

## Practice Areas

### BUSINESS

L-1 Visas

H-1B

H-1B Transfers

Visas

TN Visas (NAFTA)

Special Visas for Other Countries:

- Australia
- Chile / SingaporeE-1

E-1 Visas

E-2 Visas

PERM Labor Certification

### HOSPITALS / HEALTHCARE

H-1C Visas

H-1B Visas for Doctors

### FAMILY

Spouse / Fiancée Visas

Permanent Residence for Family  
within U.S.

Naturalization /Citizenship

### AMNESTY

## Solicitor General Weighs In On Visa Overstays

**Posted:** March 14th, 2011

The office of U.S. Citizenship and Immigration Services (the “USCIS”) has discretion to adjust the status of an “immediate relative” Visa Waiver Program overstay, regardless of whether such an overstay occurred prior to the filing of an application to adjust immigration status to permanent residency (using form I-485).

That was the position taken late last year by the U.S. Acting Solicitor General Neal Katyal in a brief filed in the U.S. Supreme Court in opposition to a writ for certiorari in the case of *Bradley v. Holder*.

The Visa Waiver Program allows citizens of specific developed countries to travel to the U.S. for up to 90 days without a visa to facilitate commerce among those developed countries with certain common agreements regarding immigration, and it is not unusual for an overstay to occur either unintentionally or for emergency reasons.

Now, in light of the Solicitor General’s writings, it would appear that the official position of the U.S. is that the USCIS has a certain amount of discretion to forgive a Visa Waiver Program overstay when processing an application for permanent residence, depending on the circumstances.

This possibly cracks the door to permanent residency open just a little more for those who wish to adjust their visa status, but the need for a good and experienced advocate during the immigration process is still paramount.

If you are an individual needing assistance with a legal issue regarding immigration on behalf of yourself or a family member, please do not hesitate to contact our office at (847) 564-0712, and feel free to check out the pertinent portion of [our Website](#) for more information.