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IMMIGRANT SPOUSES OF US CITIZENS BENEFIT FROM NEW LAW

By Christopher Kerosky, Esq.

The Obama Administration announced this January that they were implementing the new rule first proposed last year that would make it easier and safer for undocumented immigrant spouses of US citizens to apply for permanent residence. This is the change in procedure that will allow them to seek a "pardon" or waiver from immigration penalties in the U.S., instead of returning to a US Consulate in Ciudad Juarez, or the country of their origin.

This new law is an enormous benefit for families who previously were afraid of long separations of up to 10 years if they sent their relative abroad to apply at a US Consulate for the waiver. Now that risk will be eliminated.

Below I attempt to answer critical questions about this important new law:

Q: Who qualifies to apply under this new procedure?

A: Immediate relatives of U.S. citizens are eligible for this new procedure if they are:

- 17 years of age or older;
- an immediate relative of a U.S. citizen (parent or spouse of a US citizen); and
- Be able to demonstrate that the separation will cause extreme hardship to the U.S. citizen spouse or parent. Individuals who can only establish extreme hardship to an LPR spouse or parent are not eligible for the provisional unlawful presence waiver);

Q: Will this new rule reduce the time an undocumented immigrant must wait after they have filed an application?

A: Under the existing waiver process, these immediate relatives cannot file a waiver application until after they appear for an immigrant visa interview abroad and the Department of State determines whether they are admissible and eligible for an immigrant visa. In many instances, this process has caused long periods during which individuals filing for the waiver are separated from their U.S. citizen parents or spouses. USCIS anticipates more quickly adjudicating waiver applications than through the existing waiver application process. Importantly, individuals will be able to remain in the U.S. during the adjudication time period, and not be separated from their family members.

Q: What will the process be for applying for legal residency under the new rule?

A: Individuals may begin filing applications for the waiver with USCIS on March 4, 2013, the day this process change becomes effective.

Q: What is the application form to be submitted?

A: Form I-601A, Application for Provisional Unlawful Presence Waiver, will be available on uscis.gov by March 4, 2013.

Q: Is anything else required to be submitted to be eligible for the waiver?

A: In order to have a good chance at obtaining the waiver and therefore being eligible for obtaining permanent residence, applicants must present a significant amount of supporting documentation to prove that the immigrant's deportation to their home country would cause the citizen spouse or parent "extreme hardship".

Q: What sort of documentation can be used to show "extreme hardship"? Certainly financial documentation confirming the immigrant's work history, support for family members and payment of taxes are helpful. Also, any documents showing the US citizen family members have special needs that cannot be met in the home country, such as illnesses, disabilities, other health conditions, educational needs, etc. We usually try to obtain a letter from a counselor who has consulted with the US citizen spouse and writes that separation from the immigrant spouse will cause extreme hardship for him or her. Also documents showing the immigrant's good moral character and ties to the community are helpful.