

WALNUT CREEK OFFICE
1990 N. CALIFORNIA BLVD.
SUITE 800
WALNUT CREEK, CA. 94596
TELEPHONE: (925) 222-5074

UKIAH OFFICE
308 S. SCHOOL STREET
UKIAH, CA. 95482
TELEPHONE: (707) 376-1010

SAN JOSE OFFICE
111 N. MARKET ST., STE. 300
SAN JOSE, CA. 95113
TELEPHONE: (408) 963-0355

KEROSKY PURVES & BOGUE LLP
ATTORNEYS AT LAW

SAN FRANCISCO OFFICE
785 MARKET STREET, 15TH FLOOR,
SAN FRANCISCO, CA. 94103
TELEPHONE: (415) 777 4445

LOS ANGELES OFFICE
8484 WILSHIRE BLVD., SUITE 745
BEVERLY HILLS, CA. 90211
TELEPHONE: (323) 782-3877

SANTA ROSA OFFICE
131 A STONY CIRCLE
SUITE 500
SANTA ROSA, CA. 95401
(707) 433-2060

NAPA OFFICE
1041 JEFFERSON STREET, STE 3
NAPA, CA. 94559
TELEPHONE: (707) 224-2722

SACRAMENTO OFFICE
770 L ST., SUITE 950,
SACRAMENTO, CA. 95814
TELEPHONE: (916) 349-2900

www.KPBimmigrationlawfirm.com

IMMIGRANT SPOUSES OF US CITIZENS BENEFIT FROM NEW LAW

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.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine "Super Lawyers" edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had his own law office in downtown San Francisco for 25 years.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento), (707) 224-2722 (Napa); (707) 433-2060 (Santa Rosa) or (707) 376-1010 (Ukiah)