

# USCIS proposes rule change

By Todd Etshman, Daily Record Reporter

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The U.S. Citizenship and Immigration Service posted a Notice of Intent in the Federal Register on Friday to begin the process of changing procedural rules regarding the amount of time illegal immigrants with immediate American family members have to spend out of the country and away from their families to get a green card.

The proposal would allow immediate relatives to obtain a provisional waiver of unlawful presence before they leave the United States to apply for a green card. Immigrants who are in the country illegally cannot apply for a green card here in the U.S.

Currently, the waiver application must be processed in the immigrant's home country by their consulate. If approved here in the U.S., they would now only have to return to their home country for final green card processing.

Immigrants who are denied a waiver in their home country are barred from returning for at least three years and up to 10 years, depending on the amount of time they have been in the country unlawfully. Consular processing in Mexico is done in Juarez, a city beset by drug cartels, murders and extreme violence.

As immigration attorneys Stephen Brent and Tracy Powell explained, obtaining a provisional waiver of unlawful presence still requires meeting a proof of hardship burden but once obtained, the amount of time spent outside of the country to get a visa will be reduced to days instead of years.

"It's totally procedural and it doesn't change the standard," Brent said. "Nothing has changed yet and it will be months before it takes effect but it will have a profound effect on many people who are in unlawful presence status here in the U.S."

"Not only will this proposal further the administration's commitment to family unity, but the change would improve government efficiency by increasing the predictability and consistency of the application process," said U.S. Citizenship and Immigration Services Director Alejandro Mayorkas in announcing the proposed rule change Friday.

"It's very complicated," said Jill A. Apa, an immigration attorney with Damon Morey LLP in Buffalo. "It's a good idea on paper but how is it going to work in reality?"

"They're trying to make it easier by giving the waiver but what happens to people who don't get the waiver, how is it going to affect them?" Apa asked.

Those who don't get the waiver are already in the U.S. illegally and may have no incentive to change their status. Apa said an easier fix would be to get rid of the three- and 10-year bars for unlawful presence.

Immigration attorneys said the situation is a Catch-22 in that unlawfully present immigrants who want to apply for a visa have to leave the country and become separated from their family members to do it.

"It reminds me of that old Clash song, 'Should I Stay or Should I Go,'" said Buffalo immigration attorney Matthew Kolken.

"The administration could take one more step and say they don't have to leave at all," he said. "It hangs over their head like a dark cloud. To get legal, they have to leave the U.S."

The proposal received the widespread support of immigration groups such as the League of United Latin American Citizens, which has a chapter in Syracuse.

"We have long sought relief for immigrants who have legal avenues to become legal residents of the U.S. and while we applaud the Administration we also hope for immigrants that are not married to an American citizen, or are not children of American citizens to be granted eligibility in the near term as well," said LULAC Executive Director Brent Wilkes.

USCIS Director Mayorkas said more details on the proposal would be included in the Notice of Proposed Rulemaking tentatively scheduled to be published in the spring.

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