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New Pardon Procedure Has Already Benefited Many Spouses of US Citizens

By Christopher A. Kerosky, Esq.

In March of last year, the Obama Administration implemented a major immigration policy change that has already benefitted many immigrants in the North Bay immigrant community and across the country.

The regulation allows spouses of US citizens to apply for their permanent residence and waivers of the 10-year penalty for unlawful presence inside the US even if they came here without a visa. It means that those persons who previously were waiting here unable to change status and afraid to risk going to the US Consulate in their home country to apply for a waiver, they are now able to apply without the same danger.

Under the prior procedure, undocumented spouses who came here without a visa risk being barred for 10 years from the US if their waiver was denied. Naturally, this risk kept many from applying at all.

Now, since last March, these immigrants still have to leave to get their green card, but they know beforehand it will be approved after a few days or weeks in their home country— not the long and uncertain waits that have existed until now.

For Mexican citizens, means a trip to Ciudad Juarez for a week or two, instead of waiting there up to one year separated from family and work in the US.

American immigration law applies a severe penalty for those who come here without a visa. If an immigrant comes illegally to the US, and they stay more than one year here, they are also barred from coming back to the US for ten years – even if they came as a child. The ten year wait begins only from the date the person leaves the US. The penalty applies even if the immigrant marries a US citizen.

But the law permits a person subject to the penalty to apply for a waiver if they have either a spouse or parents that are U.S. residents or citizens. A child who is a US citizen or resident does not qualify the parent for a waiver.

To obtain the waiver, one needs to prove “extraordinary hardship” would occur to the spouse or parents if the immigrant is not allowed to come back to the US.

Under the prior procedure, about 30% of these waiver applications were denied. Those denied were stuck outside the U.S. for at least 10 years.

For those families involved, a denial of a waiver under these circumstances can mean many years of separation of a parent from their children and their spouse. In some cases, it means the marriage and the family fall apart.

Under the new law, the immigrant are permitted to present a waiver application in the U.S. and obtain a decision on the waiver *before* they leave the U.S.

Many thousands of immigrants have applied under the new I601A procedure for the waiver or pardon since the US government began accepting applications in March 2013.