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PROMISES AND PITFALLS: FORMER LPRS QUEST FOR A SECOND CHANCE

Every year, the United States Immigration and Customs Enforcement (ICE) removes thousands of immigrants from the United States. In the fiscal year between October 2021 and September 2022, ICE executed the removal of 72,117 noncitizens, which is a 22% increase from the previous fiscal year. Of those removals, 44,096 noncitizens had criminal convictions or pending charges. According to the United States Department of Homeland Security (DHS), as of January 2022, an estimated 12.9 million lawful permanent residents (LPRs) live in the United States. About 970,000 of these LPRs obtained status before 1980, while the remaining 11.9 million obtained status after 1980. This entire population of LPRs is at risk for removal, even those who became LPRs and lived in the United States before 1980. The removal process, more commonly known as deportation, applies to any non-citizen currently within the U.S. regardless of lawful admission or status. While LPRs are granted lawful residency, this does not make them citizens, and as a result, they do not have the same legal protections, liberties, and privileges as citizens, making them vulnerable to deportation.

Long-standing LPRs who were ordered removed by an immigration judge and wish to return home to the U.S must navigate the complexities of the consular process. This process is for indivuduals applying for permanent residence from outside the United States. It involves the cooperation of multiple government entities to reach a conclusive determination of an immigrant's application which usually takes on average 14 months. Current administrative procedures within the consular process do not consider the many factors that differentiate a first-time LPR applicant and a previous long-time LPR. The consular process's relies on arbitrary standards and vast discretion rendering the process unworkable for long-time LPRs.

Photo by Greg Bulla on Upsplash.

The consulate office has vast discretion to admit or deny a former LPR's application for re-entry. Depending on the reasons for their removal, an individual may face inadmissibility provisions which will bar them from reentering the U.S. for a specified period of time. If an applicant is deemed inadmissible under INA § 212, the applicant must submit an I-601 waiver. For example, an individual may be removed from the country for committing crimes involving moral turpitude (CIMT). The inadmissibility grounds of INA § 212(a)(9)(A), will bar their admission into the

U.S. for ten years. If that removed individual remains outside of the U.S. for ten years and reapplies for LPR status, there is no provision in place that will automatically approve their readmission. Satisfaction of this inadmissibility ground does nothing more than create a possibility of re-entry. There is a possibility that the reviewing officer will reject their application because each decision is subject to the discretion of the reviewing officer. These former LPRs are caught in a seemingly never-ending cycle of obstacles when they deserve to reunite with their families after complying with the provisions.

For LPRs removed for criminal activities, deportation acts as a second punishment for individuals who have already served their sentences in the United States. It is particularly frustrating, considering criminal activity is the primary cause of deportation. Discretionary decisions effectively create an additional punishment for former LPR individuals because the removal can be indefinite when, in theory, they are allowed to reapply for permanent residency. The criminalization of immigrant status has long been a theme in American immigration policies. It is evident in the discriminatory language associated with immigrants, such as 'illegal aliens,' and the mindset that immigrants are 'taking' from citizens. Even using terms to classify immigrants as lawful permanent residents further stigmatizes the status of immigrant individuals. Much of the immigrant community find themselves marginalized based on characteristics of race, class, and immigration status.

There has undoubtedly been a preference for the admission of immigrants from particular countries. This is evident in the seemingly facially neutral per-country ceilings that limit the number of immigrants from any country to approximately 26,000 a year. The reality is that there is more of a demand to immigrate from developing nations or where economic prospects are unavailable to them, such as Mexico. More demand means longer wait times for individuals seeking admission from some countries. These longer wait times can be contrasted with the shorter wait times of similarly situated immigrants coming from countries with less of a demand to emigrate from. The comparison showcases the disproportionate effects immigrants face coming from developing countries. Policies like these per-county ceilings inherently promote preference for admitting certain immigrants over others. Discretionary decision-making in the consular process perpetuates preference of one immigrant over the other, which is detrimental to former LPRs, their families, and the immigrant community.

Another issue with the consular process stems from the 'extreme hardship' standard of form I-601. When filing an I-601 waiver, the applicant must show they have at least one 'qualifying family member' (QFM) residing in the U.S. A QFM must be a parent or spouse with U.S. citizenship or LPR status. The QFM must show through a preponderance of the evidence that they would suffer an 'extreme hardship' if the applicant's waiver and subsequent admission are denied. An extreme hardship must go beyond the common consequences of inadmissibility. The submitted evidence must be taken into account in their totality and cumulatively when determining whether a QFM will experience an extreme hardship. Ultimately, the evidence submitted with this waiver is subject to the discretion of the reviewing officer.

The 'extreme hardship' standard is an unnecessary, arbitrary requirement that negates the common repercussions of family separation. Family separation, economic detriment, difficulties adjusting to life in a new country, quality and availability of educational and medical services

abroad, and ability to pursue a chosen employment abroad are all considered common consequences of a denied application and are not considered extreme enough by the U.S. Citizenship and Immigration Services (USCIS). The USCIS recognizes that "at least some degree of hardship to qualifying relatives exists in most, if not all, cases" involving the denied admission of a relative. They also state that the 'extreme hardship' requirement is not a high standard to meet, citing that Congress "intended the waiver to be applied for purposes of family unity." This statement contradicts applicants' burden in proving such high-level hardships when common consequences of such separation are not considered. The negative ramifications of such 'common consequences' have lasting long-term effects on the families that former LPRs leave behind, including those not considered QFMs under I-601. The 'extreme hardship' provision imposes hard-to-reach standards that force applicants to justify their trauma.

The USCIS does not consider children to be QFMs, though they experience an array of consequences that negatively impact their long-term health and development. 17.8 million children living in the U.S have at least one foreign-born parent. Between 2011 and 2013, half a million U.S. children experienced the deportation of at least one parent. According to the American Immigration Council, the deportation of a parent severely increases a child's risk of mental health problems such as depression, anxiety, and psychological distress. Additionally, children with a parent who is deported face more economic instability than their counterparts. In another study, about one-third of families reported a loss of income that affected their ability to pay rent, utilities, food, and school supplies. In the same study, on top of their financial loss, 26 percent of families also had to provide the deportees with money after their deportation. Excluding children, the most vulnerable population affected by deportation, downplays their long-term distress as a common consequence of deportation.

Furthermore, there is a direct correlation between the time spent in the U.S. and the family members left behind. Deportees living in the U.S. for over ten years were more likely to be separated from their nuclear family when deported. Of these deportees, 44 percent reported being separated from their children. On the other hand, those who resided in the U.S. for fewer than two years were less likely to have been separated from their nuclear families upon deportation. This correlation indicates the different ramifications former and new LPRs face throughout this process. Requiring the same hardship standard shows indifference to former LPRs. For a former LPR, the standard can be more challenging. If the former LPR waits for the ten-year inadmissibility grounds of INA § 212 (a)(9)(A) to file an I-601 waiver, the more difficult it can be to prove an 'extreme hardship' because the separated family has lived without the LPR applicant for so long. The 'extreme hardship' validates only specific experiences resulting from deportation.

Photo by Greg Bulla on Upsplash. The challenges presented in this article through the discretionary decisions and the ‘extreme hardship’ standard emphasize the systemic inequalities former LPRs face when returning to the U.S. The current consular process disregards the history, experiences, and circumstances that separate former and new LPRs. The current administrative process must create a new pathway, free of subjective decisions, for long-term former LPRs to return to the U.S. despite their grounds for inadmissibility.

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