

PREFACE

The unlawful presence ground of inadmissibility has separated families and hampered the immigration of vast numbers of noncitizens who were otherwise eligible for legal permanent residency. This ground of inadmissibility, commonly understood as the three- and ten-year bars, has severely affected intending immigrants who entered the United States without authorization or overstayed their nonimmigrant status. Faced with the Hobbesian choice of attending a consular interview abroad and triggering the three- or ten-year bar, or remaining in the United States without status, many noncitizens chose to remain in the United States with their families rather than face lengthy separations.

For nearly two decades, until January 2013, no remedial legislation, regulation, or policy had tempered the devastating consequences of these bars. With the implementation of this program and its expansion in 2016 to include all family-based applicants as well as others, the provisional waiver program has become an essential remedy for many vulnerable populations. The 2016 guidance on how the agency should apply the extreme hardship standard has encouraged even more people to apply. Somehow, in this era of heightened enforcement, the provisional waiver program has managed to survive unscathed. Family-based immigration remains one of the major paths for obtaining legal status, and it appears that provisional waivers will continue to be an important way of achieving that.

Charles Wheeler
CLINIC
March 2020