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## 2023 Military Parole in Place Update

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### Introduction and Legal Basis of Parole in Place

If you do not regularly handle military immigration cases, you may be unaware of current law<sup>2</sup> or longstanding USCIS policy guidance<sup>3</sup> with respect to designated family members of certain military personnel and veterans present in the United States without inspection (EWI). This cohort of EWI immigration clients may be eligible to obtain a specialized form of parole called military parole in place (parole in place or PIP) from USCIS. The application for parole in place has no filing fee. PIP is a remarkable benefit that allows an EWI applicant to apply for adjustment of status without having to obtain an I-601A waiver and depart the United States to consular process.

The longstanding policy guidance has never existed visibly on any USCIS form. Although an applicant applies for PIP by using USCIS Form I-131, that form's instructions have no specific PIP guidance. As instructed in the following section below (Parole-in-Place Applications), an applicant must "hand write" upon the form the relief requested.

Parole in place *cures only a single entry without admission or inspection*. PIP does *not* help applicants who entered the United States *with* inspection, including wave-throughs. **Parole in place does not cure any other separate grounds of inadmissibility that bar adjustment of status.** Therefore, it is vital to screen potential PIP applicants for other possible bars to adjustment under INA §245(c) or grounds of inadmissibility, such as multiple entries without inspection, criminal convictions, or fraud that may require a separate Form I-601. In

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<sup>2</sup>P.L. 116-92: National Defense Authorization Act (NDAA) for Fiscal year 2020, available at <https://congress.gov/116/plaws/publ92/PLAW-116publ92.pdf>. (Full text also at AILA Doc. No. 19121731/December 20, 2019)

<sup>3</sup>Adjudicator's Field Manual (AFM) ch. 21.1(c)(1) and (c)(3), <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm21-external.pdf>; USCIS website, *Discretionary Options for Military Members, Enlistees and Their Families* (Last Reviewed/Updated on April 12, 2021); The Obama administration released two policy memoranda regarding the legal basis behind parole in place. USCIS Policy Memorandum PM-602-0091, *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 and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i)* (Nov. 15, 2013), AILA Doc. No. 13111545; USCIS Policy Memorandum PM-602-0114, *Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees* (Nov. 26, 2016), AILA Doc. No. 16112333. The parole in place memorandum from 2016 clarified that parole in place extended to sons and daughters as well as children and that the family members of service members who were dishonorably discharged cannot apply for parole in place based on the dishonorably discharged service member's service.

such cases, where adjustment is not possible for other reasons, practitioners should think carefully about whether to file a PIP. While parole may be granted and a client may be able to obtain work authorization, the final benefit—the ability to adjust their status in the United States—will not be achievable. It is possible for an applicant to be placed into removal proceedings based on adverse information in the PIP application or to have closed removal proceedings reopened even if otherwise eligible to adjust. Furthermore, the fact that a military member may have a qualifying relationship for a PIP application does not mean that that military member will necessarily be a qualifying relative for other necessary I-601 purposes.<sup>4</sup>

### Parole-in-Place Applications

Local USCIS field offices adjudicate parole-in-place applications, so requirements for a successful application vary from one office to another. It is wise to consult local practitioners if you are filing at a field office with which you are unfamiliar. While an application for parole in place can be filed either at the field office where the service member resides or where the applicant resides, it is often logistically better to apply at the field office where the applicant resides to facilitate biometrics and interview.

Although exact procedures may vary, PIP applications require at least the following basic items:<sup>5</sup>

- Completed Form I-131 (You should handwrite “Military PIP” in Part 2 instead of checking a box. **There is no fee for this application.**)
- Evidence of qualifying family relationship
- Evidence of the family member’s qualifying military service
- Two identical color passport-style photographs of the applicant
- Evidence of any other discretionary factors that the applicant would like USCIS to consider

Applicants should also submit evidence of their identity, such as the biographic page of their passport. All documents in a foreign language should have a certified translation.

You should prepare and submit documents as evidence of necessary “other discretionary factors” in support of the application. Such documents could include a statement from the service member pointing out the effect the family member’s lack of status and possible removal would have on their morale, readiness, ability to serve, and continuity of service. A statement from the applicant on their lack of status and inability to obtain a dependent military ID card, work, drive a car, or go to school, especially in the case of the military member’s deployment, is also recommended. Some field offices also require a sworn statement from the applicant setting forth all past entries into the United States. These statements provide the needed evidence of hardship on the service member and on the applicant that parole in place seeks to address.

There are no official processing times posted by USCIS for parole-in-place applications. Field offices differ in terms of how long the adjudication of PIP applications can take, ranging from days to more than six months.

If PIP is granted, the applicant will be given a Form I-94 as proof of parole in order to allow them to apply for adjustment of status. Parole in place is granted in *one-year increments*. Although some practitioners have reported successfully applying for adjustment of status after the expiration date of the Form I-94, the guidance from USCIS is that the application for adjustment must be *filed* within the validity period of the parole-in-place Form I-94. Filing within the PIP validity period is best practice.

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<sup>4</sup> For example, a §212(i) waiver will not allow children to be used as qualifying relatives for the purposes of that waiver.

<sup>5</sup> See footnote 3.

If parole in place is denied, *there is no appeal*. Instead, the remedy is to reapply. Because parole in place is a discretionary application, USCIS does not need to provide a reason for denying the application. However, a denial with a stated reason for denial can be instructive in determining what portions of the application, such as evidence of rehabilitation, may require more attention.

## Screening for Parole in Place

When screening for parole in place, pay close attention to certain requirements and red flags that may disqualify an applicant. Some of these issues are detailed below.

### 1. Admission

To be eligible for PIP, a person must have entered the United States without inspection or admission. A wave-through at the border is considered an admission and inspection which will disqualify applicants from PIP.<sup>6</sup> It is imperative that you understand the circumstances of how the applicant entered the United States, including the age of the person when they entered, the specific details of how they entered, and with whom they entered. This inquiry can be complicated if the applicant was a child upon entry and doesn't remember how they entered. Some field offices request detailed affidavits from the applicant regarding the circumstances of their entry into the United States, and if the applicant was underage at the time of their arrival to the United States, some field offices request affidavits from parents or others who may have knowledge of the applicant's entry into the United States.

A thorough inquiry into circumstances can help you uncover other red flags, such as the use of false documentation or a false name. Beware of serious complications if the applicant states that they entered the United States multiple times, as PIP does not cure the permanent bar in INA §212(a)(9)(C).

Most field offices will expect evidence that the person has been residing continuously in the United States since entry without departure. This evidence can include school records, medical records, dated photographs, bills, pay stubs, passport copies, or any other secondary documentation to show that the applicant was continuously present in the United States since their initial entry.

### 2. Qualifying Relationship

A PIP applicant must have a qualifying relationship with the military member. This qualifying relationship can be any of the following:

- Spouse or widow/widower
- Parent (or stepparent)<sup>7</sup>
- Child (or stepchild)—includes sons and daughters who are 21 years of age and over<sup>8</sup>

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<sup>6</sup> Evidence in the application suggesting either a lawful admission or a wave through will likely sink the PIP application. *Matter of Areguillin*, 17 I&N Dec. 208 (BIA 1980); *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Of course, depending on the family relationship, evidence of admission may make the applicant eligible to adjust without the need for PIP.

<sup>7</sup> The definition of parent or stepparent is from INA §101(b)(2). A stepparent is not eligible for parole in place if the qualifying marriage did not take place before the service member turned 18 years old.

<sup>8</sup> See footnote 3.

Unfortunately, PIP does not extend to siblings, grandparents, or a service member's other extended family members such as aunts, uncles, or cousins.

USCIS will normally require proof of this qualifying relationship with the PIP application, such as a marriage certificate for spouses or birth certificates for parents and children. For spouses, you should include all previous marriage termination documentation, along with the marriage certificate.

You also should include proof that the applicant is considered a military dependent if available. The normal documentation of military dependent status is a military dependent card.

### 3. U.S. Citizen or LPR's Qualifying Military Service

The qualifying U.S. citizen or lawful permanent resident (LPR) must be one of the following:

- Active duty
- A member of the Selected Reserve of the Ready Reserve
- Veteran<sup>9</sup>
- Retired

A common question is who is considered a member of the Selected Reserve of the Ready Reserve. The Selected Reserve consists of Ready Reserve members who participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of travel time) during each year.<sup>10</sup> The label assigned to the Selected Reserve varies by branch. For instance, in the Army, the Selected Reserve is comprised of Troop Program Units (TPUs), Active Guard and Reserve (AGR) Soldiers, and Individual Mobilization Augmentees (IMAs).<sup>11</sup>

For veterans and retired military members, the DD-214 or NGB 22 (*not* NGB 22b) can be used as proof of qualifying military service.<sup>12</sup> For active-duty members, USCIS will accept a copy of the active-duty member's current military ID (front and back) as proof of military membership.<sup>13</sup> An active-duty member's military orders or enlistment contract are considered secondary evidence and cannot be used alone to show active-duty status.

In the case of an LPR service member, as stated above, parole in place does not waive the INA §245(c) bars to adjustment. Furthermore, an LPR cannot petition for a parent's adjustment of status. Therefore, although the

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<sup>9</sup> Parole in place is not available to family members of a dishonorably discharged veteran if that veteran's service is the basis for the parole in place application. See footnote 3. It can also be risky to apply based on a service member's other-than-honorable discharge, as field offices may not distinguish between an other-than-honorable discharge and a dishonorable discharge.

<sup>10</sup> 10 USC §10143; 10 USC §10147(a)(1); and 32 USC §502.

<sup>11</sup> U.S. Army Reserve website, *Three different groups make up today's Army Reserve*, <https://www.usar.army.mil/Commands/US-Army-Reserve-Command/About-Us/Force-Composition/>.

<sup>12</sup> Only the long-form version of DD 214, namely, "Member-4," at Block 24, or the NGB Form 22, at Block 24, contain the character of service—honorable or some other. Those guardsmen who did not serve in the Selected Reserve are issued Form NGB 22b, which does not list character of service.

<sup>13</sup> In some cases, the military member will refuse to allow you to copy the ID because at some point he or she was told that it should not be copied. However, it is permissible to copy a military ID to submit to the government for purposes of a PIP application. "Examples of authorized photocopying include photocopying of DoD ID cards to facilitate medical care processing, check cashing, voting, tax matters, compliance with 50 U.S.C. appendix 501 (also known as "The Service member's Civil Relief Act"), or **administering other military-related benefits to eligible beneficiaries.**" 32 CFR §161.6(b)(1)

LPR service member's status can be the basis for parole in place, the applicant is unlikely to be able to adjust unless there is a different qualifying family relationship that makes the applicant an immediate relative of the petitioner or the service member can and will naturalize to make the applicant an immediate relative.

#### 4. Criminal Convictions

You should screen carefully for criminal convictions. Parole in place is a discretionary grant by the local USCIS Field Office. The guidance from USCIS states that "[a]bsent a **criminal conviction or other serious adverse factors**, parole in place would generally be an appropriate exercise of discretion for such an individual."<sup>14</sup> To date, USCIS has not defined whether a single criminal conviction would be disqualifying, although practitioners report successful applications for parole in place despite a criminal conviction for a petty misdemeanor. USCIS has not expounded further on what would be considered serious adverse factors, although in the experience of the authors, several misdemeanor convictions or a felony conviction may sink an application and possibly lead to removal proceedings.

If the applicant has a criminal arrest or conviction, always provide proof of rehabilitation with the application. Such evidence can include proof of completing required counseling classes, as well as volunteer activity letters or commendations from sources such as food banks, community centers, churches, the Red Cross, or the Salvation Army.

#### 5. Removal Issues

Applicants are *not* eligible for parole in place from USCIS if they are in removal proceedings. The various USCIS policy memoranda dating to 2013 all have emphasized that USCIS will not adjudicate a parole-in-place application for someone in removal proceedings, including for any applicants whose case has been administratively closed.<sup>15</sup>

#### 6. False Claims to United States Citizenship

This is a serious issue that all practitioners should screen for at the beginning stages and before applying for parole in place. A false claim to U.S. citizenship can arise in many situations. The more common situations in which a false claim may arise include claiming to be a U.S. citizen on a Form I-9, using false documents that indicate the person is a U.S. citizen, claiming U.S. citizenship to obtain grants or scholarships for college, and registering to vote.

Practitioners should ask applicants about any jobs they have held in the past and what documents and forms were used to apply for and to obtain the job. This may reveal possible false claims to U.S. citizenship. Some field offices may request I-9 forms from previous employers to see if the applicant checked off the box in Part 1 as a U.S. citizen.

#### Conclusion

Parole in place is a tremendous benefit to those EWI family members who are qualified. However, great care

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<sup>14</sup> USCIS Policy Manual vol. 7, pt. B, ch. 2.A.3, *Parole* (current as of Sep. 16, 2021).

<sup>15</sup> Whether the court will grant a motion to terminate the removal action so the applicant can pursue parole in place with USCIS is discretionary. ICE cannot grant parole in place. ICE's various memoranda limit its parole authority to those outside the United States seeking *humanitarian* parole (as distinguished from parole in place for those inside the United States).

should be taken when screening qualifying family members to ensure that the family members are eligible for adjustment of status, which is the ultimate goal with parole in place.