

WHAT ARE THE THREE YEAR, TEN YEAR & PERMANENT BARS TO ADMISSION?

Issue: The 1996 Illegal Immigration Reform and Responsibility Act (IIRAIRA) created three-year, ten-year, and permanent bars on admission to the United States for a variety of immigration status violations. These bars apply widely and affect immigrants who have family in the United States, have worked and paid taxes in the United States, and in many cases are otherwise eligible for permanent resident status.

Background: The three-year bar applies to individuals who have been unlawfully present in the United States for a continuous period of more than 180 days, but less than one year, and who voluntarily depart the country.

The ten-year bar applies to individuals unlawfully present in the United States for an aggregate period of one year or more who depart voluntarily. Unlawful presence begins to accrue when the period of authorized stay expires or after an entry to the United States without inspection.

The "permanent" bar applies to any person who has ever been ordered removed (or has resided in the United States unlawfully for more than one year in the aggregate), leaves the United States, and then returns or attempts to return without being admitted.

The following classic example highlights the excessive harshness of these bars.

Example: An individual applies for and receives a ten-year visitor visa and enters the United States pursuant to such visa to visit family. At the border, the inspecting immigration officer annotates Form I-94 by hand authorizing only a 90-day period of admission. The visitor, believing the visa authorizes his stay in the United States for the next ten years, does not realize that the annotated Form I-94 limits his period of stay and he remains in the United States for eleven months. At day 91 of his stay, he begins to accrue unlawful presence and 180 days after that, he automatically becomes subject to the three-year bar on reentry. (If he were to stay in the country for a year after hitting day 90, he would become subject to the ten-year bar on reentry.) As a result, even if this individual is eligible to become a permanent resident through family or employer sponsorship, he will be unable to attain that status: he is ineligible for adjustment of status (Section 245(i) of the Immigration and Nationality Act has expired), and he is ineligible to receive a permanent immigrant visa at a U.S. consulate until he has been outside the United States for the three-year (or ten-year depending on the circumstances) period.

The bars must be eliminated: Rather than stemming illegal immigration, these bars encourage people to remain in the United States in an undocumented status. The bars undermine rather than promote our country's national security goals. If we eliminate these rigid bars, individuals will be encouraged to come out of the shadows and normalize their status by leaving the country and applying for a lawful visa authorizing their reentry. These bars make our immigration system inflexible and dysfunctional and are an obvious symptom of the need to reform our immigration laws. Comprehensive immigration reform legislation introduced in the 109th Congress—the Secure America and Orderly Immigration Act of 2005 (S. 1033/H.R. 2330) -- would waive the bars for a broad class of subject individuals and would create a mechanism through which other individuals could apply for a waiver. If enacted, this would represent a significant step forward in the effort to restore rationality and fairness to our system.

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