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IMMIGRANTS WAITING ON FAMILY PETITIONS CAN FILE EARLY
UNDER NEW OBAMA POLICY.

By Christopher Kerosky, Esq.

A new Obama Administration policy will change the rules for family sponsorship slightly, allowing many immigrants to apply before their priority date is current, in some cases one or more years earlier. This will allow some undocumented immigrants here to obtain a work permit and attain temporary status a bit earlier while their adjustment of status application is pending.

Much of the immigration to the U.S. is through sponsorship by a family relative. Family-based immigration allows for close relatives of U.S. Citizens and legal permanent residents to rejoin their families here. However, the system is based on categories, each of which has strict annual limits in the number of immigrants allowed each year. This creates backlogs, some of them quite lengthy, in some of these family categories.

Immediate Relatives have priority.

The priority is given to “Immediate relatives”. This category does not have any limit or cap on the number of visas and therefore, there is no “waiting period” other than the amount of time the Department of Homeland Security (DHS) or the U.S. consulate abroad takes to process these visas. These “immediate relative” categories are:

- Spouses of U.S. citizens;
- Unmarried minor children of U.S. citizens; and
- Parents of U.S. citizens.

Other Family Categories.

You can sponsor other members of your family besides those in this “immediate relative” category, but in most cases there will be a long wait for them to get a green card. The other relative categories have limits on the number of visas and therefore, there are waiting periods, which can run from five to ten years or more.

The waiting periods for each of these visas can be determined (approximately) by checking the U.S. Department of State website or the Visa Bulletin which they publish.

The visa bulletin is available at <http://travel.state.gov>. The U.S. Department of State visa bulletin lists each category and the date on which an individual applied in each category who is being processed for a green card currently. From this date, one can try to extrapolate how long it will take for an application filed today to take before a relative qualifies for permanent residence.

These Family Members can apply for residence earlier.

Now the visa bulletin contains a second category of dates, which is labelled “Dates for Filing Family-Sponsored Visa Applications”. This contains the date applicable to cases which can be filed now (rather than approved).

As you’ll see when you check this bulletin, there are long waits for every category of family sponsorship, especially for Mexican citizens. Based upon the visa bulletin for November 2015, the current date of processing for the first category (unmarried adult children of U.S. citizens) is **February 2008**. This means that these individuals waited seven years from the date of their application until they qualified for permanent residence. But the waits for Mexico are even longer. If you’re from Mexico, the government is processing cases filed in **December 1994** -- a 20 year wait.

Under this new rule, the government will allow you to file for adjustment of status if your petition was filed **April 1, 1995 or earlier** --- essentially allowing persons to file about 5-6 months earlier in this category.

In the case of second category A (spouses of permanent residents) the current “priority date” is **May 2014** for most of the world including Mexico. For Mexico, it’s **April 2014**. The new rule would allow filing for persons with cases pending since **March 1, 2015 or earlier** --- allowing persons to file almost one year earlier in this category.

In the case of second category B (unmarried children of permanent residents) the current “priority date” is **February 2009**, but from Mexico, it’s **August 1995**. That’s a 20 year wait for children of green card holders. Under this new rule, the government will allow you to file for adjustment of status if your petition was filed **April 1, 1996 or earlier** --- allowing persons to file 8 months earlier in this category.

In the case of third category (adult married children of U.S. citizens), the current “priority date” is **June 2004** but for Mexico, it’s **June 1994**. The new rule would allow filing for persons with cases pending since **May 1, 1995** – nine months earlier

In the case of fourth category (brothers and sisters of U.S. citizens), the current “priority date” is **March 2003** but for Mexico, **April 1997**. Under this new rule, the government will allow you to file for adjustment of status if your petition was filed **June 1, 1998 or earlier** --- allowing persons to file 14 months earlier in this category.

This new policy is a small step but for those eligible now to file earlier, it makes a big difference. Persons waiting on petitions filed by family members should check the visa bulletin or get legal advice to see if the policy benefits their situation.