



**KPB Immigration Law Firm**

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## Article: **IMMIGRATION PARDONS OF INADMISSIBILITY, Part 1**

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Since 2013, thousands of undocumented immigrants have been able to obtain permanent residence after obtaining a "provisional pardon" (I601a) within the United States and then traveling for a consular interview in their country of origin, a trip that takes between one and two weeks. This process, which also includes a family petition and an affidavit of support, should be prepared with great care given that the final decision on eligibility is issued outside the country, so a procedural problem could delay or even prevent issuance of the Immigrant Visa (Green Card).

### **Seeking the I601A pardon.**

- Information related to contacts with immigration authorities: Immigration and Customs Enforcement (ICE) arrests or deportations within the United States or by Customs and Border Patrol (CBP) at the border of the country may cause an applicant to be ineligible for this process. Share all this information with your attorney, as well as any records you may have related to these incidents.
- Criminal Record: The immigrant who seeks a pardon is seeking permanent residence so the moral character of this person will be evaluated by the US Citizenship and Immigration Service (USCIS) before issuing a decision. Any criminal arrest and / or conviction either within the United States or outside the country must be made known to the lawyer.
- Multiple entries: Those who entered the United States illegally more than once must be careful as they may not be eligible for this pardon.
- 245i Eligibility: Those immigrants who have filed a labor certification or family petition before April 30, 2001 should consider the possibility of applying within the U.S. for a green card and paying a \$ 1,000 fine rather than using the pardon process and seeking their status at a Consulate.

### **The Consular Interview.**

Once the pardon is approved, the applicant should complete an Affidavit of Support with the National Visa Center, which will eventually send the case to the applicant's Embassy or Consulate. The interview process consists of several stages and certain factors must be considered:

- Potential penalties for those who crossed the border illegally with children: Applicants who at some point brought their children across the border illegally could be charged with "alien

smuggling”, which would delay the process and require a new pardon to be obtained outside the country.

- The relationship upon which the Family Petition was based must continue to exist: if the marriage or other relationship no longer exists at the time of the interview, the applicant may not qualify for the pardon. Examples are divorce or separation of those who petitioned their spouses or death of those who sponsored their parent or children.
- Alcohol or drug abuse: each applicant will undergo a medical examination in their home country, and it is possible that the process will be delayed if the applicant has had drug or alcohol abuse problems.
- Tattoos: Any tattoo that can be interpreted as belonging to and / or affiliated with a gang could delay or even eliminate the possibility of obtaining residence.
- Record with Immigration and / or Criminal Authorities: the Embassy and / or US Consulate in the home country will also review records of any criminal charge or arrest and any prior contacts with immigration, so discuss with your attorney if there are any changes in the information you shared with your representative before sending the pardon application.

These issues mentioned above are extremely critical, as well as the legal arguments as to why the U.S. citizen will suffer extreme hardship if the applicant returns to the home country. Our next segment in this series will address how to prove “extreme hardship” in order to successfully obtain the pardon.

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#### **About the author:**

**Christopher A. Kerosky** of the law firm of KEROSKY PURVES & BOGUE LLP has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine “Super Lawyers” edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

**WARNING:** The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento), (707) 224-2722 (Napa); (707) 433-2060 (Santa Rosa) or (707) 376-1010 (Ukiah)