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Impact of Unlawful Presence

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Submitted by Chief Editor on Nov 14th 2018

I am a LPR for 1 year. I married my wife 10 month ago. She came here on a J1 visa that expired 12 years ago and she is out of status. She never filed anything with USCIS except the I-130 9 month ago. The new policy implemented on Aug 9, 2018 for the F,J,M students and accrual of unlawful presence says that she will accumulate unlawful presence starting Aug 9, 2018. If she leaves US after February 5, 2019 she will be subject to 3/10 year bar. She plans to leave shortly before that and wait for her priority date to be current in 1.5 years hopefully. Do you think she can have any problems at the consulate interview if she was out of status for 12 years, and she accumulates close to 180 days of unlawful presence?

ANSWER:

[Watch the Video on this FAQ: Impact of unlawful presence](#) ^[2]

Video Transcript:

In your case make sure she came in with an I-94DS because if she did not have DS, then she's been accumulating unlawful presence for a while and then the only solution is when you become a US citizen, you can then apply for her I-485 without having an issue with unlawful presence because she entered legally. Please spend some time with your lawyer, go over your wife's situation in detail, learn all the pros and cons of your situation. [More...](#) ^[2]

Note: This is a verbatim transcript of the referenced audio/video media delivered as oral communication, and, therefore, may not conform to written grammatical or syntactical form.

Nonimmigrant Visas:

[I-94](#) ^[3]

[General Nonimmigrant Visa](#) ^[4]

FAQ Transcript:

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Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [5] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [6]

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Links:

[1] <https://immigration.com/faq/impact-unlawful-presence>

[2] <https://youtu.be/htSoREU4MVM?t=93>

[3] <https://immigration.com/visa/nonimmigrant-visas/i-94>

[4] <https://immigration.com/visa/nonimmigrant-visas/general-nonimmigrant-visa>

[5] <http://www.immigration.com/law-offices-rajiv-s-khanna-pc>

[6] <http://www.immigration.com>

[7] <https://immigration.com/JavaScript%3Avoid%280%29%3B>