

Illegal immigrants in Colorado seize upon new visa waiver

[By Nancy Lofholm](#)

[The Denver Post](#)

Alejandro Esparza texted his wife a smiley face Wednesday.

The occasion for the momentous digital grin was a small change in a convoluted immigration regulation. On paper, that change may seem like an insignificant reform, but for American families of certain illegal immigrants such as Esparza, it represents a new opportunity to obtain a green card without tearing loved ones apart.

Under the old rules, Esparza, who entered the United States illegally when he was 15 years old, would have had to return to his home country of Mexico to apply for a waiver from being barred re-entry to the United States. The waiver would be based on the hardship his absence would create for his wife in Denver.

That process could drag on for months or years — and it came with a great risk. If Esparza, now 27, was turned down for the waiver, he would be barred from returning to the United States for three to 10 years because he had entered the country illegally.

The changed regulation, announced last week by Homeland Security Secretary Janet Napolitano, makes it possible to apply for the waiver without leaving the country. Immigrants still have to return to a home country to complete the process and pick up a visa, but they can go with the waiver in hand and the prospect that they will be away for weeks, not months or years.

"This is really, really, really good news for us, said Esparza's wife, Magdalena Mendoza.

It is so good the family is now viewing the necessary trip back to Mexico as a vacation rather than an anxiety-provoking separation. Mendoza and their three daughters will accompany Esparza on the journey to complete what she calls "the procedure."

When they return, they will still have their home and jobs. Their girls can continue in their schools.

All of that could have been lost under the old regulations, which American Immigration Lawyers Association president Laura Lichter calls "downright dangerous."

"This is a really good interim solution to a problem that we shouldn't have anyway," Lichter said of the change to the waiver regulation.

There is no estimate of how many illegal immigrants will be eligible for the new waivers, which will open for applications March 4. Lichter, who practices immigration law in Denver, said she has hundreds of clients who will be able to take advantage of it.

To qualify, illegal immigrants must have a citizen spouse or be under 21 and have citizen parents in the United States. There must be proof that the citizen family members would face extreme hardship due to the absence of the immigrant.

Many, including Cesar Lopez of the Vail area, had been waiting for this change since it was promised last spring as a step to keep families together in the absence of comprehensive immigration reform.

Lopez has been married to a citizen for five years and has two toddlers — one with a chronic medical problem and another ready to enter kindergarten.

If he had to be away in Mexico for an extended time, his wife, Rosa Martinez, said she didn't know how she would have survived as the sole parent, breadwinner and part-time college student.

"I was really scared because it would be a horrible thing if he was gone," she said.

Moving the whole family to Mexico was a feared option because of the crime and poverty rates there and the fact that the elementary schools are behind U.S. schools, Martinez said.

The relief some families of illegal immigrants are feeling with the new rules is tempered by what immigration lawyers and immigrant advocates are calling deficiencies in the change.

Adult undocumented children of U.S. citizens are not eligible for the hardship waivers even though they might be important caregivers for parents. Brothers and sisters and other immediate relatives are also not eligible.

"We are disappointed that the rules change does not apply to spouses of legal permanent residents and adult children of U.S. citizens, as they are often the caregivers. We hope that, as the changes are implemented, the administration will see the wisdom in expanding the hardship waivers to these critical family members," said Eliseo Medina of Service Employees International Union.

Lichter was also disappointed there is no provision in the new rules to help families that can't pay the \$585 filing fee.

She said she will continue to warn her clients that the new rules do not come with any full guarantee.

"There are still risks. Nothing is ever 100 percent guaranteed," she said. "This is just a way of removing one of the nonsensical roadblocks."

Read more: [Illegal immigrants in Colorado seize upon new visa waiver - The Denver Post](http://www.denverpost.com/news/ci_22319024/illegal-immigrants-colorado-seize-upon-new-visa-waiver#ixzz2HKo4UQd5)
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