

Juan and Maria were married 5 years ago. Juan is from Mexico and Maria was born in the US of Mexican descent. They have two kids together, 4 and 1 years old. Maria wants to petition Juan and help him get lawful permanent residency or green card status. They consult with a lawyer who goes through the process with them.

The lawyer has a lot of questions about Juan's immigration history. **He entered 10 years ago when he was 22 by crossing the border. He was not inspected or admitted legally into the country.** Since his arrival, he has supported himself by working with his uncle in construction, who pays him cash for his work.

As a US citizen, Maria can petition Juan for residency by filing the I-130 petition for alien relative. Because Juan entered the country illegally, he is not able to simultaneously file for residency in the US. He must return to his home country of Mexico for consular processing there. When Juan leaves the US for Mexico to apply for an immigrant visa allowing him to return, he'll trigger a 10 year bar for his unlawful presence. Before he leaves the country, he will need to apply for a provisional waiver for his unlawful presence, so that when he leaves the country, this 10 year bar is already waived and he can return without incident.

The first step in this process is for Maria to file the I-130 petition. The petition will demonstrate that Maria is a US citizen, that the two of them are legally married, and that their marriage is legitimate and not solely for immigration purposes. The fact that they have been married for 5 years and have two children together is great evidence of that, but they should also include proof that they reside together, have filed their taxes together, and otherwise share their life.

From there, the I-130 gets forwarded to an agency called the National Visa Center, or NVC, who will process the case and send to the US consulate in Mexico for a visa interview. While the case is at the NVC, Juan and Maria will need to file the I-601A provisional waiver application, so that when Juan goes to Mexico he can return without staying outside of the country for the next 10 years.

The I-601A requires that Juan can show how Maria, as his qualifying relative spouse, will suffer extreme hardship if the waiver is not approved and Juan must live in Mexico away from his family for the next 10 years, or in the event of Maria's relocation with Juan to Mexico. The rules require you to only need to prove hardship on one of these scenarios, separation or relocation, but it is stronger to make arguments on both sides.

Extreme hardship can be shown in different ways and is often a combination of many factors such as health, emotional, financial, etc. Maria and her children are all perfectly healthy. Since her children are young, she stays home full time to care for them, while Juan works with his uncle in construction making \$500 a week or \$2000 per month. They live with Maria's mother, and help her with her mortgage. Because Juan is undocumented, he has not paid taxes on his income.

Juan and Maria should immediately work with a CPA to figure out how to file taxes. Even though he is undocumented and is paid cash, he is still responsible for paying income tax on his earnings.



This will help him on his waiver case because he can 1) document his income and 2) show that he's worthy of discretion, for following US law by paying taxes.

Looking at whether Maria will suffer extreme hardship upon their separation and Juan living in Mexico for the next 10 years, there are a few different arguments to make. Financially, Maria does not currently work. Should she have to enter the work force, she will have to find and pay for childcare, which is very expensive in her town. Any money she makes will go directly to childcare expenses, not leaving anything left over for rent, groceries or any other expenses. Although she lives with her mother, her mother is ill and on dialysis. She depends on Maria to take her to doctor's visits and dialysis treatments, and would be unable to watch an active 4 and 1 year old on her own. Additionally, the economy in Mexico being what it is, while Juan would probably be able to find some work given his age and skills, he would not earn enough to support himself as well as send money back to Maria in the US. They would not be able to afford to visit him in Mexico.

In regard to whether Maria would suffer extreme hardship upon her relocation with Juan to Mexico, there are other factors to consider. While Maria is a US citizen, she is of Mexican descent and grew up speaking Spanish at home, so she is bilingual, and their children understand Spanish. However, the state of Guerrero, where both Maria's family and Juan are from, is very dangerous. American citizens are targeted for kidnapping and extortion there, and she and the kids would be shut in the house for their protection. With no family support in Mexico, Juan and Maria would be starting over from scratch and would need to find housing, jobs, childcare, etc. They don't currently have the money in savings to be able to do so, and it would be a huge financial hardship. Additionally, as Maria is her mother's sole caretaker, she would be constantly worried how her mother is taking care of herself.

There are strong arguments on both separation and relocation, and Juan's I-601a provisional waiver is approved. After that, he goes through consular processing between the National Visa Center and the US Consulate in Ciudad Juarez to apply for his immigrant visa, which once approved will allow him to return to the US and receive lawful permanent residency or green card status. Maria's sister serves as Juan's joint sponsor since Maria is a stay at home mom and doesn't have any income. Juan is in Mexico for about a week and has a fingerprint appointment, medical exam, and attends his visa interview, and it all goes well. His visa is printed in his passport and he returns to the US as a green card holder.