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September 21, 2015

Ms. Laura Hawkins
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

**RE: Request for Comments: Expansion of Provisional Unlawful Presence Waivers of Inadmissibility
DHS Docket No. USCIS-2012-0003**

Dear Ms. Hawkins:

The New York City Mayor's Office of Immigrant Affairs ("MOIA") submits the following in response to the Department of Homeland Security's ("DHS") request for comment on the proposed rule regarding "Expansion of Provisional Unlawful Presence Waivers of Inadmissibility."

MOIA promotes the well-being of immigrant communities by recommending policies and programs that facilitate the successful integration of immigrant New Yorkers into the civic, economic, and cultural life of the City of New York. MOIA and the City of New York have particular interests in supporting the unification of immigrant families, as it leads to stronger, more stable communities, and in ensuring that those who apply for immigration benefits are provided clear guidelines about their eligibility for those benefits while being protected from immigration services fraud.

Thus, we offer our enthusiastic support for the proposed expansion of the provisional waiver program, because it will allow many New Yorkers to complete their applications for lawful permanent residence, stay close to their family members during the process, and build deeper roots in the U.S. as immigrants on the path to citizenship.

Expansion of the Provisional Unlawful Presence Waivers

The expansion of the provisional waiver will allow individuals with a path to lawful permanent residence due to family or community ties to successfully complete the process upon demonstrating their eligibility for the waiver.

Since 2013, the provisional waiver process has provided relief to individuals who were otherwise able to apply for an immigrant visa by providing a waiver for certain past immigration violations to those who could demonstrate “extreme hardship” to a qualifying family member. However, the program to date has been limited in scope, excluding many non-citizens who are statutorily eligible for the waiver. An expansion of the waiver has the potential to significantly impact many of New York City’s 500,000 undocumented residents, many of whom have U.S. citizen or lawful permanent resident family members, or employers who have filed approvable immigrant petitions on their behalf, and may be eligible for the waiver. The expansion will not only allow those New Yorkers to complete the first step on the path to citizenship, but it will also help provide economic stability to many families by allowing eligible individuals to obtain work authorization and contribute to their household incomes. For this reason, we support DHS’s proposal to expand the provisional waiver program. We particularly support the expansion to other visa categories, like diversity visas and derivative family members of individuals in the eligible visa categories.

We encourage DHS to use a broad and inclusive approach in the implementation of the provisional waiver program so that as many individuals who are currently eligible for the expanded waiver as possible are allowed to apply.

Extreme Hardship Standard

We also encourage DHS and U.S. Citizenship and Immigration Services (“USCIS”) to clarify the definition of “extreme hardship” for the provisional waiver. In his November 20, 2014 memorandum, titled, “Expansion of the Provisional Waiver Program,” DHS Secretary Jeh Johnson instructed USCIS to provide additional guidance on the definition of “extreme hardship” for the purposes of a provisional waiver application. Neither the federal statute nor federal courts have provided specific definitions of “extreme hardship,” as it relates to provisional waivers and this has left many immigrants and their representatives in confusion over how to best advocate for their case.

The City of New York encourages transparency in adjudications that significantly impact the lives of its residents. As there is no appeals process for the provisional waiver, the City of New York is invested in ensuring that immigrant consumers with limited resources are fully informed prior to paying the \$680 application fee about their eligibility to satisfy the extreme hardship standard. We also believe that providing a clear definition of “extreme hardship” will help prevent fraud by unscrupulous providers who prey on misinformed immigrants and convince them that they may be eligible for a provisional waiver when in fact they are not. Issuing guidance will help address these concerns as well as increase efficiency for DHS by encouraging stronger applications and discouraging frivolous ones.

MOIA and the City of New York appreciate the opportunity to comment on this issue and we look forward to a continuing dialogue with DHS on this and many other issues.

Sincerely,



Nisha Agarwal
Commissioner
NYC Mayor’s Office of
Immigrant Affairs