



Practice Advisory Series

ADVANCE PAROLE

2021

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Practice Advisory Forward

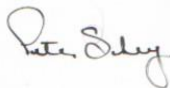
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The Center has achieved major victories in numerous major cases in the courts of the United States and before international bodies that have directly benefited hundreds of thousands of disadvantaged persons.

This practice advisory provides an overview of advance parole, the process of applying for advance parole, and court cases pertaining to advance parole.

Manuals prepared by the Center are constantly being examined for improvements and updated to reflect current practices. Please feel free to email pschey@centerforhumanrights.org if you would like to suggest updates or edits to portions of this practice advisory.

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I. INTRODUCTION

“Parole’ is an administrative practice whereby the government allows an arriving alien who has come to a port-of-entry without a valid entry document to be temporarily released from detention and to remain in the United States pending review of [] his immigration status.” *Ibragimov v. Gonzales*, 476 F.3d 125 (2d Cir. 2007). The parole governing statute, 8 U.S.C. § 1182(d)(5)(A), states “The Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States” 8 U.S.C. § 1182(d)(5)(A).

Advance parole, though not “explicitly contemplated by the statute governing parole” *Ibragimov*, 476 F.3d at 132 is permitted by 8 C.F.R. § 212.5(f), which states: “Advance authorization. When parole is authorized for an alien who will travel to the United States without a visa, the alien shall be issued an appropriate document authorizing travel.” 8 C.F.R. § 212.5(f).

In other words, advance parole “is a practice whereby the government decides in advance of an alien's arrival that the alien will be paroled into the United States when he arrives at a port-of-entry.” *Ibragimov*, 476 F.3d at 132. Advance parole “is often granted to aliens residing in the United States who have a need to travel abroad, but whose immigration status would not afford them a *right* to legal admission upon their return.” *Id.* (emphasis added).

II. ADVANCE PAROLE PROCEDURES AND LIMITATIONS ON TRAVEL OUTSIDE THE UNITED STATES (8 C.F.R. § 208.8)

A. WHEN, WHERE, AND HOW TO APPLY FOR ADVANCE PAROLE

An advance parole applicant must apply for advance parole *before* the applicant departs from the United States; otherwise, “If you depart from the United States before the Advance

Parole Document is issued, your application for an Advance Parole Document will be considered abandoned.” USCIS, I-131, APPLICATION FOR TRAVEL DOC., <https://www.uscis.gov/i-131> (last updated Aug. 10, 2021).

To apply for advance parole, you must first file a [Form I-131, Application for Travel Document](#) (“Form I-131” or “I-131 Form”) with USCIS. One can fill out the form either online by signing up for a [MyUSCIS Account](#) or by downloading the [Form I-131](#) from the USCIS website and mailing it, along with the filing fee and other supporting documents (detailed below), to the appropriate USCIS mailing address, depending on your place of residence, which can be found on the USCIS [website](#).

The additional supporting documents required for individuals who are currently in the United States are as follows:

- (1) A copy of an official photo identity document;
- (2) Two identical passport-style photographs of yourself taken within 30 days of the filing of this application;
- (3) A copy of any document showing your current status in the United States;
- (4) Evidence that your trip is for educational, employment, or humanitarian purposes;
- (5) An explanation or other evidence showing the circumstances that warrant issuance of an advance parole document;
- (6) A copy of a USCIS receipt as evidence that you filed the adjustment application, if you are an applicant for adjustment of status; and
- (7) A copy of the U.S. consular appointment letter, if you are traveling to Canada to apply for an immigrant visa.

Id.

“For advance parole for someone outside the United States (for urgent humanitarian reasons or significant public benefit),” the additional supporting documents required are as follows:

- (1) A copy of a photo identity document for beneficiary, petitioner, and sponsor;
- (2) A copy of the beneficiary's passport identity page;
- (3) A description of the urgent humanitarian or significant public benefit reason, including documentation of a need for expedited handling, and the length of time for which the beneficiary needs parole;

- (4) A completed Form I-134 with appropriate documentation as described in the form instructions;
- (5) A statement explaining why the beneficiary cannot obtain a U.S. visa (if applicable);
- (6) A statement explaining why the beneficiary cannot obtain a waiver of inadmissibility (if applicable); and
- (7) A copy of any decision on immigrant/nonimmigrant applications or petitions.

Id.

The I-131 Form requires that the applicant “provide evidence of your reason for travel outside of the United States” on “Part 4. of the form indicating how your intended travel fits within 1 of the 3 purposes...” listed below:

- (1) Educational Purposes
 - a. A letter from a school employee acting in an official capacity describing the purpose of the travel and explaining why travel is required or beneficial; or
 - b. A document showing enrollment in an educational program requiring travel.
- (2) Employment Purposes
 - a. A letter from your employer or a conference host describing the need for the travel.
- (3) Humanitarian Purposes
 - a. A letter from your physician explaining the nature of your medical condition, the specific medical treatment to be sought outside of the United States, and a brief explanation why travel outside the U.S. is medically necessary; or
 - b. Documentation of a family member’s serious illness or death.

USCIS, INSTRUCTIONS FOR APPLICATION FOR TRAVEL DOC., (April 24, 2019), <https://www.uscis.gov/sites/default/files/document/forms/i-131instr.pdf>.

The current [filing fee](#) is \$575. However, the “filing fee may be waived based upon a demonstrated inability to pay. Applicants should file Form I-912, Request for Fee Waiver, when filing Form I-131 to ensure such requests are supported in accordance with 8 CFR 103.7(c).” *Id.*

The determination of advance parole is made by “an appropriate Department of Homeland Security (DHS) officer.” *Ibragimov*, 476 F.3d 125.

B. LIMITATIONS ON TRAVEL OUTSIDE THE UNITED STATES ([8 C.F.R. § 208.8](#))

8 C.F.R. § 208.8 lists certain limitations on travel outside the United States that apply to noncitizens. Subsection A states: “An applicant who leaves the United States without first obtaining advance parole under § 212.5(f) of this chapter shall be presumed to have abandoned his or her application under this section.” 8 C.F.R. § 208.8(a).

Furthermore, “An applicant who leaves the United States pursuant to advance parole under § 212.5(f) of this chapter and returns to the country of claimed persecution shall be presumed to have abandoned his or her application, unless the applicant is able to establish compelling reasons for such return.” 8 C.F.R. § 208.8(b).

It is important to note that “Advance Parole does not guarantee admission into the United States. Aliens with Advance Parole are still subject to the U.S. Customs and Border Protection inspection process at the port of entry.” USCBP, ADVANCE PAROLE, <https://www.cbp.gov/travel/us-citizens/advance-parole> (last modified July 22, 2019).

III. WHO QUALIFIES FOR ADVANCE PAROLE

According to the I-131 Form, if you are currently *in* the United States, you may apply for advance parole if you fall into the following categories:

- (1) “You have a pending application to adjust status, Form I-485, and you seek to travel abroad temporarily for ‘urgent humanitarian reasons’ or in furtherance of a ‘significant public benefit,’ which may include a personal or family emergency or bona fide business reasons.”
- (2) “You have a pending application for Temporary Protected Status (TPS) (Form I-821), have been granted TPS, or have been granted T or U nonimmigrant status...”
- (3) “You have been granted parole pursuant to INA section 212(d)(5), AND you seek to travel abroad temporarily for urgent humanitarian reasons or in furtherance of a significant public benefit. Humanitarian reasons include travel to obtain medical treatment, attend funeral services for a family member, or visit an ailing relative.”
- (4) “USCIS or U.S. Immigration and Customs Enforcement (ICE) has deferred action in your case as a childhood arrival based on the guidelines described in the Secretary of Homeland Security’s memorandum issued on June 15, 2012 (‘Deferred Action for Childhood Arrivals’ (DACA))...”

- (5) “USCIS has granted you IMMACT 90 or LIFE Act Family Unity Program benefits, AND you seek to travel abroad temporarily for urgent humanitarian reasons or in furtherance of a significant public benefit...”
- (6) “You have a pending application for temporary resident status pursuant to INA section 245A, and you seek to travel abroad temporarily for urgent humanitarian reasons or in furtherance of a significant public benefit...”
- (7) “You have been granted V nonimmigrant status in the United States, AND you seek to travel abroad temporarily for urgent humanitarian reasons or in furtherance of a significant public benefit...”

INSTRUCTIONS FOR APPLICATION FOR TRAVEL DOC., *Id.*

Advance parole may also apply to individuals *outside* the United States if “you or someone else is outside the United States and needs to visit the United States temporarily for an urgent humanitarian reason or for significant public benefit...” *Id.* Furthermore, an Advance Parole Document “may also be granted to qualified individuals outside the United States as part of specific USCIS Family Reunification Parole policies.” *Id.*

An advance parole document may *not* be issued to you if: (1) “You hold a nonimmigrant status, such as J-1, that is subject to the 2-year foreign residence requirement as a result of that status. Exception: If you are someone who was subject to this requirement but are now eligible to apply for adjustment of status to lawful permanent resident, USCIS may consider your application for advance parole; or (2) You are in exclusion, deportation, removal, or rescission proceedings, unless you have received deferred action under DACA. You may, however, request parole from ICE.” *Id.*

The CBP [website](#) further clarifies that the application for advance parole

[D]oes not apply to aliens who have applied to adjust to permanent resident status and who maintain H-1B (Specialty Worker) or L-1 (Intracompany Transferee) status, or their dependents, who have applied to adjust to permanent resident status and who have valid H-1B or L status and valid visas, V nonimmigrants who have a valid V nonimmigrant visa, are in valid V nonimmigrant status and have or obtain a valid V nonimmigrant visa before applying for readmission to the US, and K-3/4 nonimmigrants who have applied to adjust to permanent resident status and who have a valid K-3/4 nonimmigrant visa, are in

valid K-3/4 nonimmigrant status and have or obtain a valid K-3/4 nonimmigrant visa before applying for readmission to the US.

USCBP, ADVANCE PAROLE, *Id.*

IV. EXPEDITED PROCESSING

An individual may “ask USCIS to expedite the adjudication of a benefit request (such as applications or petitions) for an immigration benefit.” USCIS, HOW TO MAKE AN EXPEDITE REQUEST, <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request> (last updated June 9, 2021).

An expedited request will be considered “if it meets one or more of the following criteria or circumstance:

- (1) Severe financial loss to a company or person, provided that the need for urgent action is not the result of the petitioner’s or applicant’s failure to: (a) Timely file the benefit request, or (b) Timely respond to any requests for additional evidence;
- (2) Emergencies and urgent humanitarian reasons;
- (3) Nonprofit organization (as designated by the Internal Revenue Service (IRS)) whose request is in furtherance of the cultural and social interests of the United States;
- (4) U.S. government interests (such as urgent cases for federal agencies such as the U.S. Department of Defense, U.S. Department of Labor, DHS, or other public safety or national security interests); or
- (5) Clear USCIS error.”

Id.

V. COURT CASES PERTAINING TO ADVANCE PAROLE

A. HASSAN V. CHERTOFF

In the 2010 case, *Hassan v. Chertoff*, Plaintiff was granted advance parole before leaving the United States while his application for adjustment of status was pending. *Hassan v. Chertoff*, 593 F.3d 785 (9th Cir. 2010). While he was abroad, the government denied his adjustment application and revoked his advance parole. *Id.* Plaintiff was denied readmission upon his return and brought suit in federal court challenging the revocation of the denial of status adjustment and

revocation of advance parole. *Id.* The Ninth Circuit affirmed the district court’s ruling that “under the REAL ID Act of 2005, 8 U.S.C. § 1252(a)(2)(B), both the denial of the adjustment of status and the revocation of the advance parole were discretionary decisions that the court lacked jurisdiction to review.” *Id.* The district court relied on 8 U.S.C. § 1252(a)(2)(B)(ii) to determine that it lacked jurisdiction to review the revocation of the applicant’s advance parole, which provides that: “no court shall have jurisdiction to review any other decision . . . of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security” 8 U.S.C. § 1252(a)(2)(B)(ii). The Court noted, however, that it “retain[s] jurisdiction to review constitutional claims, even when those claims address a discretionary decision.” *Hassan*, 593 F.3d at 789 (quoting *Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003)).

B. ADELEKE V. MCNARY

Hassan dealt with judicial review of the *revocation* of advance parole, not the denial of advance parole itself. In the 1993 case, *Adeleke v. McNary*, the New York Southern District Court rebuffed the government’s argument that the Court lacks jurisdiction to hear denials of advance parole, citing several cases:

See Bertrand v. Sava, 684 F.2d 204, 211 (2d Cir. 1982)¹ (‘accordingly, the exercise of administrative discretion on parole requests by unadmitted aliens may be judicially reviewed.’); 6 C. Gordon and S. Mailman, *Immigration Law and Procedure*, at 151-35 (Justice Department contention that court lacks jurisdiction to review INS determination is an ‘unsupportable assertion, and it is surprising that the government occasionally

¹ In *Bertrand v. Sava*, the 2nd Circuit Court of Appeals held “Discretion vested by statute in agents of the federal government is rarely, if ever, entirely free of judicial review for abuse. The principle that discretionary power is not absolute power is fundamental to our constitutional form of government. The discretionary power to parole unadmitted aliens granted by statute to the Attorney General, and delegated by him to INS District Directors, is broad, but it is not without limits. *See Mayet Palma v. Verdeyen*, 676 F.2d 100, slip op. at 12 (4th Cir. 1982) (Attorney General's denial of parole to an unadmitted alien reviewed for abuse of discretion). In granting the Attorney General this discretionary power, Congress did not modify or qualify the availability of a habeas corpus action to unadmitted aliens detained pending completion of exclusion proceedings. Accordingly, the exercise of administrative discretion on parole requests by unadmitted aliens may be judicially reviewed.” *Bertrand v. Sava*, 684 F.2d 204 (2d Cir. 1982).

resurrects it, despite numerous repulses in the courts.’). *See also Cohen v. Smith*, 534 F. Supp. 618 (S.D. Tex. 1982) (court addressed the merits of plaintiff's claim that he was unfairly denied advance parole); *Massoud v. Attorney General*, 459 F. Supp. 672 (W.D. Mo. 1978) (same).

Adeleke v. McNary, 1993 U.S. Dist. LEXIS 477 (S.D.N.Y. Jan. 20, 1993).

In *Adeleke*, plaintiff, a Nigerian citizen living in the U.S., applied to INS for permission to leave for 30 days, “fearing that if he did not obtain this advance parole, his application for permanent lawful residence under Immigration Reform and Control Act of 1986 (IRCA) would be prejudiced.” *Id.* He sought to travel to London because his two minor children were the subject of a custody proceeding, and their caretaker was attempting to terminate plaintiff's parental rights. INS denied plaintiff's request, and plaintiff sought review.

The District Court reversed and held that the INS decision "was an abuse of discretion because plaintiff was seeking advance parole so that he could attend a hearing concerning his parental rights to his two children, and such a trip was clearly for legitimate emergency or humanitarian purposes; and thus, pursuant to INS regulations, plaintiff's request should have been granted.” *Id.*

C. COHEN V. SMITH

In *Cohen v. Smith*, plaintiff filed a suit against the Immigration and Naturalization Service and the Attorney General seeking judicial review of defendants' decision (to deny advance parole for plaintiff's sister) pursuant to the Administrative Procedure Act, 5 U.S.C.S. § 702. *Cohen v. Smith*, 534 F. Supp. 618 (S.D. Tex. 1982). The U.S. District Court for the Southern District of Texas first addressed the issue of standing, holding that

The Supreme Court has held that section 10 of the Administrative Procedure Act, 5 U.S.C. § 702 (1966), confers standing to obtain review of administrative actions upon those parties who allege ‘that the challenged action had caused them (an) ‘injury in fact,’ ... to an interest ‘arguably within the zone of interests to be protected or regulated’ by the

statutes that the agencies were claimed to have violated.’ [Sierra Club v. Morton](#), 405 U.S. 727, 733, 92 S. Ct. 1361, 1365, 31 L. Ed. 2d 636 (1972).

[Cohen v. Smith](#), 534 F. Supp. 618 (S.D. Tex. 1982).

In reviewing the Attorney General’s decision to deny advance parole, the Court held that the “backlog of aliens seeking legal entrance into this country...precipitated the Attorney General's decision to deny plaintiffs' request for immediate parole” and because “the Attorney General was unable to conclude that the humanitarian factors present in plaintiff Perez's case compelled her admission into the United States prior to issuance of an immigrant visa,” the Court “is unable to conclude that the Attorney General abused his discretion in denying plaintiff's request for advance parole.” *Id.*

D. MASSOUD V. ATTORNEY GEN. OF UNITED STATES

Similarly, in *Massoud v. Attorney Gen. of United States*, the U.S. District Court for the Western District of Missouri reviewed the denial of plaintiff’s advance parole request pursuant to [5 U.S.C. § 706](#). Section 706 provides, in part: “...the reviewing court shall...determine the meaning or applicability of the terms of an agency action. The reviewing court shall (2) hold unlawful and set aside agency action, findings, and conclusions found to be(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; . . .” [5 U.S.C. § 706](#).

The Court ultimately concluded that though “the Court might not necessarily have reached the same conclusion...as the District Director did,” a “rational basis existed in this case for the denial of the advance parole...” due to the fact that there was “doubt as to the validity of the marriage” between Plaintiff and his wife, and Plaintiff’s petitions were based on that marriage. *Massoud v. Attorney Gen. of United States*, 459 F. Supp. 672 (W.D. Mo. 1978).

E. MUSTAFA V. MEISSNER

In *Mustafa v. Meissner*, plaintiff, a citizen of Bangladesh residing in the United States, sought advance parole to attend his father's funeral in Bangladesh, but had his application denied by the INS. *Mustafa v. Meissner*, 945 F. Supp. 668 (S.D.N.Y. 1996) The New York Southern District Court held that the "INS did not abuse its discretion in denying the alien's request. The alien's father had died more than a month before his request, and the alien did not submit a certified copy of a birth certificate demonstrating the relationship." *Id.*

VI. DATA ON ADVANCE PAROLE

According to the USCIS, for Fiscal Year 2021, as of the [Quarter 3 Report on Number of Service wide Forms](#), 455,835 I-131 Application for Travel Document (Advance Parole) were received. USCIS, NUMBER SERVICE-WIDE FORMS FISCAL YEAR TO DATE, (Aug. 2021), https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2021Q3.pdf. Out of the 455,835, 164,258 were approved, 35,513 were denied, and 365,705 are pending. *Id.*

In terms of processing time, an advance parole applicant who is applying at the National Benefits Center can expect to wait 3 to 5 months for their application to be processed. USCIS, CHECK CASE PROCESSING TIMES, <https://egov.uscis.gov/processing-times/home> (last visited Dec. 23, 2021). On the other hand, an advance parole applicant who is applying at the California Service Center can expect to wait an estimated 19 to 25 months. *Id.*

With respect to data on expedite requests, though the USCIS website does not offer an estimated processing time, online sources have noted that requests are reviewed on a case-by-case basis and processing times range from 30 to 45 days, though some applicants may receive a response within 10 to 15 days. See Kumar, *How to make USCIS Expedite Request? Expedite Criteria, Process, Call*, REDBUS2US, <https://redbus2us.com/visas/usa/uscis/how-to-make-uscis-expedite-request/#USCIS-Expedited-Processing-Time> (last visited Oct. 13, 2021); *The Latest On*

USCIS Delayed Processing and Expedite Requests, INT’L LEGAL AND BUS. SERVICES GROUP (June 12, 2021), <https://bizlegalservices.com/2021/06/12/delayed-processing-and-expedite-requests/>; Chris Prescott, *Expedite Requests through USCIS*, PATEL L. GROUP (Oct. 12, 2020), <https://www.patellegal.com/expedite-requests-through-uscis/>.

In terms of adjudication costs and filing fees, DHS “establishes fees for most forms to reflect the estimated full cost of adjudication...” U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46788 (Aug. 3, 2020), <https://www.federalregister.gov/documents/2020/08/03/2020-16389/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.