



## IMMIGRATION OPTIONS FOR MILITARY FAMILIES

U.S. Citizenship and Immigration Services (“USCIS”) has made available two immigration options for family members of military personnel: Parole-in-Place and Deferred Action. These policies were set in place to aid those serving in the United States military by protecting eligible family members who reside in the United States. USCIS outlined these options in two memorandums: *Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve*<sup>1</sup> and *Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans and Enlistees*.<sup>2</sup>

These policies can help family members of military service personnel obtain authorized stay, work authorization, and in certain cases apply for Adjustment of Status under INA § 245(a).

### I. Parole-in-Place

Parole-in-Place (“PIP”) is available for spouses, parents, sons and daughters of military personnel. PIP is an option available for family members of United States Citizens and Lawful Permanent Residents who are, or were once enrolled, in the U.S. Military. Additionally, PIP is also available to family members of previous military personnel who are now deceased and for sons and daughters who are over 21 and married.<sup>3</sup> Individuals who are granted PIP are given authorize stay, work authorization, and are “paroled” for adjustment purposes under § 245(a) of the Immigration and Nationality Act (INA), creating the possibility for adjustment.

#### A. Overview:

- PIP is outlined by USCIS memorandum (Nov. 2013 and Nov. 2016) and authorized pursuant to INA § 212(d)(5)(A). The policy emphasizes that close family members of military personnel are deserving of consideration for a favorable exercise of discretion on a case-by-case basis in accordance with the USCIS policy.
- PIP is available to certain family members of USC and LPR active members of the U.S. Armed Services, like the Selective Reserve of the Ready Reserve, and veterans, whether

living or deceased, who were not dishonorably discharged. Family members include spouse, children (under 21) and unmarried, as well as adult (over 21) sons and daughters whether married or not, and parents.

- A grant of PIP cures the inadmissibility ground under § 212(a)(6)(A)(i), relating to individuals “present in the United States without being admitted or paroled,” but does not impact other inadmissibility grounds and an individual must be otherwise eligible to adjust under § 245(a).

### **B. Authority to Grant Parole-in-Place:**

The Attorney General, under § 212(d)(5)(A) of the INA, has authority, on a case by case basis, to grant parole to noncitizen applying for admission to the United States for urgent humanitarian reasons or significant public benefit.<sup>4</sup> The government has interpreted this power to include individuals who are already physically present in the country.<sup>5</sup> This authority has been extended to include the granting of PIP.<sup>6</sup>

The INA states that applicants for admission include those persons who are physically present in the country but entered without inspection.<sup>7</sup> PIP allows such persons to be granted parole while remaining in the United States.<sup>8</sup> The United States government has been using PIP since at least 2007 to allow certain relatives of U.S. military members to remain in the county and enable them to adjust status.

### **C. Eligibility for Parole-in-Place:**

Certain family members of military personnel can request parole-in-place, if they meet the basic requirements. PIP is generally granted for a period of 1 year. An individual may qualify for PIP if they:

- are physically present in the United States;
- were not previously “admitted”;
- are the spouse, parent, son or daughter (of any age) of an active duty member of the U.S. Armed, the Selected Reserve of the Ready Reserve, or former member of the U.S. Armed Forces or Selected Reserve of the Ready Reserve (including individuals who served in the military but are now deceased); AND
- do not have a criminal conviction or other serious adverse factor.

It is important to note that even though these requirements are outlined, a grant of PIP is discretionary, and people have been granted parole in cases where they have contact with law enforcement.

#### ***Physically Present:***

Applicants for PIP must be physically present in the United States at the time of applying. There is no specific length of time mentioned in the policy memorandum. In the case of surviving family

members, proof of residence in the United States at the time of the service member's death will be required.<sup>9</sup>

***Admission<sup>10</sup>:***

Only individuals who have not been formally admitted into the United States can apply for PIP. Current immigration law distinguishes an entry from an admission.<sup>11</sup> An admission is a "lawful entry" after an "inspection and authorization" by an immigration officer.<sup>12</sup> Under this definition, a person may enter the United States, and be living within the United States, without having been legally admitted. Therefore, a noncitizen who entered the United States without inspection (EWI), has not been admitted.

Since the statute limits access to parole to those who have not been admitted, people who were awfully admitted at a port of entry, like with a tourist visa, student visa or border crossing card, will not be able to apply for parole in the United States because they are no longer applying for admission.<sup>13</sup>

**Example:** Monica is an undocumented immigrant, and a mother of a member of the U.S. Armed Force. She entered the country in 1992 by wading across the Rio Grande River to avoid detection by immigration authorities. As the mother of a member of the U.S. Armed forces, and because she entered without inspection, Monica is eligible for PIP.

**Note:** Individuals who were admitted but are present beyond their periods of authorized stay may be eligible to request Deferred Action as spouses, parents, and sons/daughters of active military personnel.<sup>14</sup> **Reference part B for more information on Deferred Action.**

***Spouse, Parent, Son or Daughter:***

**Spouses:** People who are legally married and have a "bona fide" marital relationship. A marriage must be legally recognized in the place where it took place and USCIS will look to the law of the location where the marriage took place when determining if the marriage is valid for purposes of immigration law. This applies equally to same sex marriages and marriages where one or both spouses are transgender.<sup>15</sup>

Widows and Widowers of a U.S. Military member or veteran can also be granted PIP, so long as they prove they were residing in the United States at the time of the service member's death.<sup>16</sup>

**Sons or Daughters:** Children, whether under or over 21, married or unmarried. This was clarified in the November 2016 memo, recognizing PIP was available to sons and daughters and not just "children," as previously stated in the November 2013 memo.<sup>17</sup>

In addition to biological children born in wedlock, PIP is available to stepchildren, adopted children, adopted orphans, and children born out of wedlock. These definitions mirror those in immigration law.<sup>18</sup>

Parent: There is no legal definition of parent in immigration law, rather it is derived from the definition of child under the Act. See the above discussion of ‘Sons or Daughters’. While in regular family-based petitions, a child must be at least 21 years old and a U.S. Citizen to petition their parent, this is not the case for PIP. For PIP, a child can also be a Lawful Permanent Resident in order for their parent to submit a request for PIP.<sup>19</sup> Moreover, there is no minimum age requirement for the son or daughter for a parent to qualify for PIP.<sup>20</sup> Therefore, the parents of a nineteen-year-old lawful permanent resident serving in the U.S. military can qualify for PIP.

***Member of U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve, who was not dishonorably discharged:***

1. Active Duty Member of U.S. Armed Forces: The U.S. Armed Forces refers to the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard.<sup>21</sup> Active duty includes full-time duty in active military service, full-time training duty, annual training duty, attendance, while in active military service, at a service school (designated by law), and active duty in noncombatant capacity.<sup>22</sup>

Though the National Guard is included in the definition of the armed forces, active duty does not seem to include full-time National Guard duty since personnel is described as “Active Status” and PIP specifically calls for “Active Duty.”<sup>23</sup> The Selected Reserve consists of those units and individual Reserves that are recommended by their military department and approved

2. Member of the Selected Reserve of the Ready Reserve: Each armed force group has a reserve component (such as Ready Reserve, Standby Reserve, and Retired Reserve).<sup>24</sup> Within the Ready Reserve of each of the reserve components there is a Selected Reserve.<sup>25</sup> The Selected Reserve consists of those units and Individual Reserves that are recommended by their military department and approved by the Chairman of the Joint Chiefs of Staff. Individuals who are selected have been recommended for service and are considered active duty. Therefore, only selected reserve of the ready reserve are considered active duty members.<sup>26</sup>

Individuals currently enrolled in Military Accessions Vital to the National Interest (“MAVNI”) program, who are not currently on active duty but are enrolled in Delayed Entry Program<sup>27</sup> (“DEP”), cannot utilize PIP until they are in active duty but are eligible for deferred action.

3. Dishonorably discharge: PIP requires that military personnel not be dishonorably discharged. A dishonorable discharge is a punitive discharge, it is generally handed down to an enlisted member by a general court-martial. This type of discharge is given by a conviction at a general court-martial for serious offenses (i.e. desertion, sexual assault, etc.)<sup>28</sup>

#### ***Criminal Conviction or Other Serious Adverse Factor:***

While USCIS indicates PIP is available to those without criminal convictions (i.e. those without past criminal conduct, prior immigration violations, or other adverse factors), in practice, individuals have been granted PIP despite prior law enforcement contact. For example, USCIS has granted PIP where the applicant was convicted of a DUI. USCIS stated that positive factors should be submitted with the application when the applicant has a criminal history. In this case, USCIS will request a certified copy of the criminal disposition.

**Note:** If the applicant has any history of contact with INS, USCIS, ICE, or CBP, be sure you know exactly what happened in the eyes of immigration. You may need to do an FBI fingerprint check and/or FOIA request. It is important to know before any request are submitted to understand any risks your client might face. For more information on completing the different types of FOIA requests ILRC's practice advisory *Step by Step Guide to Completing a FOIA Request with DHS* at [https://www.ilrc.org/sites/default/files/resources/foiaa-step\\_by\\_step-20171117.pdf](https://www.ilrc.org/sites/default/files/resources/foiaa-step_by_step-20171117.pdf).

**Example:** Gina entered without inspection in 1997 and has resided in the United States since. Gina has dedicated her life to working and raising her daughter Amy. Gina's daughter, Amy, is a U.S. Citizen who joined the military and is serving honorably. Can Gina qualify for PIP?

Yes, because Gina entered without inspection, or EWI, and her daughter is a USC, who is serving in the military, she qualifies for parole-in-place. Gina will have to submit an I-131 and supporting documents to establish her eligibility.

#### **D. Application Packet:**

To request parole, the individual must submit a complete application to the local USCIS field office with jurisdiction over their place of residence.<sup>29</sup> A complete packet includes the following:

- Parole-in-Place Request Letter:
  - Letters should be addressed to the director of the local USCIS field office, include biographical information about the service member or veteran, detail the service, describe the service member's relationship to the applicant, applicant's immigration status, if any petitions have been filed, and the hardship caused to the service member due to the applicant's legal status;
- Completed I-131, Application for Travel Document (no fee is required);
 

**Note:** Form I-131 does not have an option for parole-in-place, per USCIS instructions, individuals should write in "military PIP" in part 2, Application Type.<sup>30</sup> The USCIS

- Director has determined that in this situation the Form I-131 may be filed without fee, per 8 CFR 103.7(d).<sup>31</sup>
- Evidence of family relationship:
    - Parent/Child: copy of the child's birth certificate or adoption decree;
      - stepchild—marriage certificate between the biological parent and stepparent;
      - out of wedlock child—evidence showing the child was legitimated—photographs, proof of financial support, or other documentation;
    - Spouse: copy of the marriage certificate and evidence showing bona fide nature of the marriage (photographs, birth certificate of children, copies of income taxes filed jointly, joint bank accounts);
    - Surviving family members, proof of residence in the United States at the time of the service member's death;
  - Evidence that the individual's family member is an active duty member of the U.S. Armed Forces, individual in the Selected Reserve of the Ready Reserve or previously served (whether still living or deceased)
    - Photocopy of front and the back of the service member's military identification card (DD Form 1173 (can be obtained through the National Archives Website<sup>32</sup>);
    - Deployment orders for service member (if applicable);
  - Evidence of lawful permanent residence or U.S. citizenship of military personell (such a copy of their green card, birth certificate or U.S. passport).
  - Proof of Identity or Nationality:
    - A copy of Passport or
    - Copy of birth certificate and a copy of a photo identification, like state issued identification card or driver license;
  - Two passport photos;
  - Evidence of any additional favorable discretionary factors that the requestor wishes considered:
    - Awards or commendations the military service member has received;
    - Awards and certificates received by the applicant;
    - Enrollment in education programs, community service, volunteer work;
    - Participation in religious organizations or other community organizations;
    - Character reference letters about applicant; AND
  - Certified criminal disposition (if relevant).

USCIS field offices do not disclose how long it will take to process a PIP application, generally an applicant can expect their application to be processed in 3-6 months, like other parole applications. This time will vary per field office.

## E. Benefits of Parole-in-Place:

### a. Protection from Deportation and Work Authorization

Individuals granted PIP are protected from being removed from the United States temporarily by authorizing their stay in the country. Individuals are given an I-94 or letter evidencing parole has been issued that is valid for a period of 1 year.<sup>33</sup> Once an individual is granted PIP, they will be able to apply for a work permit, under 8 CFR 274a.12(c)(11). Individuals will need to provide a copy of their issued I-94 with their employment authorization application.

With parole and employment authorization, a person is also eligible to obtain a valid social security number and possibly other state benefits. PIP and the corresponding work permit can be renewed. Based on the processing times for Parole applications, applicants are encouraged to renew PIP between 5-6 months to ensure there is no lapse in their work authorization or designation.

PIP can also be used strategically to allow immediate family members to adjust their status under § 245(a).

### b. Adjustment of Status Strategy

Adjustment of Status is the process through which a person, within the United States, becomes a lawful permanent resident. However, adjustment under INA § 245(a) requires a lawful admission. Without an admission, or eligibility under former INA § 245(i), an applicant would have to consular process through the U.S. consulate in their country of origin. Adjustment of Status is preferable to consular processing because of the greater opportunities for administrative and judicial review, ability to avoid the risks of travel outside the United States, and the lower overall costs. Furthermore, departing the U.S., including to attend the consular appointment, may trigger inadmissibility under INA § 212(a)(9)(B), the three-year and the ten-year unlawful presence bars, creating another obstacle. PIP provides a critical path to adjustment for people who would not be able to consular process because they do not qualify for a waiver of unlawful presence because they do not have the required qualifying relative- namely a U.S. citizen or LPR parent or spouse.

A grant of PIP allows an individual, who previously entered unlawfully, to be adjustment eligible under INA § 245(a) because parole is considered an admission for purposes of adjustment under INA § 245(a). As a result, a person who initially entered the United States without inspection but subsequently granted PIP, would have be eligible to adjust under INA § 245(a).

**Example:** Mai is an undocumented immigrant who entered the country unlawfully in 1990 and has lived here ever since. Her U.S. citizen son, Pao, is 21 years old, but has not petitioned for Mai because she is barred from adjustment of status under INA § 245(a) due to her entry without inspection. Mai will trigger the ten-year unlawful presence bar if she leaves the country to consular process. Additionally, Mai will need to get an approved waiver to consular process.

Assume Pao is serving in the U.S. Marines. Mai can qualify for parole-in-place based on her son's military service. If Mai receives parole-in-place, she will no longer be barred by INA § 245(a) because she has been "paroled." Her son could file a petition for her as his immediate relative and she could adjust status.

Advocates should note the following when helping an individual determine if they would be eligible to adjust under INA § 245(a):

- i. An individual does not need to adjust status through the same family member that made them parole eligible.

**Example:** Eric is undocumented and entered the U.S. without status years ago. He is not married to Linda, a US Citizen. Eric's dad never became a citizen, but he is an LPR and veteran of the U.S. Army. Eric can receive parole-in-place based on his dad's military service. Since Eric will be "paroled" into the country, he can then adjust as an immediate relative through his wife, Linda.

- ii. A grant of PIP establishes only the threshold requirement that the person have been inspected, admitted, or paroled.<sup>34</sup>
- iii. A grant of PIP does not cure the § 245(c) bars, which apply to people in the preference categories (not immediate relatives).<sup>35</sup> Therefore, people who are not immediate relatives and worked without authorization or were present in the United States without status might still be ineligible to adjust status despite being granted PIP.
- iv. PIP enables a person to meet the threshold requirements of adjustment of status, that person may still be unable to obtain lawful permanent residence if they are deemed to be inadmissible (and not eligible for a waiver). There are many reasons a person might be found inadmissible. The grounds can be found at INA § 212(a), and include various criminal convictions, prior removal orders, false claim to U.S. Citizenship, and many more. PIP only helps with one ground of inadmissibility, § 212(a)(6)(A), which makes someone inadmissible for being present without permission or parole. It is important that clients are thoroughly screened. A person subject to the permanent bar, § 212(a)(9)(C), should not apply for adjustment of status, even if they obtain PIP.

**F. Renewals:**

PIP recipients who have family members in the U.S. Military that can file an I-130 Family Petition, will be required to do so before they submit a request for a subsequent PIP.<sup>36</sup>

Likewise, surviving spouses, parents, sons, and daughters of deceased service members and veterans who were residing in the United States at the time of the service member's death, and who are eligible to file form I-360 on their own behalf, must submit a completed petition prior to filing the request for subsequent parole in place renewal.<sup>37</sup> This requirement of filing I-130 is only applicable for individuals submitting renewals.<sup>38</sup> USCIS can continue to grant renewals so long as the I-130 or I-360 is pending or approved (and still valid). The I-130 does not need to be approved in order to grant PIP; an individual may file their PIP renewal request with a copy of the I-130 receipt notice.<sup>39</sup>

**G. Individuals in Removal Proceedings:**

Noncitizens who are in removal proceedings and who qualify for PIP may ask ICE to join in a motion to terminate proceedings and ask them to adjudicate the PIP request. Those with final orders of removal likewise may ask ICE to join in a motion to reopen and terminate proceedings based on eligibility for military PIP or grant the parole request directly.<sup>40</sup> Even though this is a possibility, it is unlikely that ICE will join on a motion to terminate in light of recent Attorney General decisions regarding case terminations/closures<sup>41</sup> and new enforcement priorities under the Trump Administration.<sup>42</sup>

**II. Deferred Action for Family Members of Military Personnel:**

Deferred action is an alternative program available to some family members of military personnel who are not eligible for PIP. Deferred action is primarily available for qualifying family members who had a lawful admission into the country (i.e. inspected by an immigration official) but have fallen out of status. Deferred action can also be accessed by family members of military personnel who are not in active duty, like those in the Delayed Entry Program (DEP) or the Military Accessions Vital to the National Interest (MAVNI) program who are waiting basic training.<sup>43</sup>

Deferred action grants similar benefits to PIP. Family members receive authorized stay, work authorization, and the ability to renew. These benefits are granted for two years. While Deferred action does not give a grantee an "admission" or "paroled" note that family members who entered the country with a visa (were lawfully admitted) meet the threshold admission requirement for adjustment under INA § 245(a).

**A. Eligibility:**

An applicant will have to meet the following requirements to be eligible for deferred action:

1. Individual is the spouse, parent, son or daughter (any age, married or unmarried) of a selected reserve of the ready reserve (whether still living or deceased), previously served on

- active duty in the U.S. Military or the selected reserve of the Ready Reserve and were not dishonorably discharged and were lawfully admitted into the United States;<sup>44</sup> OR
2. Is the family member of an individual who has signed a contract with the Delayed Entry Program (DEP) for a maximum of 365 days while awaiting Basic Training, including MAVNI recruits (even if they have fallen out of status); AND
  3. Fits the guidelines for parole under section 21.1(c)(1) except for being statutorily ineligible because prior admission;<sup>45</sup>

These factors do not guarantee a grant of deferred action but will weight favorably in granting deferred action. USCIS will make a case-by-case discretionary decision based on the totality of the evidence and will weigh and balance all relevant considerations, both positive and negative, when deciding.<sup>46</sup>

Deferred action can be a helpful option for people who do not meet the requirements of PIP because they were inspected and admitted at entry and/or their relative is not yet active duty.

**Example:** Patricia entered the United States without inspection in 1990. She has been living in the United States since. Patricia's daughter, Joan, recently joined the military. Because she has no prior military experience she was placed in the Delayed Entry Program while she waits to begin basic training. Patricia wants to know if she can apply for parole-in place?

Joan is in the Delayed Entry Program and so her relatives are not eligible for PIP, however her mother Patricia can still apply for "Deferred Action for Military Family Members". Patricia would qualify for deferred action as the family member of an individual enrolled in the Delayed Entry Program. This will allow Patricia to gain authorized stay and a work authorization for 2 years.

Deferred action is an option for military family members who are awaiting active duty, like Patricia because it can allow them to get protection from deportation and give them a 2-year work permit. It can also be used for family members who were once admitted into the United States but are out of status at the moment. They too can apply for deferred action as a family member and obtain temporary relief while they wait for a more permanent form of status.

**Example:** Imagine that Patricia had entered the country with a tourist visa, and overstayed and is now living as an undocumented immigrant. Patricia would not be eligible for parole-in-place because she was inspected and admitted to the United States. However, Patricia, as the mother of a U.S. Armed Forces member, could qualify for deferred action. Deferred action would allow her to obtain a work permit and protection from deportation for a 2-year period, with an opportunity to renew.

Because the only statutory bar to a grant of PIP is a prior admission, an individual who is granted deferred action because their family member was in DEP waiting basic training, and they are LPR or USC, can later apply for PIP.

**Example:** Imagine that Patricia entered EWI, instead of a with a tourist visa, but was only able to apply for deferred action because her U.S. Citizen daughter was enrolled in DEP while she waited to attend basic training. Patricia’s daughter recently completed training and is classified as active duty. Patricia could now apply for PIP because her daughter is now an active duty member of the U.S. Armed Forces, a U.S. Citizen, and Patricia has not been “admitted” into the United States

Note that this is only possible if the applicant has not been previously admitted and their U.S. armed forces family member is moved into active duty and is an LPR or U.S. Citizen.

### **B. Filing:**

To request deferred action, submit the following to the director of the local USCIS field office with jurisdiction over the requestor’s place of residence:

1. Letter stating basis for deferred action request<sup>47</sup>;
2. Evidence supporting favorable exercise of discretion in the form of deferred action:<sup>48</sup>
  - a. Documentation showing person was admitted;
  - b. Documentation of family members service (i.e. military ID or paperwork, enrollment in DEP);
  - c. Documentation that former service member was not dishonorably discharged; AND
3. Proof of family relationship;
4. Proof of service member’s immigration status (LPR card, U.S. passport, etc.)
5. If a surviving family member, proof of residence in the United States at the time of the service member’s death;
6. Proof of identity and nationality (birth certificate, passport, and/or identification card, driver’s license, etc);
7. G-325, biographic information;
8. Two passport pictures (color);
9. Discretionary factors (positive equities); and
10. G-28 (if represented by attorney or accredited representative)

An individual who has been granted deferred action is eligible to apply for work authorization for the period that they hold deferred action if they can demonstrate economic necessity.<sup>49</sup> Deferred action will be granted for 2 years, with the possibility of renewing.<sup>50</sup> To ensure there is no lapse in work authorization or designation, applicants are encouraged to renew their deferred action between 5-6 months before their expiration date.

### **C. Benefits:**

- a. Protection from Deportation and Work Authorization:

Individuals granted deferred action are protected from being removed from the United States temporarily by authorizing their stay in the country. Once an individual is granted

deferred action they will be able to apply for a work permit. A person will also be eligible to obtain a valid social security number and possibly other state benefits.

Since there is no policy around travel for this type of deferred action, it is unclear whether individuals are able to apply for advance parole to travel.

b. Renewals:

Individuals are granted deferred action for a period of 2 years. They are eligible to renew their designation every two years, so long as they remain eligible. Please note that individuals whose family members can petition them, might be required to provide proof a family petition has been submitted for them before their renewal is approved.<sup>51</sup>

#### D. Adjustment of Status:

Deferred action will not make an individual eligible for adjustment of status under INA § 245(a). Because INA § 245(a) requires a lawful admission (or to be paroled in), and deferred action does not grant an admission, a person who previously did not come in with a visa would not be eligible for adjustment of status under INA § 245(a).

Individuals how are barred from applying for PIP because they entered on a visa (i.e. tourist, student, etc), would have an admission for purposes of adjustment of status under INA § 245(a).

## End Notes

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<sup>1</sup> See USCIS Memo on November 15, 2013, *Parole-in-Place for Spouses, Children, and Parents of Members of the Military*, at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115\\_Parole\\_in\\_Place\\_Memo\\_.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115_Parole_in_Place_Memo_.pdf).

<sup>2</sup> See USCIS Memo on November 23, 2016, *Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees*, at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA\\_Military\\_Final\\_112316.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA_Military_Final_112316.pdf).

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

<sup>4</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended INA § 212(d)(5)(A) by changing “emergent reasons or reasons deemed strictly in the public interest” to “urgent humanitarian reasons or significant public benefit.” Pub. L. No. 104-208, Div. C, Title IV, § 602(a), 110 Stat. 3009 (Sept. 30, 1996).

<sup>5</sup> August 21, 1998, INS General Counsel opinion, discussed and reproduced in 76 Interpreter Releases 1050, Appendix II (July 12, 1999).

<sup>6</sup> Memorandum from Paul W. Virtue, INS General Counsel, to INS Officials, “Authority to Parole Applicants for Admission Who are Not Also Arriving Aliens,” Legal Op. 98-10 (Aug. 21, 1998) HQ. That opinion was endorsed the following year in a memorandum by then commission Meissner, Memorandum from Doris Meissner, INS Commissioner, ton INS officials, “eligibility for Permanent Residence Under the

Cuban Adjustment Act Despite Having Arrived at a Place Other than a Designated Port-of-Entry” (Apr. 19, 1999 (reprinted in 76 Interpreter Releases 676, 684, App.1 (May 3, 1999).

<sup>7</sup> INA §§ 235(a)(1) and 212(a)(6)(A).

<sup>8</sup> Please note, that this type of parole is different than when an individual receives “parole” out of detention or custody. This type of parole is based on a separate statutory provision in the INA. See INA § 236. See also DHS Memorandum, Office of the General Counsel (OGC) entitled Clarification of the Relations Between Release Under Section 236 and Parole Under 212(d)(5) of the Immigration and Nationality Act (INA) (Sept. 28, 2007). See DHS memorandum, Tracy Ranaud, Chief Office of Field Operations, Processing of Initial Parole or Renewal Parole Requests Presented by Natives or Citizens of Cuba to USCIS Field Offices referencing and discussing Appendix A: INS Memorandum, Doris Meissner (HQCOU 120/12-P) “Eligibility for Permanent Residence Under the Cuban Adjustment Act Despite Having Arrived at a Place Other than a Designated Port-of-Entry” (Apr. 19, 1999).

<sup>9</sup> See AFM 21.1(c)(1)

<sup>10</sup> It is not clear if an individual who was “waived in” is eligible for PIP. Though courts have held that a person who was “waived in” was admitted, there have been some cases where individuals have applied for PIP and been granted. For more of discussion of this see ILRC’s manual *Parole in Immigration Law* at [www.ilrc.org/publications](http://www.ilrc.org/publications).

<sup>11</sup> INA § 101(a)(13)(A) defines admission as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”

<sup>12</sup> *Id.*

<sup>13</sup> INA § 101(a)(13).

<sup>14</sup> See AFM 21.1(c)(1); See USCIS Policy Memo “Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees,” PM-602-0114, November 23, 2016 available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA\\_Military\\_Final\\_112316.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA_Military_Final_112316.pdf).

<sup>15</sup> See Implementation of the Supreme Court Ruling on the Defense of Marriage Act available at <https://www.uscis.gov/news/implementation-supreme-court-ruling-defense-marriage-act> and Adjudication of Immigration Benefits for Transgender Individuals available at [https://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/Transgender\\_FINAL.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/Transgender_FINAL.pdf).

<sup>16</sup> See AFM 21.1(c)(1).

<sup>17</sup> *Supra* note 14.

<sup>18</sup> See INA § 101(b)(1) for definition of “child born in wedlock,” “stepchild,” “child born out of wedlock,” “adopted child” and INA §101(c) for definition of “child.”

<sup>19</sup> See November 2013 Parole-in-Place memorandum for military families. See also, Q&A USCIS Field Operation Directorate Meeting with AILA (April 10, 2014), AILA Doc. 14050844.

<sup>20</sup> INA § 201(b)(2)(A)(i).

<sup>21</sup> 10 USC § 101(a)(4).

<sup>22</sup> 10 USC § 101(d).

<sup>23</sup> 10 USC § 101(d).

<sup>24</sup> 10 USC § 10141(a).

<sup>25</sup> 10 USC § 10143.

<sup>26</sup> 10 USC § 10143.

<sup>27</sup> Delayed Entry Program is for individuals who have no previous military experience and are seeking to enlist in the U.S. military. Individuals who are interesting in enrolling must sign a contract by which they enter into the DEP for a period of 365 days while awaiting basis training.

<sup>28</sup> 38 CFR § 3.12.

<sup>29</sup> *Supra* note 16.

<sup>30</sup> See Discretionary Options for Military Members, Enlistees and Their Families available at <https://www.uscis.gov/military/discretionary-options-military-members-enlistees-and-their-families>

<sup>31</sup> See AFM 21.1(c)(1).

<sup>32</sup> Request Military Records at <https://www.archives.gov/veterans/military-service-records>.

<sup>33</sup> USCIS Memo on Parole for Spouses, Children, and Parents of Members of the Military.

<sup>34</sup> See November 2013 parole-in-place memorandum, pages 3–4.

<sup>35</sup> See INA § 245(c)(2).

<sup>36</sup> See USCIS Policy Memo November 23, 2016 and AFM 21.1(c)(3)(A).

<sup>37</sup> *Id.*

<sup>38</sup> See USCIS Policy Memo “Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees,” PM-602-0114, November 23, 2016 available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA\\_Military\\_Final\\_112316.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA_Military_Final_112316.pdf).

<sup>39</sup> *Id.*

<sup>40</sup> Practice Alert: Military Parole in Place and Removal Proceedings (May 13, 2016), AILA doc. No. 16051303.

<sup>41</sup> See *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) (AG reviewed decades-long practice of administrative closure, stating that immigration judges lack the authority to administratively close cases, except in certain specific circumstances.) and *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018) (immigration judges have no inherent authority to terminate or dismiss removal proceedings and may dismiss or terminate removal proceedings only under the circumstances expressly identified in regulations).

<sup>42</sup> See Secretary Kelly, *Enforcement of Immigration laws to Serve the National Interest*, issued February 20, 2017 at [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf) (limiting the use of prosecutorial discretion and new guidance for ICE attorneys on using this and joining motions to terminate) at 4.

<sup>43</sup> AFM Chapter 21.1(c)(2)(A).

<sup>44</sup> *Id.*

<sup>45</sup> See USCIS Policy Memo “Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees,” PM-602-0114, November 23, 2016 available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA\\_Military\\_Final\\_112316.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA_Military_Final_112316.pdf).

<sup>46</sup> *Id.*

<sup>47</sup> See AFM 21.1(c)(2)(A) and (c)(2)(B).

<sup>48</sup> *Id.*

<sup>49</sup> See 8 CFR 274a.12(c)(11), (14).

<sup>50</sup> See USCIS Policy Memo “Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees,” PM-602-0114, November 23, 2016 available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA\\_Military\\_Final\\_112316.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA_Military_Final_112316.pdf).

<sup>51</sup> AFM 21.1(c)



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### About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC’s mission is to protect and defend the fundamental rights of immigrant families and communities.