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Immigration Change to Ease Family Separations

By JULIA PRESTON

Obama administration officials unveiled rules on Wednesday that will allow many American citizens — perhaps hundreds of thousands — to avoid long separations from immediate family members who are illegal immigrants as they apply to become legal residents.

The rules, announced by Homeland Security Secretary Janet Napolitano, create a waiver that bypasses an arcane Catch-22 in immigration law. It had presented Americans with the prospect of being separated for up to a decade from immigrant spouses, children or parents who were applying for the legal documents known as green cards.

Until now, the risks for those immigrants of leaving the United States to return to their native countries to pick up their visas, even ones that were already approved, had been so great that countless families decided not to apply, adding to the numbers of immigrants living illegally in this country.

The immigration authorities will begin accepting applications for the waivers on March 3. Administration officials first announced the policy change a year ago, but they have been receiving public comments and making revisions before publishing the final rules.

It is generally straightforward for American citizens to obtain green cards for foreign-born spouses or minor children, and in some cases for parents. But if the immigrants entered the United States illegally, they must return to their native countries to receive their visas from American consulates there. However, under a 1996 statute, once illegal immigrants leave this country, they are barred automatically from returning for at least three and as many as 10 years.

Even immigrants who did not incur any bars to re-entry were often stranded overseas for many months while consulates completed their applications.

With the new rules, Americans' family members can apply in the United States for a waiver from the bars to re-entry, before they leave to pick up their visas. Officials estimated the time immigrants would have to spend out of the country would be reduced to "a matter of weeks."

“One of the critical benefits is that the individual will not be separated from the United States citizen family member during the application process,” said Alejandro Mayorkas, the director of United States Citizenship and Immigration Services, the agency that issues green cards.

For immigrants, officials said, having an approved waiver in hand before leaving the country would also eliminate many doubts about whether they would ultimately receive their visas.

“This rule is leaps and bounds better than what we have now,” said Laura Lichter, president of the American Immigration Lawyers Association. “For families that were sitting on the fence, unwilling to subject their loved ones to the uncertainty, now they don’t have to wait.”

Ms. Lichter said many families would still face a hurdle in coming up with the \$585 application fee for the waiver.

One American who was heartened by the new rule is Erika Torres, 30. She has been married for six years to a Mexican man who was brought illegally to the United States 24 years ago, when he was 8. Ms. Torres, speaking by telephone on Wednesday, said she and her husband, who have known each other since they were children, now own a home and a winemaking business in Cambria, Calif.

Like many Americans, Ms. Torres said she expected no difficulty gaining legal documents for her husband once they were married. But after learning about the convoluted visa process, she said, “We have waited because we were just terrified of the separation.”

Ms. Torres said her husband would probably have to collect his visa from the American Consulate in Ciudad Juárez, Mexico, a city racked by drug trafficking violence. “He would be a prime target for kidnappers,” she said.

“We are a team,” Ms. Torres said, adding that she feared she would not be able to sustain their business without her husband’s help. She said they would apply for a waiver as soon as they became available.

The rules do not give any legal status to illegal immigrants or shortcut the underlying application. In order to receive green cards, immigrants must still show that it would cause “extreme hardship” to an American citizen if they were deported.

“It is a limited change, but a definitely a good step forward in the right direction,” said Randall Emery, president of American Families United, an organization of thousands of Americans with family members who are illegal immigrants.

Ms. Lichter called on Congress to change the law to eliminate the snag created by the automatic bars. “This is a great solution to a problem that should never have existed in the first place,” she said.

http://www.nytimes.com/2013/01/03/us/immigration-change-will-ease-family-separations.html?emc=tnt&tntemail=y&_r=0