National Immigrant Justice Center

Submitted via email at uscisfrcomment@dhs.gov

June 1, 2012

Sunday Aigbe, Chief
Regulatory Products Division
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529-2020

RE: DHS Docket No. USCIS-2012-0003
8 C.F.R. Parts 103 and 212
Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives

Dear Chief Aigbe:

Heartland Alliance's National Immigrant Justice Center (NIJC) submits these comments in response to the proposed rule entitled "Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives" published in the Federal Register on April 2, 2012, DHS Docket No. USCIS-2012-0003.

NIJC is dedicated to ensuring human rights protections and access to justice to all immigrants, refugees and asylum seekers. NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation and public education. Throughout its 30-year history, NIJC has been unique in blending individual client advocacy with broad-based systemic change. NIJC serves more than 8,000 immigrants annually with the support of a its staff of 40, consisting of attorneys, Board of Immigration Appeals (BIA) accredited representatives and other professional legal staff as well as a network of over 1,500 *pro bono* attorneys. NIJC represents hundreds of families pursuing consular processing each year and is intimately familiar with the issues surrounding inadmissibility, waivers and the hardships that ensure when families are separated due to this often protracted and complicated process.

We commend the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) for taking this initial step to begin to improve the adjudication process for some unlawful presence waivers. The new provisional waiver will help alleviate the hardships now faced by certain applicants, in particular U.S. citizens and their families as they navigate the complex and lengthy permanent residence process. Permitting individuals to await adjudication of an unlawful presence waiver while remaining in the United States will encourage individuals to seek the lawful status for which they are eligible under the law, keep families together, and increase efficiencies in the immigration system. Currently, many individuals who would qualify for a waiver choose not to apply because of the significant risks, costs, and hardships associated with the often lengthy application process and resulting family separation. We believe that this simple change in process will protect families and create a more streamlined adjudication process.

Although we strongly support the creation of a provisional waiver process, we believe that the proposed regulations are unnecessarily restrictive and exclude many eligible individuals from seeking provisional waivers. We also believe that certain provisions of the proposed rules undermine both the rationale for the proposed change and other key DHS initiatives.

Based upon its long standing commitment to providing legal counsel to immigrant families and its extensive experience in representing individuals applying for lawful permanent residence through consular processing, NIJC proposes the following changes to DHS's proposed regulations to better achieve USCIS's dual goal of protecting families and increasing agency efficiency:

1. Certain Priority Relatives Should Be Eligible for Provisional Waivers. We recommend that USCIS make the provisional waiver process available to individuals in all family based preference categories, including sons, daughters, and siblings of U.S. citizens, as well as spouses and children of lawful permanent residents (LPRs). *See* 77 Fed. Reg. 19921 (Apr. 2, 2012) (to be codified at 8 C.F.R. §212.7(e)). Hardship suffered by individuals in other family based preference categories, who face the same or even lengthier family separation from loved ones when they seek LPR status, is as compelling as those suffered by immediate relatives.

USCIS states that in limiting the provisional waiver to immediate relatives, it is following Congressional preference prioritizing U.S. citizens over LPRs. However, if USCIS only permits preference relatives to apply for the provisional waiver once the priority date is current, the distinction Congress has drawn between preference and immediate relatives will have already been satisfied. Thus we see no discernable difference between immediate and preference relatives and no reason not to include them in this process.

Moreover, even under the proposed rule, many U.S. citizens will face adjudication at consulates abroad. To the extent that intending immigrants in preference categories are channeled exclusively to consulates abroad, that overloaded system will likely entail longer waits. Permitting all or some preference immigrants to seek waivers before USCIS within the United States would likely reduce waiting for all.

Recommendation: USCIS should amend its proposed regulations to provide all family based immigrants the opportunity to seek provisional waivers of inadmissibility.

2. Qualifying Relatives for the Provisional Waiver Should Include LPR Spouses and Parents. We recommend that individuals who can show extreme hardship to an LPR spouse or parent be eligible for the provisional waiver process. *See* 77 Fed. Reg. 19921 (Apr. 2, 2012) (to be codified at 8 C.F.R. §212.7(e)(2)(vii)).Currently, the proposed rule is limited to individuals who can show extreme hardship to U.S. citizen spouses or parents. USCIS explains that a major concern with the current inadmissibility waiver process that will be fixed by the rule change is that

> an immediate relatives' extended absence from the United States [to apply for the unlawful presence waiver] can give rise to the sort of extreme hardship to U.S. citizen family members that the unlawful presence waivers are intended to address and, if the waiver is merited, avoid.#

This Catch-22 situation applies with equal force to LPR relatives.

USCIS defends its choice to limit qualifying relatives to U.S. citizens by saying that it is following Congressional and legal precedent that favors U.S. citizens over LPRs. Yet in many areas of immigration law, U.S. citizens and LPRs are treated *equally*. No distinction is drawn between U.S. citizen and LPR relatives for waivers of inadmissibility grounds. Both citizens and LPRs can serve as anchor relatives for cancellation of removal applications. In creating the unlawful presence waiver, Congress did not draw any distinction between LPR and U.S. citizen relatives, and it is illogical for USCIS to do so now.

Recommendation: That in adjudicating the provisional waiver pursuant to these regulations, USCIS consider hardship faced by LPR spouses and parents.

3. Individuals in Removal Proceedings Should be Eligible to Apply for And Receive a Provisional Waiver. We strongly believe that DHS should permit individuals who are currently in removal proceedings or who have been issued a notice to appear (NTA) to apply for and receive a provisional waiver. *See* 77 Fed. Reg. 19921 (Apr. 2, 2012) (to be codified at 8 C.F.R. §212.7(e)(3)(vii)). The proposed regulations state that individuals with pending removal cases before the Executive Office for Immigration Review (EOIR) are not eligible for to apply for a provisional waiver. To be eligible to apply, individuals in removal proceedings must persuade ICE to agree to dismiss or terminate proceedings. Individuals whose cases have been administratively closed would be required to have their cases re-calendared and accept voluntary departure before they would be eligible to apply for a provisional waiver. In cases where ICE, CBP, or USCIS has issued an NTA but not yet filed it with the immigration court, the applicant would not be eligible to seek a provision waiver unless DHS cancels the NTA.

- **The proposed rule is unworkable:** Component agencies are unlikely to agree to dismiss, terminate, or cancel an NTA on the mere assurance that an individual intends to apply for a provisional waiver. Additionally, requiring applicants to have their NTA disposed of prior to even filing for a provisional waiver will force EOIR, ICE, and CBP to expend resources before the applicant's eligibility for the waiver has been established, particularly since the voluntary departure period is limited to 120 days.

- **The proposed rule undermines DHS' prosecutorial discretion initiative. In addition, many eligible applicants will not risk applying for the provisional waiver, thereby undermining USCIS's stated goals for this initiative:** Last November, DHS launched a prosecutorial discretion initiative focused primarily on removing low priority cases from the immigration court docket and ensuring that such individuals were not placed into removal proceedings in the future. DHS has repeatedly explained that the prosecutorial discretion initiative is necessary for better enforcement of immigration laws and more effective use of finite enforcement resources. If the proposed rule is implemented as it is now written, USCIS would be requiring individuals granted administrative closure under this initiative to accept voluntary departure.

  The inefficiencies in the process would place burdens on the immigration courts and sister agencies within DHS. Under the proposed process, applicants would be granted voluntary departure and would then seek a waiver from USCIS. But many applicants with qualifying U.S. citizen immediate relatives would also be eligible to seek Cancellation of Removal under INA § 240A(b)(1). If USCIS will not state how it would rule on the waiver before completion of the removal proceedings, the non-citizen would have no incentive not

to proceed forward with the Cancellation application; especially as they could seek Voluntary Departure (and then a waiver) at the conclusion of proceedings. By contrast, if USCIS adjudicated and approved a waiver application for a person in removal proceedings, there would be no incentive for them to continue with costly and time-consuming discretionary processes in Immigration Court, and those cases would likely be resolved in an efficient manner by the Court system, either by a grant of Voluntary Departure or by termination of the proceeding without prejudice.

Likewise, we fear that pro se or poorly counseled individuals will remain in the United States waiting for adjudication by USCIS of the waiver request, rather than departing within 120 days as required by the Voluntary Departure statute. This in turn would lead to a host of motions to reopen, which would impose costs on the system whether those requests are granted or denied; and in cases where voluntary departure orders convert into removal orders, the provisional grant of a waiver would be of no effect. In any of these scenarios, ICE attorneys as well as the Immigration Courts would be forced to expend additional resources on cases which are already determined to be low priority.

If USCIS fails to adjudicate the waiver prior to the expiration of the voluntary departure period, the respondent would have to depart and await processing of the provisional waiver from outside the U.S.#—resulting in the lengthy separation that the provisional waiver rule is attempting to overcome—or have their voluntary departure order convert into a removal order, rendering them ineligible for the provisional waiver.

In short, the proposed rule would force these low priority respondents, who have deep ties to our country and communities, to give up the temporary reprieve granted to them by ICE to seek a provisional waiver, which, if delayed or denied, would require them to depart the U.S. immediately. As a result, many of these low priority individuals whose cases have been administratively closed will choose not to apply for the provisional waiver, and will instead remain in the U.S. without lawful status, thereby undermining USCIS's own rationale for developing this new rule.

- **The final rule should allow individuals issued NTAs and in removal proceedings to apply for and be granted the provisional waiver:** A better process would allow individuals who have been issued NTAs or who are currently in removal proceedings, including those whose cases have been administratively closed, to apply for a provisional waiver. If granted, they would then move to dismiss or terminate proceedings so that they could depart the U.S. for their immigrant visa interview at the U.S. consulate. This would also ensure that a provisional waiver applicant who is issued an NTA while the provisional waiver application is pending does not automatically become ineligible for the waiver in the middle of the process. It is essential that USCIS, ICE, and CBP develop a policy so that the provisional waiver can be efficiently adjudicated and then the NTA or removal proceedings be dismissed, terminated, or cancelled if the provisional waiver is approved.#

NIJC represents a 26 year-old Mexican man who is married to a United States citizen wife and has two United States citizen children. He is the sole income provider for the family. He was placed in removal proceedings after he was the victim of a violent attack. As a result of the attack, he has a permanent tracheotomy that requires constant medical observation and regularly becomes infected. His wife wishes to petition for him but the family cannot manage without him for the projected time he would have to remain in Mexico to await adjudication of his waiver for unlawful presence. He is not inadmissible for any other reason. Approval of a provisional waiver would enable to family to

seek voluntary departure and proceed with consular processing knowing that his time in Mexico would be limited and that he would be able to promptly return to continue supporting the family.

Recommendation: USICS should amend its regulations to allow individuals in removal proceedings to apply for the provisional waiver.

4. Applicants in the U.S. Who Have Been Scheduled for an Immigrant Visa Interview at a Consulate Should Be Eligible to Apply for a Provisional Waiver. Under the proposed rule, individuals who have already been scheduled for immigrant visa interviews are ineligible to apply for a provisional waiver. *See* 77 Fed. Reg. 19921 (Apr. 2, 2012) (to be codified at 8 C.F.R. §212.7(e)(3)).These applicants face the same lengthy separation and resulting hardships that the provisional waiver process is seeking to correct. In the proposed rule, USCIS explains that "resource constraints and timing issues warranted exclusion of these cases from participation."# However, concerns that USCIS would be unable to handle any initial surge of applications that might result, or that there would be disruptions in scheduling of appointments at U.S. Consulates abroad, and particularly, at Ciudad Juarez, should be outweighed by the humanitarian considerations that form the foundation for the proposed process change. USCIS has extensive experience at gearing up to handle waves of applications, for example when a country is designated or renewed for Temporary Protected Status (TPS) or when a regulatory change or new law results in additional adjudication responsibilities for USCIS.# Moreover, USCIS has acknowledged that it will already need to develop close communication and coordination with DOS to implement this rule.# We strongly recommend that applicants who have been scheduled for immigrant visa interviews but who have not left the U.S. be eligible to apply for provisional waivers; though we would support a timeliness requirement to ensure sufficient time to reschedule consular appointments without creating dislocations for consular staff or requiring inefficient expedited treatment of prospective waiver applications.

We would also point out that this rule is likely to lead to unforeseen administrative costs. We believe it is likely to lead to hesitation in (notoriously ill-informed) immigrant communities to move forward with consular processing, which could lead to unforeseen ebbs and flows in the number of people seeking immigrant visa interviews in the coming years. While USCIS instructs individuals already given an interview date at a consulate abroad, we expect that many individuals will fail to appear, in unpredictable ways. Moreover, it appears that USCIS would not preclude that individual from simply allowing the consulate to proceed to terminate the existing I-130 in favor of a newly-filed I-130, for which the non-citizen could seek stateside processing. We are not confident that USCIS has adequately assessed the effects of this restrictive policy. We appreciate the scheduling challenges which would be faced by DOS and USCIS

*Recommendation: I*n its efforts to ensure family unity and reduce separation, USCIS should allow even applicants in the U.S. who are scheduled for interviews to apply for provisional waivers. USCIS should instruct such applicants that their visa interviews will be automatically rescheduled for a period of 4-6 months

5. USCIS Should Not Limit Provisional Waivers Only to Individuals Who are Inadmissible Due to Unlawful Presence. We recommend that USCIS expand the use of the provisional waiver to include cases where certain grounds of inadmissibility in addition to unlawful presence are at issue. *See* 77 Fed. Reg. 19921 (Apr. 2, 2012) (to be codified at 8 C.F.R. §212.7(e)(3)). The USCIS officers adjudicating the provisional waiver will presumably have expertise on all grounds of inadmissibility and relevant waiver provisions contained in the INA. The same factors that support

the implementation of provisional waivers where unlawful presence grounds apply are equally relevant in the context of other grounds of inadmissibility. The aims of promoting systemic efficiency and limiting family separation and hardship support expanding the provisional waiver program.

Immigration & Nationality Act (INA) § 212(g) permits the waiver of health-related inadmissibility grounds where the applicant is the spouse or unmarried son or daughter of a citizen or lawful permanent resident or the parent of a citizen or lawful permanent resident. By allowing waiver issuance based on familial relationships, Congress has signaled the high esteem in which it holds family integrity. This suggests requests for this waiver should be dealt with efficiently and with minimal disruptions to family unity.

Likewise, the waiver permitted by INA § 212(h) for individuals with certain criminal convictions is available to an immigrant who is the spouse, parent, son or daughter of a citizen or lawful permanent resident who will experience extreme hardship if separated from the immigrant applicant. Here, again, the spirit behind the law is to promote preservation of the family unit. Since USCIS is centralizing waiver adjudication, it creates no additional work for adjudicators to decide these waivers through the provisional system along with waivers for unlawful presence.

INA § 212(i) permits waiver of misrepresentation where the immigrant applicant can show hardship to a citizen or lawful permanent resident spouse or parent. Similarly, this waiver should be made available through the provisional process to promote efficiency and family preservation.

NIJC represents a Mexican woman who is married to a United States citizen and has three citizen children. Her elderly lawful permanent resident mother suffers from severe dementia and requires constant care. More than ten years ago, the client filed a failed application for adjustment of status. While that application was pending, immigration officials summoned the client to the USCIS office without her attorney. They proceeded to interview her using her young daughter as an interpreter. During that interview, the client erroneously indicated she had used false documents. She was found to be inadmissible for having misrepresented her immigration status in the past. The client would now be eligible to consular process through her citizen spouse. However, because USCIS believes she requires a waiver under INA §212(i), she cannot take advantage of the provisional waiver program. The family is unwilling and unable to risk sending her to Mexico to await adjudication of her inadmissibility waivers because, for her spouse, children and mother, she is a primarily source of all forms of support.

USCIS should also permit concurrent filing of the provisional waiver with a Form I-212 waiver for a prior removal order. As USCIS notes in the proposed rule, there is already a similar stateside adjudication process in place for individuals who are inadmissible due to a prior removal order. Moreover, current adjudication policy directs that:

> generally, if the Form I-601 is approved, the Form I-212 filed under INA 212(a)(9)(A)(iii) will also be approved, since approval of the Form I-212 involves the exercise of discretion and, by deciding to approve the Form I-601, the adjudicator has determined that the alien merits a favorable exercise of discretion.#

Even though each of these waivers can be obtained stateside, under the proposed rules, applicants requiring an I-212 would be ineligible for the provisional waiver process. We recommend that applicants requiring an I-212 be permitted to apply for it concurrently with other waivers of inadmissibility. If concurrent waivers are not possible, applicants who apply for and are granted the I-212 waiver stateside will have to depart for processing of the unlawful presence waiver abroad. A second USCIS adjudicator will then have to expend valuable resources reviewing the same case a second time. This is particularly nonsensical since the provisional waiver requires a higher showing by the applicant. This type of consecutive, rather than concurrent adjudication is a waste of USCIS time and resources.

Moreover, a USCIS adjudicator would have to spend time analyzing the applicant's file in order to determine potential inadmissibility under INA § 212(a)(2), 212(a)(6)(C), and 212(a)(9)(A). Having reviewed the file and relevant background checks, as well as reviewing the arguments and supporting documentation submitted by the applicant, the adjudicator would often be able to determine whether the applicant meets the relevant hardship standard, and would merit a waiver in the exercise of discretion. Requiring that adjudicator to refuse approval, thus necessitating a second round of adjudication (and the related expenditures of time and money) before approval, is highly inefficient.

We recognize that the exercise of discretion in cases involving other types of waivers might be more complicated than waivers only involving unlawful presence. However, we would think that to the extent that the evaluation would be more complicated, it would be benefitted by stateside adjudication.

Recommendation: USCIS should allow applicants requiring other waivers of inadmissibility to apply for a provisional waiver.

6. USCIS Should Permit Motions to Reopen/Reconsider and More Than One Provisional Waiver Application. We recommend that applicants denied provisional waivers be permitted to file a motion to reopen or reconsider AND be able to re-file an application for a provisional waiver if the initial application is denied. *See* 77 Fed. Reg. 19921 (Apr. 2, 2012) (to be codified at 8 C.F.R. §212.7(e)(3)). Currently, the proposed rule does not permit any appeal or motion to reopen/reconsider, and applicants are only permitted to apply once for the provisional waiver. The only exception is if USCIS, on its own motion, reopens and approves a case that was initially denied. This unduly restrictive approach will result in eligible applicants being unable to benefit from the provisional waiver process.

While we are sensitive to the fact that the Administrative Appeals Office (AAO) is already overburdened, we firmly believe that there must be a formal process in place for the reconsideration of denied cases and the ability to reapply. First and foremost, notaries public and other unscrupulous actors will prey on immigrants and use the provisional waiver regulations as an opportunity to defraud immigrants. Based on NIJC's experience in representing victims of notary fraud, we anticipate notaries public and other unscrupulous actors will mislead individuals and file deficient provisional waiver applications on an applicant's behalf. We appreciate the proposed language at 8 C.F.R. 212.7(e)(4)(ii) for USCIS to reject certain deficient applications and recognize that this may prevent the adjudication of some deficient applications. However, this will not prevent a notary public from misleading an applicant and filing a provisional waiver either without supporting evidence of hardship or with minimal evidence of hardship.

In addition to notary fraud victims, *pro se* applicants may not fully understand the level of detail required for a successful waiver application. Finally, USCIS denies some applications in error. As a result, many eligible applicants may be denied a provisional waiver and will be barred from contesting an incorrect decision or reapplying. Suggesting that individuals whose applications are denied for any reason should simply proceed under the current process is not an adequate solution. Rather than electing to proceed abroad, many eligible individuals will choose to remain in the United States without status. In either case, the benefits of creating the provisional waiver will be lost.

NIJC has represented individuals who initially filed deficient waiver applications through notaries public and were later approved after representation by competent counsel. In one case, a pregnant Mexican woman with a U.S. citizen husband, one U.S. citizen child, and two legal permanent resident children left the United States to attend her consular interview in Ciudad Juarez. The family hired a notary public who prepared the waiver without any supporting documentation of hardship. USCIS placed the waiver on the slow track requiring the woman to remain in Mexico for more than one year for adjudication of the waiver. During this year, the woman gave birth to their U.S. citizen child in Mexico and the family relocated the other three children to Mexico, disrupting their education in the United States. The U.S. citizen husband remained in the United States to work, but he struggled to support himself in the United States and his family in Mexico. He lost their house to foreclosure and could only afford to travel to Mexico one time during the year to visit his wife and children, including his newborn child. The children could not understand why their father was not living with them and eventually the four-year-old son refused to talk to his father by phone out of anger, which caused the father extreme mental anguish. NIJC represented the family in supplementing the waiver application and within two months, USCIS approved the waiver. This case example presents the unfortunate and common fact pattern of immigrants being defrauded by notaries public. Unless USCIS allows for motions to reopen, appeals, and/or re-filing of the provisional waiver application, families will continue to be separated unnecessarily on account of initially deficient filings.

USCIS explains that permitting multiple applications "would significantly interfere with the interagency operations between USCIS and DOS and substantially delay immigrant visa processing." Presumably, this is because the proposed rule requires applicants to begin the consular process, and thus requests to reconsider or re-adjudicate a provisional waiver might result in coordination difficulties with the Department of States (DOS). Yet the proposed rule also recognizes the need for significant and close coordination with the National Visa Center (NVC). For example, "NVC and USCIS intend that both document collection for the immigrant visa interview and waiver adjudication should occur as parallel processes that will conclude at the same time . . ." As USCIS and DOS consider how to effectuate this close cooperation, they should also work to develop efficient mechanisms for coordination in instances when provisional waivers are denied and applicants must decide whether to go forward abroad, withdraw the immigrant visa application, file a motion to reopen or reconsider, or reapply.

Finally, any delays in visa processing would happen only with regard to the particular I-130 under consideration. When an applicant is denied a provisional waiver, they may decide not to attend a consular interview abroad, which would ultimately lead to termination of the approved I-130. If USCIS declined to issue an NTA, the applicant would likely continue to be present. At a later point, a petitioner might file a new I-130. Particularly if new or increased hardship has developed, the refusal to consider a provisional waiver could cause grave hardship.

To the extent that the agency wishes to avoid potential scheduling problems, a more efficient route would be to ask the applicant whether they wish to continue forward with the consular application. If the individual indicates that they do not wish to proceed forward by seeking a waiver abroad, the individual might again seek an immigrant visa by filing a new set of forms with the Department of State (and by repaying the fees); or if the I-130 has been terminated, might re-file the I-130 at a later point. Regardless, persisting in scheduling an applicant for an interview which many will not attend is unlikely to be an efficient use of the government's resources.

Finally, we would note that preventing the filing of motions to reopen – which require payment of a substantial fee – would channel cases through the *sua sponte* route, which does not involve payment of a fee. Such requests, even where not acted upon, consume resources. It is to be expected that particularly sad cases will trigger Congressional and community involvement. We would think that permitting only *sua sponte* reopening would ultimately increase the cost of the program for all. Permitting motions to reopen to be filed would be more sensible. We would recommend that the filing of a motion to reopen (which would have to be filed within 33 days of the decision) trigger automatic rescheduling of any consular appointment.

Recommendation: To ensure fairness and avoid inefficiency, USCIS should allow individuals to file a motion to reopen with the administrative agency having jurisdiction over the waiver. Further, individuals should not be limited to one application.

8. Approved Provisional Waivers Should Carry a Presumption of Extreme Hardship. Under the proposed rules, if the consular officer determines that the applicant is subject to another ground of inadmissibility, "the provisional unlawful presence waiver is automatically revoked and the alien would be required to file a new waiver application that covers all applicable grounds of inadmissibility, including the 3-year or 10-year unlawful presence bar." *See* 77 Fed. Reg. 19921 (Apr. 2, 2012) (to be codified at 8 C.F.R. §212.7(e)(13)). This is true even after USCIS determined that the individual met the extreme hardship requirements when granting the provisional waiver. Rather than requiring an entirely new adjudication, we recommend that an approved provisional waiver should give rise to a presumption of extreme hardship. This presumption should also apply to the adjudication of waivers of additional grounds of inadmissibility with the same standard.

Recommendation: An approved provisional waiver should give rise to a presumption of extreme hardship, even when the waiver is revoked on the basis that other grounds of inadmissibility apply.

9. Training on the Extreme Hardship Standard to Ensure Fair and Consistent Outcomes. As explained in the proposed rule, the change being contemplated would only impact the way an unlawful presence waiver is processed, not the standard for qualifying for such a waiver. Nevertheless, we would strongly suggest that part of the implementation of the provisional waiver include training on the extreme hardship standard, including extensive training on country conditions and hardships that are unique to various localities. Currently, waivers are processed by USCIS employees who are in-country or are very knowledgeable about conditions in the applicant's country. Centralizing the waiver process will increase efficiencies, but it is also important that country-specific knowledge is not lost in the process. Training is also important to ensure consistent and fair outcomes.

Recommendation: USCIS should provide training to adjudicators to ensure fair and consistent outcomes.

10. Suggested Revisions to Form I-601A and Instructions. Questions 25 to 33 and the accompanying instructions are confusing and inaccurate. We would suggest that they be rewritten as follows:

- Question 25b—about voluntary departure—is to be answered only by an individual currently in removal proceedings. However, individuals granted voluntary departure are no longer in removal proceedings.

  Suggested Revision: *delete question 25b. Revise the "Note" beneath question 25a to: "Note: You may answer "No" if the removal proceedings have been terminated or dismissed, or if you were granted voluntary departure. You must answer "Yes" to this question if your removal proceedings are currently administratively closed.*

- The "Note" preceding question 25a. states that if an individual answers "No" to question 26b, they are ineligible for a provisional waiver. Yet someone who was issued an NTA, placed into removal proceedings, and those proceedings were terminated would respond "No" to question 26b; they were issued an NTA but it was not cancelled.

  Suggested Revision: *Revise question 26.b. to: If you answered "Yes" to Item 26.a., was the NTA subsequently cancelled by DHS or were you subsequently placed into removal proceedings?*

- The "Note preceding question 25a and the Form Instructions state that the provisional waiver application will be denied if the applicant answers "Yes" to Questions 28, 29, and 33 concerning potential inadmissibility grounds. According to the proposed rule a person is ineligible for the provisional waiver if they are subject to other grounds of inadmissibility. However, questions 28, 29, and 33 are broader than the corresponding ground of inadmissibility. In other words, the form states that a broader group of individuals are ineligible for the provisional waiver than is actually the case under the proposed rule. For example, question 33 asks whether a person has ever been convicted of a crime. If the answer is "yes," the form and instructions indicate that the person is ineligible for the provisional waiver. Yet only certain convictions make someone inadmissible and, therefore, ineligible for the provisional waiver.

  Suggested Revisions:

1. *Revise the Note preceding question 25a to: "if you answer "Yes" to Item 27., you are not eligible for a provisional unlawful presence waiver and your application will be denied. If you answer "Yes" to Items 28., 29., 30. or 33. you may be ineligible for a provisional unlawful presence waiver and your application may be denied.*
2. *Revise the Instructions for Form I-601A, Items 25.-33. to: "NOTE: USCIS will deny your provisional waiver application if you answered "Yes" to Items 25 or 27. USCIS may deny your provisional waiver application if you answered "Yes" to Items 28, 29, 30, or 33 . . ."*

Hundreds of NIJC's clients will be impacted by the proposed regulations. The suggested comments reflect years of practical, hands-on experience from working on hundreds of these cases each year. NIJC commends DHS's efforts in trying to prevent extended family separation and hardship; however, the proposed regulations fall short in ensuring protections to many immigrant families, including parents of U.S. citizen children where the petition is based on marriage to an LPR, or siblings of U.S. citizens.

Thank you for your consideration and please do not hesitate to contact us at 312/660-1360 or via email at mruizvelasco@heartlandalliance.org should you have any questions or concerns.

Sincerely,

Mony Ruiz-Velasco, Director of Legal Services
National Immigrant Justice Center