

The Relationship Between Advance Parole and Unlawful Presence by Sherry L. Neal, Esq.

A foreign national who is in the final stages of his green card application (I-485 Adjustment of Status) can apply for permission to leave the United States temporarily through the filing of a Request for Travel Document (also known as advance parole authorization). The sole purpose of the advance parole authorization is to permit an applicant for adjustment of status to leave the United States and then return without the application being abandoned. In other words, if a person with an I-485 application pending left the United States without advance parole authorization, upon his return he would have to re-file his I-485 application because the INS views departure as abandonment. The only exception is for those foreign nationals who have a valid H or L visa in their passport.

Section 301(b)(1)(B)(ii) of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act created what is known as the "three and ten year bars" to entering the United States. Specifically, an alien that is unlawfully present in the United States for a period of more than 180 days who voluntarily departs the United States is inadmissible for a period of three years; an alien that is unlawfully present in the United States for a period of one year who voluntarily departs the United States is inadmissible for a period of ten years. For purposes of the three and ten year bars, the INS counts any time of unlawful presence after April 1, 1997. Also, the INS does not make any distinction between those who intentionally overstayed and those who inadvertently overstayed. However, a person is not barred from the U.S. until he actually departs after the period of unlawful presence.

The relationship between advance parole and the three and ten year bars is vitally important. Approval of an advance parole does not give the foreign national *carte blanche* authority to re-enter the United States. That is, if the foreign national is subject to the three or ten year bar, he will be prevented from re-entering the United States despite the fact that he may have an advance parole approval. In fact the advance parole document itself provides the following warning: Presentation of this authorization will permit you to resume your application for adjustment of status upon your return to the United States. If your adjustment of status application is denied, you will be subject to removal proceedings under 235(b)(1) or 240 of the Act. *If after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(I) of the Act when you return to the United States to resume the proceeding of your application.* (Emphasis added).

Generally, a competent attorney who reviews a foreign national's immigration history and detects whether or not there has been unlawful presence would not even apply for advance parole for the foreign national since such application would be futile. However, there are some cases where the advance parole application was filed, because either the attorney did not diligently review the file or the foreign national filed his own case. In those situations it is normal for the INS to approve the advance parole since the INS does not typically look for possible unlawful presence when processing advance parole applications. Thus, when a foreign national receives an advance parole authorization he should still carefully review his immigration history to ensure that he has not been unlawfully present in the United States for 180 days.

About The Author

Sherry L. Neal, Esq. is an immigration attorney with Hammond & Associates, LLC, based in Cincinnati, Ohio. Ms. Neal has written several other articles, copies of which can be retrieved on the firm website at <http://www.hammondlawfirm.com>. She can be reached directly at sln@hammondlawfirm.com.