

A New (and Improved) System for Family-based Immigration Waivers



By Jerry Grzeca and John Sesini
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Imagine packing your bags and buying a one-way ticket to the country you emigrated from five, ten, or even twenty years ago. You tell

your spouse, your children, and your boss that you hope to be back in two or three months. But you don't know for certain. Under the law, you could be barred from returning for ten years. You, like tens of thousands of people every year, take that chance, because it is the only way to gain legal status. But that may soon change.

On January 6, 2012, the Obama Administration proposed a small procedural change that would make a big difference in how people who entered the country illegally obtain legal status. The change does not require Congressional support and could take effect within the next year.

Under current immigration laws, most people who entered the United States illegally are caught in a legal trap which prevents them from obtaining lawful immigration status. They cannot fix their status in the United States because they were never inspected and admitted by an immigration officer. But if they return to their native country and apply for a visa, they are barred from returning for as long as ten years because of their time spent living undocumented in the US.

For many, the only way out of that legal trap is by asking the government for a visa and a waiver (or perdón). The first step is the visa[EMB1]. A US citizen family member can apply for one, and it will be granted or denied in the United States. The waiver, though, is a different matter. To get such a waiver, the applicant must show that his or her spouse or parents (children and siblings don't count) would suffer extreme hardship if he or she were not allowed back into the country.

The catch is this: the waiver applicant must return to his or her native country to apply, and must wait there until it is granted or denied. For several nerve-wracking months, families are divided and often left without the applicant's valuable income. If the

waiver is denied, months turn into years while the applicant appeals the decision. For many, this is simply too great a risk or too costly a trip.

This month, the Administration proposed a small but dramatic change to this system. Under the proposal, applicants could apply for a waiver before they leave the United States. The applicant could then await the decision with his or her family, without the emotional and financial costs of months apart. If the waiver is granted, the applicant would still need to travel abroad to obtain an immigrant visa to lawfully re-enter the United States. But the trip would be shorter, and the applicant could leave certain of returning to his or her family and job.

This proposal, like last summer's prosecutorial discretion memorandum, reflects the current administration's pragmatic, values-based approach toward immigration. Forced to work within the existing immigration laws, the government has taken several steps reduce the toll on families and long-time residents.

For now, this option would be available only to the spouses and children of United States citizens, and those who have not committed crimes or immigration fraud that would make them inadmissible. And it is still too soon to know when any such procedures would take effect. At best, the government is months away from implementing them. Nevertheless, for the thousands who have considered returning abroad to obtain a visa it is encouraging news.

For more information about the administration's new proposal, or for information on any other immigration matter, please contact Grzeca Law Group at (414) 342-3000 or visit our website at www.grzecalaw.com.

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