

CRIMMIGRATION COMMUNICATION



New Program for Undocumented USC Spouses and Step Children

President Biden has announced a significant new program offering protections from removal for undocumented non-citizens who are married to or step-children of US citizens. Very few details about the specific eligibility requirements or application process have been publicly shared. However, a “criminal history” will be disqualifying.

As you are aware, the term “criminal history” carries much ambiguity for non-citizens facing criminal charges, and it is not certain what, if any, dispositions of criminal charges in New York will end eligibility for this program. Further, an element of wide discretion appears to be built in to the program. Therefore, we urge caution and delay for affected clients currently facing open criminal charges until we know more about the specific details of this program.

So far, the White House has announced only that it will use its general authority to enforce the immigration laws to grant “parole” to some categories of undocumented non-citizens. Parole will allow these non-citizens to apply for Lawful Permanent Residence (green cards) without needing to travel out of the country. This program is estimated to protect about 550,000 people. ***Fact Sheet: DHS Announces New Process to Promote the Unity and Stability of Families. Available at: <https://www.dhs.gov/news/2024/06/17/fact-sheet-dhs-announces-new-process-promote-unity-and-stability-families#:~:text=To%20address%20this%20challenge%2C%20DHS,eligible%20to%20apply%20for%20adjustment>***

According to the announcement, to be considered on a case-by-case basis for this process, an individual must:

- Be present in the United States without admission or parole (be undocumented);
- Have been continuously present in the United States **for at least 10 years** as of June 17, 2024; and

- Have a legally valid marriage to a U.S. citizen as of June 17, 2024.

In addition, **individuals must have no disqualifying criminal history or otherwise constitute a threat to national security or public safety and should otherwise merit a favorable exercise of discretion.**

Noncitizen children of potential requestors may also be considered for parole under this process if they are physically present in the United States without admission or parole and have a qualifying stepchild relationship to a U.S. citizen as of June 17, 2024. (This portion of the program does not appear to carry a ten-year presence requirement.)

Therefore, if possible, and only until regulations have been published, best practice will be to seek to delay resolution of any criminal charges (unless the charges are being dismissed, not including an adjournment in contemplation of dismissal) for clients who:

- Have been physically present in the United States for 10 or more years, and
- Are married to United States Citizens; or
- Are the step-children of US citizens.

We will circulate more detailed information about how criminal charges and convictions will impact eligibility for this program when a notice describing eligibility is published in the Federal Register. Please feel free to reach out to Jackie or Michelle about this exciting new program.

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