[^ 6] See INA 320 and INA 322.

[^ 7] A dissolution in and of itself does not generally impact an adoptee’s U.S. citizenship status.

[^ 8] For example, a Certificate of Citizenship (USCIS Form N-560A) or a valid, unexpired U.S. passport.

[^ 9] See instructions for the Application for Certificate of Citizenship (Form N-600). See instructions for the Application for Replacement Naturalization/Citizenship Document (Form N-565).

[^ 10] See the Request Records through the Freedom of Information Act or Privacy Act webpage.

Volume 6 - Immigrants

Part A - Immigrant Policies and Procedures

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures.

See more

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact PolicyFeedback@uscis.dhs.gov.

AFM Chapter 20 - Immigrants in General (External)

Part B - Family-Based Immigrants

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures.

See more

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AFM Chapter 21 - Family-based Petitions and Applications (External)

Chapter 1 - Purpose and Background

A. Purpose

The Immigration and Nationality Act (INA) allows U.S. citizens, U.S. nationals,[1] and lawful permanent residents (LPRs) to petition for certain alien relatives to immigrate to the United States.[2] These alien relatives include immediate relatives[3] of U.S. citizens and relatives who fall within a family-based preference immigrant visa category.[4]

Family-based immigration accounts for most new LPRs with immediate relatives alone making up approximately 40 percent of all new LPRs annually.[5]

Fraudulent, frivolous, or otherwise non-meritorious family-based immigrant visa petitions erode confidence in family-based pathways to LPR status and undermine family unity in the United States. Therefore, USCIS must ensure that qualifying marriages and family relationships are genuine, verifiable, and compliant with all applicable laws.

B. Background

Legislative History

U.S. immigration law and policy has included family relationships as a basis for admitting immigrants as early as 1924. The Immigration Act of 1924 established a country-specific quota system for immigration to the United States and was the first to establish guidance around family-based immigration by excluding certain spouses and children of U.S. citizens from numerical limitations.[6]

Congress enacted legislation in 1952 and 1965 to further refine existing categories of family members and specifically promote family-based immigration and continued to provide for family-based immigration reform.[7] These laws created the basis for the immediate relative and family-based preference categories that are used today for family-based immigration.[8]

Visa Availability for Immediate Relatives and Family-Based Preference Immigrants

If the petitioners and the alien beneficiaries of family-based immigrant visa petitions meet the eligibility requirements and USCIS approves their petitions, alien beneficiaries may then pursue LPR status by applying for an immigrant visa at a U.S. embassy or consulate (otherwise known as consular processing), or if already in the United States, by applying for adjustment of status.[9]

Immigrant visas are always immediately available for immediate relative beneficiaries as they are not subject to the numerical limitations.[10] Alien beneficiaries in a family-based preference category are subject to annual numerical limitations set by Congress and can immigrate only when an immigrant visa is available.[11]

In part, the availability of an immigrant visa is based on the number of visas designated by Congress on an annual basis for each family-based preference category.[12] The annual limit for family-based preference categories depends on the previous year's immigration levels and is set at a minimum of 226,000.[13]

After a petitioner files an immigrant visa petition for his or her qualifying relative in a preference category, USCIS or the U.S. Department of State (DOS) assigns a priority date, which establishes the alien beneficiary's place on a waiting list maintained by DOS for issuance of an immigrant visa.[14]

In most instances, the priority date is the date the petitioner properly filed[15] the immigrant visa petition with USCIS or, in cases where the petition is filed with DOS, the date the petition is received at a U.S. embassy or consulate outside the United States.[16]

To immigrate based on the qualifying family relationship, the alien must be the beneficiary of an approved immigrant visa petition demonstrating that he or she is an immediate relative or falls into a preference category. An approved petition and available immigrant visa are the basis for a beneficiary to apply for adjustment of status (if in the United States) or for an immigrant visa (if outside the United States).

C. Legal Authorities

- INA 101 – Definitions
- INA 201 – Worldwide level of immigration
- INA 202 – Numerical limitations on individual foreign states
- INA 203 – Allocation of immigrant visas
- INA 204; 8 CFR 204 – Procedure for granting immigrant status
- INA 205; 8 CFR 205 – Revocation of approval of petitions
- 8 CFR 103 – Immigration benefit requests; USCIS filing requirements; biometric requirements; availability of records
- 22 CFR 42.31 – Family-sponsored immigrants

Footnotes

[^ 1] U.S. nationals, as defined in INA 308, are afforded the same rights as lawful permanent residents (LPRs) to file a family-based immigration petition for certain alien relatives. See *Matter of Ah San* (PDF), 15 I&N Dec. 315 (BIA 1975) (holding that nationals, but not citizens, of the United States may also file petitions under INA 203(a)(2)). A person who, though not a citizen of the United States, owes permanent allegiance to the United States (for example, persons born in American Samoa or Swains Island). See definition in Glossary.

[^ 2] In addition, Congress provided that certain relatives may self-petition in limited circumstances, including self-petitioners seeking to immigrate as an abused spouse, child, or parent; as an Amerasian; or as a widow or widower of a U.S. citizen. See Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act [3 USCIS-PM D]. See Volume 7, Adjustment of Status, Part P, Other Adjustment Programs, Chapter 9, Amerasian Immigrants [7 USCIS-PM P.9]. See the Green Card for Widow(er) of a U.S. Citizen webpage.

[^ 3] See INA 201(b)(2)(A)(i).

[^ 4] See INA 203(a). The term preference is used in immigration law to refer to numerically limited family-based and employment-based categories for immigration and LPR status.

[^ 5] See U.S. Department of Homeland Security, Office of Homeland Security Statistics (OHSS), Annual Flow Reports on Lawful Permanent Residents.

[^ 6] See the Immigration Act of 1924, also known as the National Origins Act or the Johnson–Reed Act, Pub. L. 68-139 (PDF) (May 26, 1924).

[^ 7] See the McCarran-Walter Act, also known as the Immigration and Nationality Act of 1952, Pub. L. 82-414 (PDF) (June 27, 1952). See the Immigration and Nationality Act of 1965, Pub. L. 89-236 (PDF) (October 3, 1965). The 1965 Act replaced quota limitations based on nationality in favor of family reunification and skills-based immigration. Family-based immigration reform has continued to evolve since 1965 with the Refugee Act of 1980, Pub. L. 96-212 (PDF) (March 17, 1980); the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (PDF) (November 6, 1986); the Immigration Act of 1990, Pub. L. 101-649 (PDF) (November 29, 1990); and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208 (PDF) (September 30, 1996).

[^ 8] See Chapter 2, General Eligibility Requirements, Section B, Qualifying Relationship, Subsection 1, Immediate Relatives of a U.S. Citizen [6 USCIS-PM B.2(B)(1)] and Subsection 2, Family-Based Preference Relatives [6 USCIS-PM B.2(B)(2)].

[^ 9] For more information, see Volume 7, Adjustment of Status [7 USCIS-PM].

[^ 10] See INA 201(b)(2)(A)(i).

[^ 11] See INA 201(a)(1) and INA 203(a). See 8 CFR 204.1. For more information on the numerical limits system, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 12] See INA 201, INA 202(a), and INA 203(a).

[^ 13] See INA 201(c)(1)(B)(ii).

[^ 14] See INA 203(e). For information on determining priority dates, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 3, Priority Dates [7 USCIS-PM A.6(C)(3)].

[^ 15] See 8 CFR 204.1(b). USCIS considers a petition properly filed if it is filed in accordance with the form instructions and 8 CFR 103.2. The filing date of the petition is generally the date USCIS receives a properly filed petition and constitutes the priority date.

[^ 16] The priority date is listed on a Notice of Action (Form I-797). See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 3, Priority Dates [7 USCIS-PM A.6(C)(3)].

Chapter 2 - General Eligibility Requirements

A. Family-Based Immigrant Visa Petitions

A U.S. citizen, U.S. national,[1] or lawful permanent resident (LPR) may file a Petition for Alien Relative (Form I-130) on behalf of certain relatives who seek to immigrate based on a qualifying family relationship.[2]

This chapter addresses general eligibility requirements for family-based immigrant visa petitions, including the qualifying relationship between the petitioner and the principal beneficiary and requirements for family members of the principal beneficiary to qualify as derivative beneficiaries.

B. Qualifying Relationship

A qualifying relationship between the petitioner and the alien beneficiary must exist at the time the immigrant visa petition is filed and continue through adjudication.[3] USCIS determines if the alien beneficiary of a petition is eligible for the family-based classification sought.

U.S. citizen petitioners may file a Form I-130 on behalf of the following relatives:

- Spouse;[4]
- Child (unmarried and under 21 years old);[5]

- Parent (if the U.S. citizen petitioner is at least 21 years old);[6]
- Unmarried son or daughter, age 21 or older;[7]
- Married son or daughter of any age;[8] or
- Sibling (if the U.S. citizen petitioner is at least 21 years old).[9]

LPR and U.S. national (who are not citizen) petitioners may file a Form 1-130 on behalf of the following relatives:

- Spouse;[10]
- Child (unmarried and under 21 years old);[11] or
- Unmarried son or daughter, age 21 or older.[12]

1. Immediate Relatives of a U.S. Citizen

Immediate relatives include spouses, certain children[13] and parents of U.S. citizens.[14] The following table summarizes general principles applicable to each immediate relative category.

Summary of Family-Based Immediate Relative Categories

Family-Based Immediate Relative Category	General Principles
Spouse of U.S. citizen	An immediate relative spouse includes someone who is recognized as married to a U.S. citizen under the laws of the place of celebration.[15] Upon the death of the U.S. citizen, the alien spouse may still qualify as an immediate relative as a widow or widower if certain conditions are met.[16]
Child of U.S. citizen	An immediate relative child includes someone unmarried and under the age of 21 whose relationship to a U.S. citizen is covered under INA 101(b)(1).[17]
Parent of a U.S. citizen	An immediate relative parent includes someone whose relationship to a U.S. citizen is covered under INA 101(b)(1).[18] The U.S. citizen petitioning for the parent must be 21 years of age or older.[19]

2. Family-Based Preference Relatives

Certain family members of U.S. citizens, U.S. nationals, and LPRs, who are not immediate relatives, may be eligible to immigrate as a family member through the preference system.[20]

The following table summarizes the general principles applicable to each family-based preference category.

Summary of Family-Based Preference Categories

Family-Based Preference Category	General Principles
Unmarried sons and daughters of U.S. citizens[21] (1st preference)	A family preference unmarried son or daughter includes someone who is unmarried and 21 years or older who once qualified as a child of the U.S. citizen.[22] Unmarried generally means not married at the time of filing through admission or adjustment of status, whether or not previously married.[23]
Family members of LPRs (2nd preference)[24]	Certain family members of an LPR may be eligible for family preference based immigration and include someone who is the spouse, child (under 21 and unmarried), or unmarried son and daughter (21 years old or older) of the LPR.
Married sons and daughters of U.S. citizens[25] (3rd preference)	A family preference married son or daughter includes someone who is married and once qualified as a child of the U.S. citizen.[26] Married generally means a person who is recognized as married under the laws of the place of celebration.[27]
Brothers and sisters of U.S. citizens[28] (4th preference)	A family preference sibling includes someone who has at least one parent in common with a U.S. citizen.[29] The U.S. citizen petitioning for the brother or sister must be 21 years or older.[30]

3. Impact of Life Events and Material Changes in Circumstances

Certain life events, such as the petitioner’s naturalization, a change in the beneficiary’s marital status, or the beneficiary turning 21 years old, may impact a pending or approved immigrant visa petition. These material changes in circumstances may result in:

- Automatic conversion of the petition to a new immigrant visa category without the petitioner filing a new petition;[31]
- Denial of a pending petition; or
- Automatic revocation of an approved petition.

Automatic Conversion

USCIS converts the classification of an alien beneficiary's petition to a different immigrant visa category if a change in circumstances occurs that would allow the alien beneficiary to be classified under a different visa category. In such cases, the alien beneficiary retains the original priority date.[32] Examples where a material change in circumstance may lead to a converted classification include:

- A U.S. citizen's unmarried son or daughter, age 21 or older (beneficiary of a 1st preference petition) marries, and the classification converts to a married son or daughter of a U.S. citizen (3rd preference petition);[33]
- A U.S. citizen's married son or daughter, age 21 or older (beneficiary of a 3rd preference petition) divorces, and the classification converts to an unmarried son or daughter of a U.S. citizen (1st preference petition);[34]
- An LPR petitioner of a spouse or child (2nd preference petition) naturalizes, and the classification converts to an immediate relative;[35] or
- A child beneficiary reaches the age of 21 years.[36]

If an event occurs while the petition is pending or the alien beneficiary is waiting for an immigrant visa to become available, the alien beneficiary's visa classification changes accordingly as of the date of the event.[37]

Opting Out of Automatic Conversion

Sometimes the wait for one family preference immigrant visa category is shorter than the wait for another family preference immigrant visa category. Certain alien beneficiaries may opt out of the automatic conversion to stay in a preference category with a shorter wait. For example, an alien beneficiary whose immigrant visa category automatically converts to the first preference immigrant visa category upon the petitioner's naturalization may opt out of the automatic conversion to remain in the second preference immigrant visa category as the son or daughter of an LPR.[38]

Conversion of Classification for Derivative Beneficiaries[39]

Generally, a child who turns 21 and does not benefit from the Child Status Protection Act (CSPA)[40] is no longer eligible as a derivative beneficiary and requires a new petition.[41] However, if the CSPA allows the beneficiary to automatically convert to a new category as a principal beneficiary based on

their relationship to the same petitioner, USCIS does not require a new petition since there is a corresponding immigrant visa category for the child when they turn 21.[42]

For example, the derivative child of a spouse of an LPR who ages out automatically converts to a principal beneficiary as the unmarried son or daughter of an LPR. No new petition is needed, and the child retains the priority date from the original petition.[43]

In most cases, a derivative beneficiary who changes marital status can no longer qualify as a derivative beneficiary. For example, a child who marries no longer qualifies as a derivative beneficiary because he or she does not meet the definition of a child.[44] In addition, a spouse who divorces the principal beneficiary no longer has the required family relationship to the principal beneficiary to qualify as a derivative beneficiary.[45] A spouse whose marriage ends because the principal beneficiary dies, however, may be eligible to request the immigrant petition be reinstated, remain approved, or adjudicated, if pending, as if the principal had not died.[46]

Denial

If an event occurs while the petition is pending that places the alien beneficiary in a relationship for which there is no visa classification, USCIS denies the petition. For example, if an unmarried son or daughter of an LPR marries while the petition is pending, USCIS denies the petition because there is no visa classification for the married son or daughter of an LPR.

Automatic Revocation

If an event occurs after the petition has been approved and before the alien beneficiary adjusts status or is admitted as a lawful permanent resident, that places the beneficiary in a relationship for which there is no visa classification the petition is generally automatically revoked.[47] For example, if an unmarried son or daughter of an LPR marries after the petition is approved and before the alien beneficiary adjusts status or commences his or her journey to the United States the petition is automatically revoked because there is no visa classification for the married son or daughter of an LPR.[48]

C. Family Members of the Principal Beneficiary

1. Family Members of Immediate Relative Beneficiaries

Generally, family members of an immediate relative beneficiary are not eligible to accompany or follow to join the immediate relative as derivative beneficiaries.[49] However, these family members may independently qualify for an immigration classification if the U.S. citizen petitioner can demonstrate a qualifying relationship to the family member.

For example, a U.S. citizen petitioning for an immediate relative spouse may file a separate petition for the child of that spouse, as the child's stepparent. The U.S. citizen petitioner must file a separate petition for each individual family member who qualifies as an immediate relative.

2. Members of Family-Based Preference Principal Beneficiaries

Spouses and children of a family-based preference beneficiary may be eligible to accompany or follow to join the principal beneficiary as derivative beneficiaries. The petitioner is not required to file a separate petition for derivative beneficiaries.[50]

A derivative beneficiary may seek the same immigrant status and is assigned the same priority date for visa availability as the principal beneficiary if accompanying or following to join the principal beneficiary.[51] The relationship between the derivative beneficiary and the principal beneficiary must continue to exist at the time of adjustment of status or admission for the derivative beneficiary to remain eligible for adjustment or admission.[52]

Dependent Child of an LPR

In some cases, the child of an LPR may qualify either as a principal beneficiary based on a petition filed on behalf of the child, or as a derivative beneficiary through a petition filed by the LPR on behalf of the child's alien parent. The child can only qualify as the principal beneficiary of a petition filed by the LPR if the child has the requisite child-parent relationship to the LPR petitioner.[53]

For example, a stepchild of an LPR, who was age 18 or older at the time the LPR married the stepchild's alien parent, would only qualify for an immigrant visa as a derivative beneficiary of a petition filed on behalf of the alien parent. In this situation, the stepchild would not qualify as a principal beneficiary because the marriage creating the step-relationship did not occur before the child turned 18.[54]

An LPR petitioner may decide to file one petition (for the spouse as the principal beneficiary and the spouse's children as derivative beneficiaries) or separate petitions for each qualifying family member (one for the spouse and one for each of the spouse's children). A child accompanying or following to join a principal beneficiary under INA 203(a)(2) of the Act may be included in the principal beneficiary's second preference visa petition.[55] If the principal beneficiary dies, the remaining derivative beneficiaries may be eligible for relief under INA 204(l) without the need for new petitions. However, the petitioner may file new petitions if a qualifying relationship still exists with the derivative beneficiaries.

If the petitioner chooses to file separate petitions, each alien beneficiary can immigrate independently. For example, if one child needs to immigrate before the others are ready to travel, that child may do so as the principal beneficiary of a petition.

Additionally, if a petition is filed separately on behalf of the child, the child may independently adjust status based on the child's relationship to the LPR parent, whereas a derivative beneficiary's eligibility to adjust status is tied to the principal beneficiary parent's eligibility. If the LPR parent naturalizes after filing an immigrant visa petition for the principal beneficiary, the petition converts to an immediate relative petition and the child is no longer eligible as a derivative beneficiary. In this situation, the petitioner must file a new petition on behalf of the child as an immediate relative.**[56]**

Footnotes

[^ 1] A person who, though not a citizen of the United States, owes permanent allegiance to the United States (for example, persons born in American Samoa or Swains Island). See definition in Glossary.

[^ 2] Some alien relatives of U.S. citizens may self-petition by filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). An alien may file Form I-360 when seeking to immigrate as an abused spouse, child, or parent under the Violence Against Women Act; as an Amerasian under the Amerasian Act; or as a widow or widower of a U.S. citizen. See Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act [3 USCIS-PM D]. See Volume 7, Adjustment of Status, Part P, Special Adjustment Programs, Chapter 9, Amerasian Immigrants [7 USCIS-PM P.9]. For widows and widowers of U.S. citizens, USCIS automatically converts a pending or approved spousal Form I-130 to a Form I-360 when the U.S. citizen petitioner dies. See the Green Card for Widow(er) of a U.S. Citizen webpage.

[^ 3] See 8 CFR 103.2(b)(1).

[^ 4] See INA 201(b)(2)(A)(i).

[^ 5] See INA 201(b)(2)(A)(i). Under the Child Status Protection Act (CSPA), certain children may have their age frozen at the time of petition filing to preserve their eligibility for an immigrant visa. For more information on CSPA age calculation, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act [7 USCIS-PM A.7].

[^ 6] See INA 201(b)(2)(A)(i).

[^ 7] See INA 203(a)(1).

[^ 8] See INA 203(a)(3).

[^ 9] See INA 203(a)(4).

[^ 10] See INA 203(a)(2).

[^ 11] See INA 203(a)(2). Under the CSPA, certain applicants in family-based categories who are not immediate relatives may have their age determined based on a calculation that considers the time the

visa petition was pending and the beneficiary's age on the date a visa becomes available to preserve their eligibility for an immigrant visa. See INA 203(h)(1). For more information on the CSPA age calculation, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act [7 USCIS-PM A.7].

[^ 12] See INA 203(a)(2).

[^ 13] See INA 101(b)(1).

[^ 14] See INA 201(b)(2)(A)(i).

[^ 15] See INA 101(a)(35). See *Matter of P-*, 4 I&N Dec. 610, 613 (A.G. 1952).

[^ 16] See INA 201(b)(2)(A)(i).

[^ 17] See INA 101(b)(1)(A)-(G). See Chapter 8, Children, Sons, and Daughters [6 USCIS-PM B.8].

[^ 18] See INA 101(b)(1) and INA 101(b)(2).

[^ 19] See INA 201(b)(2)(A)(i).

[^ 20] See INA 203(a).

[^ 21] See INA 203(a)(1).

[^ 22] See *Matter of Bullen* (PDF), 16 I&N Dec. 378 (BIA 1977) (In order to qualify as a "daughter" for preference purposes under INA 203(a)(2), the beneficiary must once have qualified as the child of the petitioner under INA 101(b)(1).).

[^ 23] See 8 CFR 103.2(b)(1), 8 CFR 205.1(a)(3)(i)(H), and 8 CFR 204.2(i).

[^ 24] See INA 203(a)(2).

[^ 25] See INA 203(a)(3).

[^ 26] See *Matter of Bullen* (PDF), 16 I&N Dec. 378 (BIA 1977) (In order to qualify as a "daughter" for preference purposes under INA 203(a)(2), the beneficiary must once have qualified as the child of the petitioner under INA 101(b)(1).).

[^ 27] See INA 101(a)(35). See *Matter of P-*, 4 I&N Dec. 610, 613 (A.G. 1952).

[^ 28] See INA 203(a)(4).

[^ 29] See INA 101(b)(1) and INA 101(b)(2). See *Matter of Garner* (PDF), 15 I&N Dec. 215 (BIA 1975) (To support a claimed brother-sister relationship under INA 203(a)(5), petitioner and beneficiary must have once qualified as children of a common parent as provided in INA 101(b)(1) and INA 101(b)(2).).

[^ 30] See INA 203(a)(4).

[^ 31] See 8 CFR 204.2(i). Petitioners should inform USCIS of life events that may impact the immigrant category of their beneficiary. If an adjustment application or immigrant visa petition is still pending with USCIS, the alien (beneficiary applying to adjust status) or petitioner should notify the USCIS office that issued the receipt notice or most recent correspondence in writing. If the approved petition is with the U.S. Department of State's National Visa Center, the petitioner or applicant should write to the National Visa Center directly.

[^ 32] See 8 CFR 204.2(i). The priority date of the newly converted petition is generally the date on which that petition was originally filed (albeit for another classification).

[^ 33] See 8 CFR 204.2(i)(1)(i).

[^ 34] See 8 CFR 204.2(i)(1)(iii).

[^ 35] See INA 201(f)(2). See 8 CFR 204.2(i)(3).

[^ 36] See 8 CFR 204.2(i)(2). However, if an alien beneficiary (principal or derivative) is a child under the age of 21 when the immigrant petition is filed but turns 21 years old before it is approved or before the alien beneficiary seeks an immigrant visa, the alien beneficiary may be eligible to remain a child for immigration purposes. See the Child Status Protection Act (CSPA), Pub. L. 107-208 (PDF) (August 6, 2002). For information on how a beneficiary's age at the time of filing the petition impacts eligibility for an immigrant visa, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act [7 USCIS-PM A.7].

[^ 37] See 8 CFR 204.2(i)(1).

[^ 38] See INA 204(k)(2). A beneficiary may opt out by submitting a written request and contacting the USCIS office that approved the petition (printed on the approval or receipt notice) or the USCIS Contact Center and requesting to opt out of automatic conversion. For additional information on opting out of automatic conversion see the Child Status Protection Act (CSPA) webpage.

[^ 39] For information about family-based derivative beneficiaries, see Section C, Family Members of the Principal Beneficiary [6 USCIS-PM B.2(C)].

[^ 40] See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act [7 USCIS-PM A.7].

[^ 41] See 8 CFR 204.2(a)(4).

[^ 42] See INA 203(h)(3). See *Scialabba v. Cuellar de Osorio*, 134 S. Ct. 2191 (2014), upholding *Matter of Wang* (PDF), 25 I&N Dec. 28 (2009).

[^ 43] See INA 203(h)(3). See *Scialabba v. Cuellar de Osorio*, 134 S. Ct. 2191, 2212 n.16 (2014) (observing that INA 203(h)(3) superseded the requirement in 8 CFR 204.2(a)(4) that a subsequent petition be filed by the same petitioner for an aged-out derivative beneficiary). For more information on priority dates, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^ 44] See INA 203(d) and INA 101(b)(1).

[^ 45] See INA 203(d).

[^ 46] See INA 204(l). For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 9, Death of Petitioner or Principal Beneficiary, Section B, Effect on Adjustment Application [7 USCIS-PM A.9(B)]. This scenario only applies to derivative beneficiaries in the family-based third preference (F3) and family-based fourth preference (F4) categories.

[^ 47] See 8 CFR 205.1(a)(3). However, USCIS may not revoke the petition if converted to a new classification. See 8 CFR 205.1(a)(3)(G) and 8 CFR 205.1(a)(3)(H).

[^ 48] See 8 CFR 205.1(a)(3)(i)(I).

[^ 49] See 8 CFR 204.2(a)(4). A widow or widower, however, is permitted to have an immediate relative classified as derivative beneficiaries to accompany or follow to join. See 8 CFR 204.2(b)(4).

[^ 50] See INA 203(d). In general, a petitioner should list all known derivative beneficiaries on the Form I-130. Note that a principal beneficiary's natural born child born after the principal's LPR admission or adjustment may still be eligible as a derivative if born of a marriage that existed at the time of the principal's admission or adjustment to LPR status. See 8 CFR 204.2(a)(4), 8 CFR 204.2(d)(4), and 8 CFR 204.2(g)(4).

[^ 51] See INA 203(d). For more information on derivative status by accompanying or following to join a principal, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 6, Derivatives [7 USCIS-PM A.6(C)(6)]. Accompanying refers to a derivative who is immigrating concurrently with the principal beneficiary or who has an immigrant visa issued within 6 months of the principal beneficiary's admission or adjustment. Following to join refers to a derivative who is immigrating more than 6 months after the principal beneficiary, based on a relationship that existed at the time of the principal's immigration, so long as the relationship still exists at the time of the derivative's admission.

[^ 52] See 8 CFR 103.2(b)(1).

[^ 53] See INA 101(b)(1).

[^ 54] See INA 101(b)(1)(B).

[^ 55] See 8 CFR 204.2(a)(4).

[^ 56] See 8 CFR 204.2(a)(4).

Chapter 3 - Filing

A U.S. citizen, U.S. national,[1] or lawful permanent resident (LPR) may file a petition on behalf of a qualifying relative using the Petition for Alien Relative (Form I-130), in accordance with the regulations and form instructions.[2] Petitioners must file a Form I-130 petition for certain alien beneficiaries within a specific period to ensure the alien beneficiary qualifies for the classification sought, such as filing before the age of 21 for certain children.[3]

A beneficiary of a family-based immigrant petition may concurrently file to adjust status in certain circumstances.[4] For example, since immediate relatives are not subject to numerical limitations on visa availability, an immediate relative beneficiary who is in the United States may file an Application to Register Permanent Residence or Adjust Status (Form I-485) concurrently with the immigrant petition or after it is approved.[5]

Generally, family-based petitions must be filed with USCIS.[6] However, there are limited circumstances where the U.S. Department of State (DOS) may accept and adjudicate Form I-130. USCIS no longer accepts and adjudicates routine Form I-130 petitions at its international field offices.

A. When the U.S. Department of State is Authorized to Accept and Adjudicate Form I-130

USCIS has delegated[7] authority to DOS to accept and adjudicate a clearly approvable Form I-130 filed abroad by a U.S. citizen petitioner for an immediate relative[8] if the petitioner establishes exceptional circumstances or falls under blanket authorization criteria defined by USCIS.[9] A clearly approvable petition is generally one that includes sufficient primary evidence to establish the status of the petitioner and the qualifying relationship.[10] This policy applies even in countries with a USCIS presence. Without such delegation, DOS has no authority to permit a U.S. embassy or consulate to accept a local Form I-130 filing abroad.

If a consular officer in a U.S. embassy or consulate encounters an individual case that the officer believes needs immediate processing of a Form I-130 filed by a U.S. citizen petitioner for an immediate relative, the consular officer may, but is not required to, accept the local filing in exceptional circumstances, in accordance with the guidance below. If DOS accepts a petition, USCIS must receive notice of the filing and information about the basis for local acceptance.

1. Exceptional Circumstances

Examples of exceptional circumstances include, but are not limited to:

- Military emergencies – A U.S. citizen military service member petitioner, who is abroad but who does not fall under the blanket authorization for U.S. citizen service members stationed abroad on military bases, becomes aware of a new deployment or transfer with little notice. This exception generally applies in cases where the U.S. citizen service member is provided with exceptionally less notice than normally expected.
- Medical emergencies – A petitioner or alien beneficiary is facing an urgent medical emergency that requires immediate travel.
- Threats to personal safety – A petitioner or alien beneficiary is facing an imminent threat to personal safety. For example, a petitioner and alien beneficiary may have been forced to flee their country of residence due to civil strife or natural disaster and are in precarious circumstances in a different country outside of the United States.
- Close to aging out – An alien beneficiary is within a few months of aging out of eligibility.
- Petitioner has recently naturalized – A petitioner and alien beneficiary has traveled for the immigrant visa interview, but the petitioner has naturalized and the beneficiary requires a new petition based on the petitioner's citizenship.
- Adoption of a child – A U.S. citizen petitioner has adopted a child abroad and has an imminent need to depart the country. This type of case should only be considered if the adoptive parent petitioner(s) has a final adoption decree on behalf of the child and has had legal custody of and jointly resided with the child for at least 2 years.[11]
- Short notice of position relocation – A U.S. citizen petitioner, living and working abroad, has received a job offer in or reassignment to the United States with little notice for the required start date.

Discretion

The list of examples provided above is not exhaustive. DOS may exercise its discretion to accept clearly approvable local Form I-130 filings for other exceptional circumstances, unless specifically noted below. However, such filings must be truly urgent and otherwise limited to situations when filing with USCIS online or domestically with an expedite request would likely not be sufficient to address the time-sensitive and exigent nature of the situation.

DOS may consider a petitioner's residency within the consular district when determining whether to accept a filing, but it is not required.[12]

2. Blanket Filing Authorizations

USCIS may issue a blanket authorization for DOS to exercise its discretion to accept locally-filed clearly approvable Form I-130 immediate relative petitions in certain situations. Petitioners in these situations do not need to reside in the country of the U.S. embassy or consulate, but they must meet the blanket authorization criteria described below in order to file a Form I-130 with DOS.

Temporary Blanket Authorizations for Large Scale Disrupting Events

In certain events, such as prolonged or severe civil strife or a natural disaster, USCIS may authorize a blanket authorization for DOS to accept and adjudicate clearly approvable Form I-130 immediate relative petitions from petitioners directly affected by such events. If DOS accepts a petition under a temporary blanket authorization, USCIS must receive notice of the filing and information about the basis for local acceptance.

Temporary blanket authorizations do not require DOS to accept a filing, but rather allow DOS to exercise its discretion to accept a Form I-130 filed at a U.S. embassy or consulate where a petitioner and alien beneficiary are physically present in the consular district where filed. Although DOS may accept a local filing by a petitioner who does not reside within the post's jurisdiction, the temporary blanket authorization is intended to assist those directly affected by the disruptive event and may be limited to event-specific dates and circumstances. Such blanket authorization is not for the purpose of expediting the process for those who are not directly affected.

Petitioners who are not eligible to locally file Form I-130 under a temporary blanket authorization may still be eligible to file locally if they are otherwise eligible and establish exceptional circumstances.

U.S. Military and Certain U.S. Government Personnel Stationed or Assigned Abroad

USCIS has granted DOS blanket authorization to accept and adjudicate clearly approvable Form I-130 immediate relative petitions filed by:

- U.S. citizen military service members stationed at U.S. military bases abroad on official orders; and
- U.S. citizens who are U.S. government (USG) employees assigned to a U.S. mission abroad under Chief of Mission authority or at an office of the American Institute of Taiwan.

If DOS accepts a petition under this blanket authorization, USCIS must receive notice of the filing and information about the basis for local acceptance. This blanket authorization does not apply to U.S. service members or USG employees stationed or assigned to non-executive branch agencies or exceptions or exclusions to Chief of Missions Authority[13] or non-military bases, such as international organizations or civilian institutions. It also does not apply to service members who are on temporary duty orders or assignments, USG employees who are personal service contractors, or their eligible family members.

The petitioner and beneficiary do not both have to be physically present in the consular jurisdiction where the petition is filed. Qualifying petitioners do not need to establish exceptional circumstances. This blanket authorization is not time-limited, but USCIS may revoke the authorization if warranted.

B. When the U.S. Department of State is Not Authorized to Accept and Adjudicate Form I-130

DOS may not exercise discretion to accept local filings in certain scenarios. USCIS does not authorize DOS to accept a local filing abroad when a petitioner based in the United States seeks to travel and file abroad in order to expedite processing. DOS acceptance of Form I-130s abroad is intended to assist petitioners living abroad who demonstrate exceptional circumstances as described above.

In addition, USCIS does not authorize DOS to accept a local filing abroad if the petitioner has already filed a Form I-130 domestically for the same beneficiary. If exigent circumstances exist, the petitioner should request expedited processing for an electronic or domestically-filed petition. Local consular or USCIS staff should inform the petitioner of the process to request expedited adjudication.[14]

C. Procedures for Local Filings

DOS may accept and adjudicate a clearly approvable local Form I-130 filed by a U.S. citizen petitioner outside the United States for an immediate relative if the U.S. citizen petitioner establishes exceptional circumstances or meets blanket authorization criteria defined by USCIS.

If DOS declines to accept a local filing, DOS informs the petitioner of its decision and of the process for filing the Form I-130 at a USCIS lockbox or online in accordance with the USCIS filing instructions.

The petitioner does not have the right to appeal, motion, or otherwise request reconsideration of a USCIS or DOS decision to decline acceptance of a local filing. Although this local filing process is designed to facilitate expedited processing of cases abroad in exceptional circumstances, it is not the only way to file a petition or seek expedited adjudication. If not permitted to file locally abroad, a petitioner may still file a Form I-130 petition with a USCIS lockbox or online and may request expedited processing for that petition in accordance with the published USCIS expedite process and criteria.[15]

DOS may approve only those Form I-130 petitions that are clearly approvable.[16]

If DOS accepts a petition and determines the petition is not clearly approvable, DOS forwards the petition to the USCIS office designated to adjudicate such petitions.[17]

If DOS approves a Form I-130 petition but that U.S. embassy or consulate does not issue immigrant visas, the Consular Section coordinates with the appropriate embassy or consulate with jurisdiction to issue a visa in accordance with DOS guidelines.

Although USCIS has delegated authority to DOS to accept Form I-130 petitions in all locations abroad in the limited instances described above, USCIS retains authority to accept and adjudicate a local Form I-130 filing abroad or conduct an in-person interview abroad as warranted, regardless of where or how the petition was filed.

D. Multiple Petitions

Multiple Form I-130 Petitions for the Same Beneficiary and Classification

In some cases, the petitioner may file more than one petition on behalf of the same beneficiary for the same immigrant classification.[18] If a Form I-130 petition and subsequent Form I-130 petition filed by the same petitioner for the same beneficiary and for the same classification are approved, USCIS regards the subsequent petition approval as a reaffirmation or reinstatement of the validity of the first petition. Prior to approving, reaffirming, or reinstating a subsequent petition filed by the same petitioner for the same beneficiary in the same immigrant visa classification, USCIS must first address any fraud or ineligibility if a prior petition was returned to USCIS by DOS for good and sufficient cause for revocation.[19] The original priority date is retained unless the original petition was terminated by the DOS,[20] had its approval revoked,[21] or a visa has been issued based on the original petition.[22] In these situations, USCIS assigns a new priority date based on the date of the subsequent filing.

Petition Submitted Concurrently for Other Relatives

If the petitioner indicates on the Form I-130 that he or she is filing petitions for additional alien relatives at the same time, the officer considers all the petitions simultaneously, if possible.[23] However, all petitions stand alone, and officers must adjudicate each petition on its own merits.

Where multiple petitions are filed together, the adjudicating officer may consider evidence provided in support of one petition to adjudicate the related petitions. However, the file must contain a copy of the evidence the officer relied upon in making the determination for each petition.

An officer should not hold a clearly approvable petition pending the adjudication of another alien relative's petition but should make every attempt to keep the family cases together.

Footnotes

[^ 1] A person who, though not a citizen of the United States, owes permanent allegiance to the United States (for example, persons born in American Samoa or Swains Island). See definition in Glossary.

[^ 2] In certain cases, alien relatives may self-petition by filing the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). For example, the widow or widower of a U.S. citizen may file a self-petition and include derivative child(ren). Additionally, an abused spouse, child, or parent may file a self-petition under the Violence Against Women's Act. See Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162 (PDF) (January 5, 2006). Amerasians may either self-petition or have a petition filed on their behalf under the Amerasian Act, as amended by subsequent legislation. See Pub. L. 97-359 (PDF), 96 Stat. 1716 (October 22, 1982). See Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act [3 USCIS-PM D] and Volume 7, Adjustment of Status, Part P, Special Adjustment Programs, Chapter 9, Amerasian

Immigrants [7 USCIS-PM P.9]. For more information on self-petitioner categories, see the instructions for the Form I-360. Form I-360 is also used for a number of other (non-relative) special immigrant classifications, which are discussed in other Policy Manual parts.

[^ 3] For more information on filing timeframes, see Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests, Section D, Filing Periods Ending on Weekends or Federal Holidays [1 USCIS-PM B.6(D)].

[^ 4] See 8 CFR 245.2(a)(2)(B).

[^ 5] See INA 201(b)(2).

[^ 6] See instructions to the Petition for Alien Relative (Form I-130).

[^ 7] See INA 103(a)(6) and 8 CFR 2.1.

[^ 8] Immediate relative refers to a U.S. citizen's spouse, unmarried child under the age of 21, or parent (if the U.S. citizen is over the age of 21). See INA 201(b)(2)(A)(i). Other Form I-130 filing categories, which may be filed by either U.S. citizens or LPRs and are also referred to as preference category petitions, must be filed with a domestic USCIS lockbox or online in accordance with the filing instructions. See 8 CFR 103.2(a)(1).

[^ 9] USCIS' Refugee, Asylum and International Operations Directorate (RAIO) serves as the liaison with DOS regarding its delegated authority to accept and adjudicate clearly approvable Form I-130 petitions abroad. RAIO receives, reviews, and responds to DOS requests for blanket authorizations on behalf of USCIS. USCIS has also delegated authority to DOS to accept and adjudicate certain clearly approvable family-based petitions under certain circumstances, as outlined in guidance on petitions filed at consular offices abroad in 9 FAM 504.2, including a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) when filed by a widow or widower and a Petition to Classify Orphan as an Immediate Relative (Form I-600) when accompanied by an approved Application for Advance Processing of an Orphan Petition (Form I-600A).

[^ 10] Additional criteria may be considered by consular officers to determine whether a petition is clearly approvable, including when the record indicates possible concerns related to the Adam Walsh Act. See Petitions Filed at Consular Offices Abroad, 9 FAM 504.2-4.

[^ 11] This applies to adopted beneficiaries of Form I-130. For more information on local filing processes for beneficiaries of a Form I-600 or Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800), see 9 FAM 504.2 and 9 FAM 504.2-4(B).

[^ 12] For information on adjudicating exceptional circumstances I-130 cases, see 9 FAM 504.2.

[^ 13] For more information on Chief of Missions exclusions, see 2 Foreign Affairs Handbook (FAH)-2 H-112.

[^ 14] See Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 5, Expedite Requests [1 USCIS-PM A.5]. See the Expedite Requests webpage.

[^ 15] For more information, see Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 5, Expedite Requests [1 USCIS-PM A.5]. See the Expedite Requests webpage.

[^ 16] For more information, see Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 5, Expedite Requests [1 USCIS-PM A.5]. See the Expedite Requests webpage.

[^ 17] See 9 Foreign Affairs Manual (FAM) 504.2-4(B)(1)(b), Adjudicating Exceptional Circumstance I-130 Cases.

[^ 18] See 8 CFR 204.2(h)(2).

[^ 19] See INA 205.

[^ 20] See INA 203(g).

[^ 21] See INA 205.

[^ 22] See 8 CFR 204.2(h)(2).

[^ 23] If an adoption-based Form I-130 is filed along with any Form I-130 for additional relative beneficiaries, the adoption-based Form I-130 is adjudicated apart from the other family-based Form I-130s.

Chapter 4 - Documentation and Evidence

A. Burden and Standard of Proof

Generally, the petitioner must establish eligibility for a family-based immigrant visa petition by a preponderance of the evidence.[1] If the petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is more likely than not true, the petitioner has satisfied the preponderance of the evidence standard.

If the initial filing does not contain sufficient evidence to demonstrate eligibility by the appropriate standard of proof, USCIS either issues a Request for Evidence (RFE), issues a Notice of Intent to Deny (NOID), schedules an interview, or denies the petition depending on the facts and law. For instance, USCIS has discretion to deny a petition without issuing an RFE or NOID if there is no statutory basis for approval or for failure to submit initial required evidence.[2] However, USCIS must provide the petitioner with sufficient detail of any derogatory information that is unknown to the petitioner when USCIS intends to take adverse action on a family-based petition (through a NOID, RFE, or interview).

USCIS adjudicates the Petition for Alien Relative (Form I-130) based on the information contained in the form, submitted documentation, other information in the record, and testimony provided at the interview (if applicable).

B. Evidence

A petitioner seeking to bring an alien beneficiary to the United States as an immediate relative or a family-based preference relative must submit the following initial evidence[3] in accordance with the Form I-130 instructions:

- Documentation establishing the existence of a qualifying relationship with the alien beneficiary, such as copies of birth certificates, marriage certificates, and evidence of termination of any prior marriages, if applicable;[4]
- Documentation establishing the petitioner's status as a U.S. citizen, U.S. national,[5] or lawful permanent resident (LPR);[6] and
- Documentation of any legal name changes (if applicable) and any other documentation requested in the instructions.[7]

Documentation of Petitioner's Citizenship or Immigration Status

Documentation of a petitioner's citizenship or immigration status includes, but is not limited to:

- A copy of the petitioner's birth certificate issued by a civil registrar, vital statistics office, or other U.S. civil authority;
- A copy of the petitioner's Certificate of Naturalization or Certificate of Citizenship issued by USCIS;
- A copy of the petitioner's Consular Report of Birth Abroad issued by the U.S. Department of State (DOS);
- A copy of the petitioner's current, unexpired U.S. passport or passport card; or
- A copy of the petitioner's Permanent Resident Card (Form I-551) or other valid unexpired evidence of status.[8]

Types of Evidence for Family-Based Immigrant Visa Petitions[9]

Generally, a petitioner of a family-based petition must submit primary evidence in support of a claim of U.S. citizenship, LPR status, or U.S. national status and a claim of a qualifying relationship to the alien beneficiary.[10]

If a petitioner does not provide primary evidence in support of a family-based petition, USCIS generally only considers other records as secondary evidence if primary evidence is determined to be unavailable or unreliable (according to the DOS's Foreign Affairs Manual Reciprocity and Civil Documents webpage).[11]

Petitioners may also submit two or more sworn written statements (affidavits) from third parties who had personal knowledge of the event and circumstances establishing a claimed relationship, such as the date and place of birth, marriage, or death, if both primary and secondary evidence are unavailable.[12]

Footnotes

[^ 1] See INA 291. See *Matter of Brantigan (PDF),* 11 I&N Dec. 453 (BIA 1966). See *Matter of Phillis (PDF)*, 15 I&N Dec. 385 (BIA 1975) (burden of proof to establish eligibility for the benefit sought lies with the petitioner). See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369 (AAO 2010). The preponderance of the evidence standard of proof, however, does not apply where a higher standard is specified by law (such as, the “clear and convincing evidence” standard). For more information on the burden or standard of proof, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 4, Burden and Standards of Proof [1 USCIS-PM E.4].

[^ 2] For additional information on RFEs and NOIDs, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 3] Documents that are not in English must be accompanied by a full, certified English translation. See 8 CFR 103.2(b)(3). Applicants should submit only photocopies of original documents unless USCIS specifically requests an original document.

[^ 4] See 8 CFR 103.2 and 8 CFR 204.2.

[^ 5] A person who, though not a citizen of the United States, owes permanent allegiance to the United States (for example, persons born in American Samoa or Swains Island). See definition in Glossary.

[^ 6] See 8 CFR 204.1(g)(1)(i-vi).

[^ 7] Many of the documents required as initial evidence may also be used to establish the petitioner’s and the beneficiary’s identity. Identity is material to a request for benefits. See *Matter of B- and P-*, 2 I & N Dec. 638 (BIA 1946). For additional information on identify verification for USCIS benefit requests, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 5, Verification of Identifying Information [1 USCIS-PM E.5]. Any substantial variation in the name of the petitioner or beneficiary, when compared with other records, must be satisfactorily explained by the submission of additional documents, affidavits, or other appropriate means.

[^ 8] See 8 CFR 204.1(g)(1)(vii). In the case of an LPR who has not yet received a Permanent Resident Card (Form I-551), a temporary U.S. Customs and Border Protection-issued or USCIS-issued stamp in a passport or on an Arrival/Departure Record (Form I-94) reflecting LPR status is acceptable evidence of lawful permanent residence. In the absence of such evidence, the petitioner

may submit any other documents issued or endorsed by USCIS relevant to the claim to LPR status. If the LPR status cannot be verified through systems checks or the petitioner's file, or if needed to resolve any discrepancies, USCIS may also refer a petitioner for an interview.

[^ 9] For additional information on primary and secondary evidence for USCIS benefit requests, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence [1 USCIS-PM E.6].

[^ 10] See 8 CFR 204.1(f) and 8 CFR 204.1(g)(1) for primary evidence to demonstrate U.S. citizenship or LPR status. See 8 CFR 204.2 for primary evidence to establish a qualifying relationship. See 8 CFR 103.2(b).

[^ 11] See 8 CFR 204.1(f)(1). For additional information on primary and secondary evidence, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section B, Primary and Secondary Evidence [1 PM-USCIS E.6(B)].

[^ 12] See 8 CFR 103.2(b)(2)(i). For additional information on affidavits, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section B, Primary and Secondary Evidence [1 PM-USCIS E.6(B)].

Chapter 5 - Adjudication of Family-Based Petitions

A. Petition Review [Reserved]

B. Interviews

USCIS has the authority to interview any petitioner or alien beneficiary.[1] USCIS may interview the petitioner, beneficiary, or both parties, either together or separately at any stage in the adjudication.[2] The U.S. Department of State (DOS) generally conducts in-person interviews when the alien applies for an immigrant visa.

While USCIS may interview any applicant, petitioner, or beneficiary, USCIS requires an interview in connection with a Petition for Alien Relative (Form I-130) as indicated in the table below.

When USCIS Requires an Interview for Standalone Family-Based Immigrant Visa Petitions[3]
Evidence is missing or the record indicates that a marriage is not bona fide.[4]
There are any material inconsistencies or derogatory information.
Petitions for a spouse where either spouse or both spouses were under the age of 16 at the time of the marriage celebration.

When USCIS Requires an Interview for Standalone Family-Based Immigrant Visa Petitions[3]
Petitions for a spouse where one spouse was 16 or 17 years of age and the other spouse was at least 10 years older than the younger spouse at the time of the marriage celebration.
Petitions that lack reliable documentary evidence to demonstrate the existence of a qualifying relationship after an officer has issued a Request for Evidence (RFE) or Notice of Intent to Deny (NOID).
Petitions where testimony is needed to resolve discrepancies in the record or to address concerns regarding the reliability or credibility of evidence following an RFE or NOID.
Petitions for a spouse where the petitioner previously filed a spousal petition for a different beneficiary.
Petitions for a spouse where either the petitioner or beneficiary was party to a prior denied, revoked, terminated, or withdrawn spousal petition.
Petitions for a spouse where the LPR petitioner acquired permanent resident status through marriage less than 5 years prior to filing for the current beneficiary.[5]
Petitions for a spouse where the marriage occurred while the beneficiary was in removal proceedings.[6]
Petitions for a spouse that are adjudicated where, following an initial interview, it is determined that the bona fides of the marriage are in question.

USCIS Field Operations Directorate (FOD) conducts most family-based immigrant visa petition interviews. When a family-based immigrant visa petition is submitted to a USCIS Service Center after intake and the case requires an interview, the Service Center refers the case, with an explanation of the reason for the interview, to the local FOD office with jurisdiction over the case. The FOD office schedules the interview according to its availability and completes adjudication of the case.

C. Decision

1. Approvals

If the petitioner properly files the petition in accordance with regulations and the form instructions and demonstrates they meet eligibility requirements, then USCIS must approve the petition.[7] Generally, there is no discretionary analysis as part of the adjudication of a family-based immigrant petition, and USCIS cannot deny these petitions as a matter of discretion.[8]

The alien's history or character is usually not relevant to the adjudication.[9] However, if during the adjudication the officer encounters grounds of inadmissibility that are relevant for adjustment of status or consular processing, the officer should document the specific grounds or factors for USCIS or the

U.S. Department of State (DOS) to review during the alien's application for adjustment of status or an immigrant visa.

USCIS approves a Petition for Alien Relative (Form I-130)[10] if the petitioner establishes that they are a U.S. citizen, U.S. national or lawful permanent resident (LPR) and a qualifying relationship exists between the petitioner and the alien beneficiary.

An alien beneficiary may apply to immigrate to the United States and become an LPR if there is an available visa[11] and they are the beneficiary of an approved Form I-130 or an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).[12]

Notice of Approval

USCIS notifies the petitioner of the approval on a Notice of Action (Form I-797).[13] The approval notice generally acknowledges the petitioner's declaration regarding the alien beneficiary's intent to immigrate to the United States through consular processing with DOS or to adjust status to lawful permanent residence in the United States, if eligible.

When approving the petition, the USCIS officer ensures that the notice accurately reflects the correct priority date, the proper section of law with the alien beneficiary's designated immigration classification, and whether USCIS will forward the petition to the DOS National Visa Center (NVC) for consular processing or retain the petition for the alien beneficiary to seek adjustment of status if eligible.

Correcting Errors in a Notice of Approval

The petitioner may request a corrected notice from USCIS if the approval notice is missing information, such as the correct priority date or the proper section of law with the beneficiary's designated immigration classification, or has a mistake because of USCIS error.[14]

If a mistake is related to the alien beneficiary's classification or the priority date, the consular officer who is adjudicating the visa application may return the petition for corrective action. Similarly, the USCIS officer adjudicating the adjustment of status application may review the petition for corrective action. This may delay the alien beneficiary's immigrant visa processing or adjustment of status.

To prevent these errors and delays, the petitioner should ensure they provide the correct information in the petition and notify USCIS of any changes or corrections needed.

Consular Processing or Adjustment of Status

Generally, if the petitioner indicates the alien beneficiary intends to adjust status in the United States, and the alien beneficiary is in the United States and eligible to adjust, USCIS retains the petition for adjustment of status processing.[15] If the petitioner indicates that the alien beneficiary intends to

consular process or if the file indicates the alien beneficiary is ineligible to adjust status,[16] USCIS sends the approved petition to the NVC.[17] When an immigrant visa becomes available, the NVC forwards the approved petition to the appropriate consulate.[18]

It is important for the petitioner to answer the questions completely and accurately on the petition about the alien beneficiary's location and whether the alien beneficiary intends to adjust status in the United States or consular process with DOS outside of the United States. If applicable, it is also important that the petitioner identify the embassy or consulate where the alien beneficiary intends to consular process. If the petitioner does not provide this information on the petition or does not contact USCIS to update this information prior to final adjudication, further action on the approved petition may be delayed and there may be additional fees.[19]

If the petitioner leaves the relevant questions on the petition blank or the petitioner selects both the option to consular process and the option to adjust status in the United States on Form I-130,[20] USCIS exercises discretion to determine whether to send the approved petition to the NVC or retain the petition for adjustment of status processing by reviewing evidence of the alien beneficiary's most recent location, including the alien beneficiary's physical address on the petition, and whether the file indicates the alien beneficiary is eligible to adjust status.

USCIS generally retains the approved Form I-130 when:

- The petitioner indicates on the Form I-130 that the alien beneficiary is in the United States and will apply for adjustment of status in the United States;
- The alien beneficiary's physical address on the petition is in the United States and the petitioner indicates both adjustment of status and consular processing on the Form I-130;
- The alien beneficiary's physical address on the petition is in the United States and the petitioner indicates neither adjustment of status nor consular processing on the Form I-130; or
- The alien beneficiary filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and the beneficiary's physical address on the petition is in the United States.

USCIS generally sends the approved Form I-130 to the NVC when:

- The petitioner indicates on the Form I-130 that the alien beneficiary will not apply for adjustment of status and will apply for an immigrant visa through consular processing on the Form I-130;[21]
- The alien beneficiary's physical address on the petition is outside the United States and the petitioner indicates both adjustment of status and consular processing on the Form I-130;
- The alien beneficiary's physical address on the petition is outside the United States and the petitioner indicates neither adjustment of status nor consular processing on the Form I-130; or
- The alien beneficiary's physical address on the petition is in the United States, but the record indicates the alien beneficiary is ineligible to adjust status.

Prior to final adjudication of the petition, the petitioner may provide updates on the petition, including whether the beneficiary intends to adjust status or consular process, the preferred embassy or consulate for visa processing, and the beneficiary's address. To provide updated information on a pending petition, petitioners should contact the office indicated on the Form I-130 receipt notice.[22]

If USCIS has approved the petition, a petitioner must file an Application for Action on an Approved Application or Petition (Form I-824) with a fee, if applicable,[23] to change from adjustment of status to consular processing, or update the preferred embassy or consulate.[24] If the petitioner seeks to change from consular processing to adjustment of status, USCIS works with the NVC to return the petition for adjustment of status processing.

2. Denials

Generally, USCIS may only deny a family-based immigrant visa petition if the petitioner fails to establish status as a U.S. citizen, U.S. national, or LPR, or the petitioner fails to establish a qualifying relationship to the alien beneficiary.[25]

USCIS may deny without first issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) if there is no legal basis for approval and no additional information could establish a legal basis for approval (for example, a petition submitted on behalf of an alien relative who does not fall under a category provided for in the Immigration and Nationality Act, such as a grandparent).[26]

If USCIS denies a petition, USCIS explains in writing the specific reasons for the denial, and the right to appeal if applicable.

3. Removable Aliens

If USCIS determines the alien beneficiary is removeable and amenable to removal from the United States USCIS may issue a Notice to Appear (NTA) placing the beneficiary in removal proceedings. Petitioners and alien beneficiaries should be aware that a family-based petition accords no immigration status nor does it bar removal.

D. Post Decision Actions

A petitioner may withdraw an approved family-based immigrant petition up until the beneficiary is admitted or granted adjustment of status based on the approved immigrant petition.[27]

An approved petition may be automatically revoked before the alien beneficiary's journey to the United States commences or, if the alien beneficiary or self-petitioner is an applicant for adjustment of status, before the decision on the beneficiary's adjustment application becomes final.[28] An approved petition may also be revoked upon written notice to the petitioner if certain conditions occur or are discovered.[29]

Unless denied for abandonment or withdrawal,[30] the petitioner may appeal a family-based immigrant petition that was denied or revoked upon notice to the Board of Immigration Appeals (BIA), or USCIS may review the denied or revoked petition following a motion to reopen or reconsider.

1. Withdrawal of Petition

A petitioner may voluntarily withdraw a family-based petition before USCIS issues a decision or after USCIS has approved the petition if the beneficiary has not yet adjusted status or been admitted as an LPR.[31] The alien beneficiary of a family-based petition may not withdraw the petition.[32] A withdrawal may not be retracted.

Withdrawal is a voluntary action, and officers should not coerce petitioners into withdrawing a petition. However, an officer may suggest withdrawal as an alternative to a formal denial if the officer has not yet denied the petition.[33] Whenever an officer receives a withdrawal request,[34] the officer should acknowledge the request in writing. USCIS may not refuse a withdrawal request.[35]

Although a withdrawal by a petitioner is not necessarily an indication of fraud, officers must consider the facts surrounding any prior withdrawal in the event the same petitioner files a subsequent petition.[36] Once USCIS accepts and acknowledges a withdrawal request, the petitioner may not appeal since USCIS no longer has authority to render a decision on the petition.[37]

2. Automatic Revocation

An approved family-based immigrant petition may be automatically revoked under certain circumstances if the alien beneficiary has not yet adjusted status or commenced his or her journey to the United States.[38] The following circumstances generally trigger automatic revocation of a family-based immigrant petition:[39]

- Termination of an alien beneficiary's registration for an available visa by DOS;[40]
- Written notice of withdrawal by the petitioner (or self-petitioner);[41]
- Death of the alien beneficiary or self-petitioner;[42]
- Death of the petitioner;[43]
- Legal termination of a marriage that is the basis of the petition;
- Marriage of the son or daughter of a lawful permanent resident (LPR);[44] or
- Legal termination of a petitioner's LPR status, other than through naturalization.

Effective Date of Automatic Revocation

Under each of these grounds, the revocation is automatically triggered by the circumstance's occurrence regardless of whether USCIS is aware of the circumstance. Although the circumstance

triggers the revocation, the revocation is effective as of the date of the petition's approval, not when USCIS issues notice of the revocation or when the circumstance occurred.[45]

For example, if a beneficiary of an approved petition as the unmarried son or daughter of an LPR marries before immigrating or adjusting status, the event of the marriage triggers the automatic revocation. Since the petition's approval is automatically revoked as of the date of approval, it does not become valid again if the marriage of the beneficiary is terminated through divorce or death of the beneficiary's spouse. Generally, if the marriage is annulled, the legal effect is that the marriage never occurred and, therefore, neither did the revocation.[46]

Notice of Automatic Revocation

When USCIS becomes aware of a circumstance triggering automatic revocation in an approved family-based immigrant petition, USCIS sends a revocation notice to the petitioner's last known address and the petitioner's legal representative (if any).[47] If the alien beneficiary is outside the United States and intends to consular process, USCIS must also notify DOS[48] of the revocation.[49]

There is no right to appeal an automatically revoked petition,[50] but petitioners may file a motion to reopen or reconsider a decision made by USCIS.

3. Revocation Upon Notice

In addition to the grounds for automatic revocation, at any time USCIS may revoke an approved petition upon notice[51] for good and sufficient cause.[52] USCIS must give the petitioner the opportunity to offer evidence in support of the petition and to rebut the grounds supporting USCIS' initiation of revocation proceedings.[53]

Effective Date of Revocation Upon Notice

Unlike automatic revocation, when USCIS revokes a petition upon notice, the revocation is effective as of the date on which the revocation decision becomes final, including any decision on appeal.[54]

Good and Sufficient Cause

The INA permits the revocation at any time of approved family-based petitions for good and sufficient cause.[55] The BIA has held that there is good and sufficient cause for revoking an approved petition upon notice when the evidence in the record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial based on the petitioner's failure to meet the burden of proof.[56] This discretion is provided by statute and is not subject to judicial review.[57]

At any time, USCIS may initiate revocation proceedings on an immigrant visa petition when USCIS becomes aware of the necessity of the revocation.[58] While this necessity may be the result of a

particular triggering event, USCIS may also initiate revocation proceedings upon notice without a specific triggering event. There may be a series of events leading up to a determination to revoke an approved petition upon notice, and the events could have occurred either before or after the original approval.

Notice of Intent to Revoke

When it appears that revocation upon notice is appropriate, USCIS sends the petitioner a Notice of Intent to Revoke (NOIR).[59] An NOIR must include all the reasons for which USCIS intends to revoke the approval of the petition. The petitioner is only required to respond to, and the ultimate decision can only be based on, reasons that were specified in the notice.

In addition to a specific statement of the facts and evidence underlying the proposed revocation, the notice must advise the petitioner of the right to review and rebut the evidence.[60] A decision to revoke the approval of a visa petition is not valid if USCIS did not properly issue the NOIR.[61]

Generally, the petitioner has 30 days to respond to the NOIR (33 days if USCIS mails the notice).[62] If the petitioner requests additional time to respond, USCIS may grant the petitioner additional time to respond to the notice.

If the petitioner does not respond within the allotted time, or if the response is inadequate to meet the petitioner's burden of proof, the officer revokes the approval and notifies the petitioner[63] of revocation and the opportunity to file an appeal.[64] The petitioner may appeal the decision to revoke the approval within 15 calendar days after service of the notice of the revocation.[65]

If the petitioner responds and sufficiently rebuts all grounds for revocation, USCIS reaffirms the petition and sends notice of the reaffirmation to the petitioner. If the decision to reaffirm the petition followed a consular return, USCIS returns the petition to DOS with copies of the NOIR, the petitioner's response, and the letter of reaffirmation.

4. Appeals and Motions

If USCIS denies a family-based immigrant visa petition, a petitioner has the right to appeal the decision within 30 calendar days from the date of the decision.[66] However, if USCIS revokes upon notice the approval of a family-based immigrant visa petition, a petitioner has the right to appeal the decision within 15 days after service of the notice of the revocation.[67]

Petitioners of family-based immigrant visa petitions may file an appeal using a Notice of Appeal to the Board of Immigration Appeals (BIA) from a Decision of a DHS Officer (Form EOIR-29). The BIA has jurisdiction over most appeals of decisions on a Petition for Alien Relative (Form I-130) and on a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) for a widow or widower.[68]

Once the petitioner has properly filed a Form EOIR-29 in accordance with regulations and the form instructions, a USCIS officer reviews the appeal. If the USCIS officer determines that the underlying petition is approvable, USCIS may reopen the petition on a service motion and approve the petition.[69] USCIS may only reopen the petition if the case is going to be approved. Some examples of reasons USCIS may reopen and approve a petition include:

- USCIS overlooked evidence that was provided before final adjudication and the petition is approvable after reviewing the evidence;
- The petitioner provided new facts[70] that are supported by affidavits or other documentary evidence, and the petition is approvable[71] after reviewing the new facts; or
- USCIS made another error[72] (for example, USCIS sent a request for evidence to the incorrect address).

If USCIS does not reopen and approve the underlying petition, USCIS creates a record of proceedings (ROP), USCIS counsel prepares a brief, and the ROP and brief are forwarded to the BIA.

A petitioner may also submit a Notice of Appeal or Motion (Form I-290B) to file only a motion to reopen or reconsider a USCIS decision.[73] The petitioner must file either motion within 30 days of the denial, or 33 days if the denial was sent by mail.[74] Petitioners should not submit a Form I-290B in lieu of the EOIR-29 if they want to appeal USCIS' decision. Failure to file the EOIR-29 within 30 days will result in a loss of appellate rights.

Footnotes

[^ 1] See 8 CFR 103.2(b)(9).

[^ 2] See 8 CFR 103.2(b)(7) and 8 CFR 103.2(b)(9).

[^ 3] USCIS may still require an interview with the petitioner or alien beneficiary even beyond these enumerated circumstances. Additionally, USCIS conducts an interview in all I-130 petitions filed concurrently with the Form I-485.

[^ 4] See *Stokes v. INS*, 393 F. Supp. 24 (S.D.N.Y. 1975). See *Stokes v. INS*, 74-cv-1022 (S.D.N.Y., Nov. 10, 1976).

[^ 5] See INA 204(a)(2).

[^ 6] See INA 204(g).

[^ 7] In this section, petition refers to the Petition for Alien Relative (Form I-130) and the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), where an alien filed Form I-360 as a self-petitioner seeking to immigrate as an abused spouse, child, or parent; as an Amerasian; or as a widow

or widower of a U.S. citizen. See Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act [3 USCIS-PM D]. See Volume 7, Adjustment of Status, Part P, Other Adjustment Programs, Chapter 9, Amerasian Immigrants [7 USCIS-PM P.9]. See the USCIS Green Card for Widow(er) of a U.S. Citizen webpage. As used in this section, the term beneficiary may also refer to these Form I-360 self-petitioners.

[^ 8] See INA 204(b). If the petitioner establishes the claimed relationship with the alien beneficiary, USCIS does not have discretion to deny the petition, unless the petition is subject to the Adam Walsh Act or is subject to relief under INA 204(l).

[^ 9] See *Matter of O–* (PDF), 8 I&N Dec. 295 (BIA 1959) (admissibility of beneficiary is not relevant to decision of visa petition). However, if the alien beneficiary previously entered into a marriage for the purpose of evading immigration laws, such conduct would be relevant to the adjudication of the petition. See INA 204(c).

[^ 10] For information on Form I-360 approvals where the applicant filed Form I-360 as a self-petitioner seeking to immigrate as an abused spouse, child, or parent; as an Amerasian; or as a widow or widower of a U.S. citizen, see Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act, Chapter 5, Adjudication, Section C, Decision, Subsection 2, Approvals [3 USCIS-PM D.5(C)(2)]. See Volume 7, Adjustment of Status, Part P, Other Adjustment Programs, Chapter 9, Amerasian Immigrants, Section D, Petition for Amerasian, Subsection 3, Decision [7 USCIS-PM P.9(D)(3)]. See the USCIS Green Card for Widow(er) of a U.S. Citizen webpage.

[^ 11] See the USCIS Visa Availability and Priority Dates webpage.

[^ 12] For information on additional requirements following the approval of a family-based immigrant visa petition, see the USCIS Consular Processing webpage and USCIS Adjustment of Status webpage.

[^ 13] See 8 CFR 103.2(b)(19) and 8 CFR 204.2.

[^ 14] For additional information, see the Form I-130 webpage.

[^ 15] See 8 CFR 204.2(a)(3), 8 CFR 204.2(b)(3), 8 CFR 204.2(c)(3), 8 CFR 204.2(e)(3), 8 CFR 204.2(f)(3), and 8 CFR 204.2(g)(3).

[^ 16] Officers should not affirmatively review a Form I-130 petition for admissibility issues when adjudicating a family-based immigrant petition. However, if an officer becomes aware of an alien’s ineligibility to adjust status during the adjudication, and the officer approves the petition, the officer should route the petition to the NVC.

[^ 17] See 8 CFR 204.2(a)(3), 8 CFR 204.2(b)(3), 8 CFR 204.2(c)(3), 8 CFR 204.2(e)(3), 8 CFR 204.2(f)(3), and 8 CFR 204.2(g)(3).

[^ 18] For additional information on NVC visa processing, see step two of the DOS's Immigrant Visa Process webpage.

[^ 19] For additional information about requesting action on an approved petition, see the USCIS Form I-824 webpage.

[^ 20] Form I-360 does not contain the option to select either consular processing or to adjust status in the United States. However, the form does ask for information about the U.S. consulate at which the self-petitioner prefers to apply for an immigrant visa if they are outside the United States, ineligible to adjust status in the United States, or they do not wish to adjust status. If the self-petitioner provides the U.S. consulate information, or fails to provide the information but provides an address outside the United States, USCIS forwards the Form I-360 to the NVC. Otherwise, USCIS retains the Form I-360.

[^ 21] See the DOS's Visa Issuing Posts webpage. If the consulate designated on the petition does not issue immigrant visas, officers may use the beneficiary's country of birth as indicated on the petition. If the beneficiary is unable to return to the country of birth or if a U.S. consulate is not present in the beneficiary's country of birth, the petitioner may request another U.S. consulate through the first designated consulate. If the new consulate accepts jurisdiction, officers annotate the petition accordingly before forwarding the petition to the NVC.

[^ 22] See the Form I-130 webpage for additional instructions on how to contact USCIS to provide updated information on a pending petition.

[^ 23] Certain individuals may be eligible for a fee exemption. For information on fees, see the Fee Schedule (Form G-1055).

[^ 24] See 8 CFR 103.9. See Form I-824.

[^ 25] See INA 204(b). See 8 CFR 204.2.

[^ 26] See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 27] See 8 CFR 103.2(b)(6). This pertains to any information provided to USCIS as part of a benefit request or related application, including interview notes. See 8 CFR 205.1(a)(3).

[^ 28] See 8 CFR 205.1(a)(3).

[^ 29] See INA 205. See 8 CFR 205.2.

[^ 30] See 8 CFR 103.2(b)(15).

[^ 31] See 8 CFR 103.2(b)(6).

[^ 32] See 8 CFR 103.2(b)(6).

[^ 33] A withdrawn petition cannot be denied. See *Matter of Cintron* (PDF), 16 I&N Dec. 9 (BIA 1976).

[^ 34] A petitioner's request for a withdrawal should be received through a written statement.

[^ 35] See *Matter of Cintron* (PDF), 16 I&N Dec. 9 (BIA 1976).

[^ 36] See *Matter of Isber*, (PDF) 20 I&N Dec. 676 (BIA 1993).

[^ 37] See 8 CFR 103.2(b)(15). See *Matter of Cintron* (PDF), 16 I&N Dec. 9 (BIA 1976).

[^ 38] See 8 CFR 205.1(a).

[^ 39] See 8 CFR 205.1(a).

[^ 40] See INA 203(g). However, if the beneficiary files a Form I-485 prior to the termination by DOS, then automatic revocation does not occur.

[^ 41] See 8 CFR 205.1(a).

[^ 42] In some cases where the principal beneficiary or self-petitioner dies before USCIS makes a decision on the adjustment of status application, the derivative beneficiaries may still be eligible to adjust status. For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 9, Death of Petitioner or Principal Beneficiary [7 USCIS-PM A.9].

[^ 43] In some cases where the petitioner dies before USCIS makes a decision on the adjustment of status application, the principal beneficiary and any derivative beneficiaries of the immigrant petition may still be eligible to adjust status. For more information see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 9, Death of Petitioner or Principal Beneficiary [7 USCIS-PM A.9].

[^ 44] This includes the marriage of children of LPRs (under 21 years of age) in the F2A category as well as the marriage of sons and daughters of LPRs (21 years of age or older) in the F2B category.

[^ 45] See 8 CFR 205.1(a). This is different in revocation upon notice under 8 CFR 205.2.

[^ 46] However, USCIS does not have to recognize annulments where there was fraud or manipulation of immigration laws. See *Matter of Magana* (PDF), 17 I&N Dec. 111 (BIA 1979) and *Matter of Wong* (PDF), 16 I&N Dec. 87 (BIA 1977).

[^ 47] See 8 CFR 205.1(b).

[^ 48] USCIS generally forwards approved petitions for beneficiaries outside of the United States to DOS at the National Visa Center, or where otherwise designated by DOS.

[^ 49] See 8 CFR 205.1(b).

[^ 50] The Board of Immigration Appeals (BIA) does not have jurisdiction over automatic revocations of visa petitions. See *Matter of Zaidan* (PDF), 19 I&N Dec. 297 (BIA 1985). See the BIA Practice Manual, Chapter 9.4(a), Jurisdiction.

[^ 51] See 8 CFR 205.2(a).

[^ 52] See INA 205.

[^ 53] See 8 CFR 205.2(b).

[^ 54] See 8 CFR 205.2(a).

[^ 55] See INA 205.

[^ 56] See *Matter of Estime* (PDF), 19 I&N Dec. 450 (BIA 1987).

[^ 57] See INA 205. See *Bouarfa v. Mayorkas*, 604 U.S. 6 (Dec. 10, 2024). The statute states that the "Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him" under section INA 204.

[^ 58] See 8 CFR 205.2(a).

[^ 59] See 8 CFR 205.2(b).

[^ 60] See 8 CFR 103.2(b)(16). A petitioner must be permitted to inspect the record of proceeding and be advised of derogatory evidence, with exceptions related to classified materials and as outlined in this Policy Manual part. See *Matter of Estime* (PDF), 19 I&N Dec. 450 (BIA 1987).

[^ 61] See *Matter of Estime* (PDF), 19 I&N Dec. 450 (BIA 1987).

[^ 62] See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 10, Post-Decision Actions [1 USCIS-PM E.10]. See 8 CFR 103.8.

[^ 63] If applicable, USCIS must also notify DOS of the revocation of an approval. See 8 CFR 205.2(c).

[^ 64] See 8 CFR 205.2(d). The petitioner has the same appeal rights from a decision to revoke upon notice as a decision to deny the petition. If a denial of the petition would be appealable, so is the revocation. The petitioner also has a right to file a motion to reopen or reconsider the decision revoking the petition approval.

[^ 65] See 8 CFR 1003.3(a)(2). The notice of revocation must include information about appeal rights. The petitioner has the same appeal rights from a decision to revoke upon notice as they would have from a decision to deny the petition. The petitioner also has a right to file a motion to reopen or reconsider the decision revoking the petition approval.

[^ 66] See 8 CFR 1003.3(a)(2).

[^ 67] See 8 CFR 205.2 and 8 CFR 1205.2(d). Although the regulations provide for 15 days for the appeal of a revocation on notice, the BIA applies 30-days for appeal denials and revocations on notice, pursuant to 8 CFR 1003.3(a)(2).

[^ 68] See 8 CFR 1003.5(b). For additional information on BIA actions and procedures, see the BIA Practice Manual webpage.

[^ 69] See 8 CFR 1003.5(b).

[^ 70] New facts are facts that demonstrate eligibility at the time of filing, are relevant to the issues raised on motion, and have not been previously submitted in the proceeding. New facts are not facts that present new or changed eligibility. See 8 CFR 103.5(a)(2) and USCIS Questions and Answers: Appeals and Motions for additional information on motion to reopen requirements.

[^ 71] The evidence must establish eligibility at the time of filing the benefit request. See 8 CFR 103.2(b)(1) and (12). See *Matter of Bardouille* (PDF), 18 I&N Dec. 114 (BIA 1981); *Matter of Drigo* (PDF), 18 I&N Dec. 223 (BIA 1982). If the petitioner was not already eligible when the petition was filed, subsequent developments cannot retroactively establish eligibility as of the filing date. See *Matter of Katigbak* (PDF), 14 I&N Dec. 45, 49 (Reg. Comm’r 1971).

[^ 72] See 8 CFR 103.5(a)(2).

[^ 73] See 8 CFR 103.5.

[^ 74] See 8 CFR 103.8.

Chapter 6 - Post-Adjudication of Family-Based Petitions [Reserved]

Chapter 7 - Spouses [Reserved]

Chapter 8 - Children, Sons, and Daughters

A. Definition of a Child[1]

In general, a child for immigration purposes is an unmarried person under 21 years of age who is:

- A child born in wedlock[2] to a U.S. citizen or lawful permanent resident (LPR) parent;

- The legitimated[3] child of a U.S. citizen or LPR parent who is under 18 and in the legal custody of the legitimating parent or parents at the time of legitimation;
- The stepchild of a U.S. citizen or LPR parent who is under 18 at the time of the marriage, creating the step-relationship;
- A child adopted while under age 16 (or 18 if the sibling exception applies) who has jointly resided with and been in the legal custody of the adopting U.S. citizen or LPR parent for at least 2 years; [4]
- An orphan who has been adopted abroad by a U.S. citizen or who is coming to the United States for adoption by a U.S. citizen;[5]
- A Hague Convention adoptee who has been adopted abroad by a U.S. citizen or who is coming to the United States for adoption by a U.S. citizen;[6] or
- A child born out of wedlock to a natural[7] U.S. citizen or LPR parent. If the petitioning parent is the natural father and the child has not been legitimated, the natural father and child must have had a bona-fide parent-child relationship before the child reached the age of 21 or married.

1. Child Born In or Out of Wedlock

USCIS considers a child to be born in wedlock when the child's legal parents are married to one another at the time of the child's birth and at least one of the legal parents has a genetic or gestational relationship to the child.[8] Therefore, a child born in wedlock may be:

- A genetic child of a married U.S. citizen or LPR parent if both married parents are recognized by the relevant jurisdiction as the child's legal parents;
- The child of a married non-genetic gestational U.S. citizen or LPR parent (person who carried and gave birth to the child) if both married parents are recognized by the relevant jurisdiction as the child's legal parents; or
- A child of a U.S. citizen or LPR who is married to the child's genetic or gestational parent at the time of the child's birth, if both married parents are recognized by the relevant jurisdiction as the child's legal parents.[9]

If a child does not meet this definition of born "in wedlock," USCIS considers the child to have been born out of wedlock. While the petitioning U.S. citizen or LPR parent may be the natural mother or natural father, if the petitioning parent is the natural father and the child has not been legitimated, the natural father and child must have had a bona-fide parent-child relationship before the child reached the age of 21 or married. A "natural" parent may be a genetic or a gestational parent (who carries and gives birth to the child) who is recognized by the relevant jurisdiction as the child's legal parent.

2. Legitimated Child [Reserved]

[Reserved]

3. Assisted Reproductive Technology (ART)[10]

The child of a gestational parent who is also the child's legal parent may be considered a "child" for immigration purposes. A person who is the gestational and legal parent of a child under the law of the relevant jurisdiction at the time of the child's birth may file a Petition for Alien Relative (Form I-130) for the child if all other eligibility requirements are met.

In addition, a non-genetic, non-gestational legal parent may file a Form I-130 on behalf of the child if the parent is married to the child's genetic or gestational parent at the time of the child's birth and both parents are recognized by the relevant jurisdiction as the child's legal parents. Under those circumstances, the child is considered born in wedlock.[11]

Legal parentage is generally determined under the laws of the jurisdiction in which the child was born, but there may be circumstances in which the law of the jurisdiction of residence applies, such as when a post-partum act of legitimation occurs in the jurisdiction of residence.

4. Stepchild [Reserved]

[Reserved]

B. Eligibility Requirements for Child Petitions [Reserved]

[Reserved]

C. Documentation and Evidence [Reserved]

[Reserved]

D. Adjudication [Reserved]

[Reserved]

Footnotes

[^ 1] See INA 101(b). The Immigration and Nationality Act (INA) provides different definitions of "child" for immigrant visa petitions and for citizenship and naturalization. One significant difference is that a stepchild is not included in the definition relating to citizenship and naturalization. For more information, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 2] See Subsection 1, Child Born in or Out of Wedlock [6 USCIS-PM B.8(A)(1)].

[^ 3] A child can be legitimated under the laws of the child's residence or domicile or under the laws of the father's residence or domicile. See INA 101(b)(1)(C). A person's "residence" is the person's place of general abode, that is, the principal, actual dwelling place without regard to intent. See INA 101(a)(33). A person's "domicile" refers to a "person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere." See Black's Law Dictionary (11th ed. 2019). In most cases, a person's residence is the same as a person's domicile. Legitimated child includes a child of a U.S. citizen or LPR who is the child's genetic or gestational parent at the time of the child's birth, if the parent(s) are recognized by the relevant jurisdiction as the child's legal parents.

[^ 4] See INA 101(b)(1)(E).

[^ 5] See INA 101(b)(1)(F).

[^ 6] See INA 101(b)(1)(G).

[^ 7] A "natural" parent may be a genetic or a gestational parent (who carries and gives birth to the child) who is recognized by the relevant jurisdiction as the child's legal parent.

[^ 8] The term "genetic child" refers to a child who shares genetic material with the parent. The term "gestational parent" refers to the person who carriers and gives birth to the child.

[^ 9] The law of the relevant jurisdiction governs whether the non-genetic parent is the legal parent for purposes of U.S. immigration law. A non-genetic U.S. citizen parent, who is not a legally recognized parent of the child, may not be considered a parent for immigration purposes. USCIS follows any applicable court judgment of the relevant jurisdiction if parentage is disputed. In addition, USCIS does not adjudicate cases involving children whose legal parentage remains in dispute unless there has been a determination by a proper authority.

[^ 10] For additional background and eligibility criteria for Assisted Reproductive Technology see Volume 12, Part H, Children of U.S. Citizens, Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section D, Assisted Reproductive Technology [12 USCIS-PM-H.2(D)].

[^ 11] See INA 101(b)(1)(A).

Chapter 9 - Parents of U.S. Citizens [Reserved]

Chapter 10 - Siblings of U.S. Citizens [Reserved]

Part C - Adam Walsh Act