



## **Practice Alert: Parole in Place and Streamlined Employment-Based Visas: What We Know and What We Want to See for Immigrant Survivors<sup>1</sup> July 2024**

In June 2024, the Biden Administration [announced](#) new programs to promote family reunification and access to employment-based visas for noncitizen graduates of U.S. institutions of higher education.<sup>2</sup> This Practice Alert will outline the requirements for the new Parole in Place (“PIP”) program for spouses and stepchildren of U.S. Citizens, address how immigrant survivors and their children may benefit, detail our unanswered questions and hopes for the PIP program, address the employment-based visa changes, and identify existing parole programs that may benefit immigrant survivors.

**The PIP program is not currently in effect.**<sup>3</sup> The program will not be implemented until publication of a notice in the Federal Register later this summer. **Requestors should not file applications for the PIP program at this time**, as United States Citizenship and Immigration Services (“USCIS”) will reject them.<sup>4</sup> ASISTA will alert the field when the program goes into effect, and we encourage practitioners to pay close attention to the latest news and updates about the PIP program.

### **I. Parole-in-Place for Spouses of United States Citizens**

The Biden Administration’s new program will grant PIP to eligible noncitizen spouses and stepchildren of United States Citizens. PIP will allow noncitizen spouses of U.S. Citizens who entered the United States without inspection to adjust status in the United

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<sup>2</sup> *Fact Sheet: DHS Announces New Process to Promote the Unity and Stability of Families*, U.S. DEP’T. OF HOMELAND SECURITY (June 17, 2024), <https://www.dhs.gov/news/2024/06/17/fact-sheet-dhs-announces-new-process-promote-unity-and-stability-families> (hereinafter “*Fact Sheet*”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

States, eliminating the need to file Form I-601A waivers of unlawful presence.<sup>5</sup> To qualify for PIP, a noncitizen must:

- Have a legal marriage to a United States Citizen as of June 17, 2024
- Be present in the United States without admission or parole
- Be continuously present in the United States for at least ten years as of June 17, 2024
- Be otherwise eligible for adjustment of status
- Have no disqualifying criminal history
- Not otherwise pose a risk to national security or public safety
- Merit a favorable exercise of discretion.<sup>6</sup>

Noncitizen children of requestors may also qualify for PIP if they:

- Are present in the United States without admission or parole and
- Have a stepchild relationship with a U.S. Citizen as of June 17, 2024.<sup>7</sup>
  - The “stepchild relationship” requirement means that a noncitizen child whose parent married a U.S. Citizen when the child was 18 or older unfortunately will not qualify for the PIP program. This is because, to be a “stepchild” under immigration law, the marriage between the legal parent and stepparent must have occurred when the child was under 18.<sup>8</sup>

#### **i. Which immigrant survivors will benefit?**

Due to the limited detail in the announcement, ASISTA cannot yet say with certainty which immigrant survivors will benefit from the PIP program. It appears that immigrant survivors who are married to U.S. Citizens, meet all program requirements, and are otherwise eligible for adjustment under INA § 245(a) will qualify, as well as noncitizen children of those survivors who are present without admission or parole and have an eligible stepchild relationship with the survivor’s U.S. Citizen spouse. Adult sons and daughters of immigrant survivors who are married to U.S. Citizens and are otherwise eligible for adjustment under § 245(a) also appear eligible for the program.

ASISTA will update the field on eligibility as more information becomes available.

#### **ii. What does ASISTA want to know?**

The announcement left many unanswered questions, and ASISTA looks forward to receiving more information in the coming months. Some of our questions include:

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<sup>5</sup> See INA § 245(a) (allows adjustment if the person has been admitted or paroled into the United States) and (c) (requirements to be in lawful status on the date of the adjustment application, and to have continuously maintained lawful status, do not apply to immediate relatives).

<sup>6</sup> *Fact Sheet*, *supra* note 2.

<sup>7</sup> *Id.*

<sup>8</sup> INA § 101(b)(1)(B)

- Will the PIP application require the participation of the U.S. Citizen spouse? If yes:
  - Will there be an exception if the U.S. Citizen spouse is abusive, and if so, how can an applicant demonstrate abuse?
  - Will USCIS apply the “any credible evidence” standard to PIP applications filed by abused spouses?<sup>9</sup>
- How will USCIS implement the 8 U.S.C. § 1367 confidentiality protections, if at all, in the adjudication of PIP applications?
- Must PIP requestors be eligible for adjustment of status but for their manner of entry? Will PIP requestors be required to identify waivable grounds of inadmissibility in their applications?
- Will USCIS grant employment authorization to successful requestors under the (c)(11) parole category, or will employment authorization only be granted under the (c)(9) category when the requestor applies for adjustment of status?
- How will USCIS define “disqualifying criminal history”? What, if any, records of juvenile adjudications or dismissed arrests will USCIS seek for PIP applicants?

**iii. What does ASISTA want to see?**

ASISTA has several hopes for immigrant survivor access to the PIP program, which we have relayed to USCIS, and we will closely monitor the program’s implementation to ensure that the Administration considers the needs of immigrant survivors.

First, we hope that the Administration will apply the PIP program broadly, in order to fully effectuate the goal of family reunification and to provide desperately needed employment authorization to immigrant survivors. This includes allowing eligible immigrant survivors who are stuck in U and T backlogs to qualify for the PIP program and receive parole-based employment authorization while they wait for their survivor-based applications to be adjudicated. Immediate employment authorization is critical to immigrant survivors’ ability to leave abusive relationships, establish stability and safety, and obtain employment that is free of abuse and exploitation.

Second, we hope that the PIP program will be fully accessible to spouses of abusive U.S. Citizens. Specifically, we hope that the PIP application will not require the U.S. Citizen spouse’s participation. Otherwise, ASISTA fears that the PIP program could become yet another weapon in the abuser’s arsenal used to exercise control over the immigrant survivor. For VAWA-eligible abused spouses of U.S. Citizens, the immediate temporary relief offered by the PIP program could allow them to exercise independence, connect earlier with supportive services, and take sufficient time to prepare a VAWA self-petition.

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<sup>9</sup> See *generally* INA § 204(a)(1)(J)

Third, ASISTA would like to see USCIS agree to use the “any credible evidence” standard when evaluating eligibility evidence for abused spouses, and for USCIS to train adjudicators to fully implement 8 U.S.C. § 1367 confidentiality protections when adjudicating PIP applications filed by spouses who affirmatively identify themselves as abused spouses of U.S. Citizens.

Finally, we hope that “disqualifying criminal history” is not defined so broadly that it excludes from the program large numbers of criminalized survivors whose criminal histories stem from abuse, trauma, poverty, and systemic racism in the criminal-legal system, and whose criminal history includes juvenile adjudications and dismissed arrests. ASISTA would also like to see USCIS refrain from requesting police/arrest reports and other documentation prepared in advance of prosecution or sentencing to inform their adjudications in this (or any other) program.

## **II. Streamlined Employment-Based Visa Processing**

The Biden Administration’s announcement also allows certain noncitizen graduates of U.S. institutions of higher education, including DACA recipients, to receive faster work visas.<sup>10</sup> As background, some employment-based visa applicants must depart the United States to receive the visa. If the applicant has accrued sufficient unlawful presence, their departure will trigger INA 212(a)(9)(B), the unlawful presence ground of inadmissibility (commonly called the “3 or 10 year bar”). This ground of inadmissibility may be waived under INA 212(d)(3) the noncitizen is applying for a nonimmigrant employment-based visa such as an H-1B visa for skilled workers.<sup>11</sup> The U.S. Department of State (“DOS”) handles visa processing, but DHS must grant the waiver.<sup>12</sup>

DOS published [questions and answers](#) about the Biden Administration’s new program. According to the questions and answers, DOS will describe when consular officers should consider recommending that DHS waive grounds of inadmissibility on an expedited basis for eligible noncitizen graduates who have applied for employment-based visas.<sup>13</sup> Expedited waivers will allow these graduates to more quickly receive their employment-based visas and return to the United States in lawful status to begin employment that is critical to the U.S. economy. DOS will update the Foreign Affairs Manual with further guidance later in July.<sup>14</sup> ASISTA encourages interested practitioners to consult the [American Business Immigration Coalition](#) (“ABIC”) for further information.

## **III. Existing Parole Programs**

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<sup>10</sup> *Easing the Nonimmigrant Visa Process for U.S. College Graduates*, U.S. DEP’T OF STATE (June 18, 2024), <https://travel.state.gov/content/travel/en/News/visas-news/easing-the-nonimmigrant-visa-process-for-u-s--college-graduates-.html> (hereinafter “*Easing the Nonimmigrant Visa Process*”).

<sup>11</sup> See INA § 212(d)(3) (does not list INA § 212(a)(9)(B) as an excluded ground of inadmissibility).

<sup>12</sup> *Easing the Nonimmigrant Visa Process*, *supra* note 10.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

There are existing PIP programs for which some immigrant survivors may be eligible. These include military parole-in-place, parole-in-place for noncitizen victims and witnesses to labor violations, and humanitarian parole-in-place.

**i. Military parole-in-place**

Military parole-in-place allows certain noncitizen service members and immediate family of service members to receive parole-in-place on a humanitarian basis.<sup>15</sup> Eligible family members include spouses, widow(er)s, parents, and sons or daughters of active-duty members of the U.S. armed forces, individuals in the Selected Reserve or Ready Reserve, and veterans of the U.S. armed forces who were not dishonorably discharged.<sup>16</sup> ASISTA encourages practitioners to consult the USCIS [website](#) for more information about how to access PIP for military-connected survivors.

**ii. Parole-in-place for noncitizen victims and witnesses to labor violations**

In January 2023, DHS announced an expedited deferred action process for noncitizen victims and witnesses to labor violations.<sup>17</sup> The process was based in part on an October 2021 [memo](#) on worksite enforcement by DHS Secretary Alejandro Mayorkas. In the memo, Secretary Mayorkas required DHS to develop agency plans for parole for noncitizen victims and witnesses to labor violations.<sup>18</sup> While the process announced in January 2023 focuses largely on deferred action, USCIS stated that parole-in-place may be a possibility for noncitizen victims of labor exploitation.<sup>19</sup>

Workers applying for parole-in-place based on labor violations must file Form I-131 at a USCIS field office. ASISTA has heard of such parole-in-place grants through the USCIS Seattle Field Office. ASISTA encourages practitioners to contact us with questions about parole-in-place for immigrant victims and witnesses to labor violations.

**iii. Humanitarian parole-in-place**

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<sup>15</sup> *Discretionary Options for Military Members, Enlistees and Their Families*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (last reviewed/updated May 2, 2024), <https://www.uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families> (hereinafter “*Discretionary Options*”).

<sup>16</sup> *Id.*

<sup>17</sup> *DHS Support of the Enforcement of Labor and Employment Laws*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/dhs-support-of-the-enforcement-of-labor-and-employment-laws> (last reviewed/updated April 11, 2024) (hereinafter “*Enforcement of Labor and Employment Laws*”).

<sup>18</sup> ALEJANDRO N. MAYORKAS, WORKSITE ENFORCEMENT: THE STRATEGY TO PROTECT THE AMERICAN LABOR MARKET, THE CONDITIONS OF THE AMERICAN WORKSITE, AND THE DIGNITY OF THE INDIVIDUAL, U.S. DEP’T OF HOMELAND SECURITY, at 2 (Oct. 12, 2021), available at [https://www.dhs.gov/sites/default/files/publications/memo\\_from\\_secretary\\_mayorkas\\_on\\_worksite\\_enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf).

<sup>19</sup> *Enforcement of Labor and Employment Laws*, *supra* note 17.

ASISTA has seen reports of humanitarian parole-in-place granted to noncitizens in extremely compelling humanitarian circumstances. It appears that such requests should, like the others discussed in this section, be filed at the USCIS field office with jurisdiction over the noncitizen's place of residence. ASISTA encourages those with questions about filing applications for humanitarian PIP to inquire with their local practitioners to learn about any known trends or practice tips in applying with the applicable USCIS field office.

## **Conclusion**

The Biden Administration's parole-in-place program and streamlined employment-based visa processing hold significant promise for family reunification and expanded pathways to lawful status in the United States. ASISTA hopes that the Administration will consider the needs of immigrant survivors when implementing the PIP program, and we will closely monitor the program's implementation. ASISTA encourages practitioners to pay close attention to updates about the PIP program and to consider existing parole-in-place programs that may benefit their immigrant survivor clients.

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