

[\[^ 6\]](#) 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](mailto:PolicyFeedback@uscis.dhs.gov).

[AFM Chapter 20 - Immigrants in General \(External\)](#)

### Part B - Family-Based Immigrants

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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) provides that U.S. citizens and lawful permanent residents (LPRs) may petition for certain alien relatives to immigrate to the United States.<sup>[1]</sup> If the petitioners and the beneficiaries of such petitions meet the eligibility requirements, 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.<sup>[2]</sup>

### B. Background [Reserved]

[Reserved]

### C. Legal Authorities

- [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

### Footnotes

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<sup>[1]</sup> In addition, Congress provided that certain alien relatives may self-petition in limited circumstances.

<sup>[2]</sup> For more information, see Volume 7, Adjustment of Status [[7 USCIS-PM](#)].

## Chapter 2 - Principles Common to Family-Based Petitions [Reserved]

## Chapter 3 - Filing

A U.S. citizen or lawful permanent resident (LPR) may file a petition on behalf of a relative using the Petition for Alien Relative ([Form I-130](#)), in accordance with the form's instructions. In certain cases, alien relatives may self-petition by filing the Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).<sup>[1]</sup> Benefit requestors must file a Form I-130 petition for certain beneficiaries within a specific period, such as filing before the age of 21 for certain children.<sup>[2]</sup>

Generally, family-sponsored petitions must be filed with USCIS.<sup>[3]</sup> However, there are some limited circumstances in which 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 remaining international field offices.<sup>[4]</sup>

## **A. When Department of State is Authorized to Accept and Adjudicate Form I-130**

USCIS has delegated authority to DOS to accept and adjudicate a Form I-130 filed by a U.S. citizen petitioner for an immediate relative<sup>[5]</sup> if the petitioner establishes exceptional circumstances or falls under blanket authorization criteria defined by USCIS. 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 has need of immediate processing of a Form I-130, the consular officer may, but is not required to, accept the local filing in exceptional circumstances, in accordance with the guidance below.

### *Exceptional Circumstances*

Examples of exceptional circumstances include:

- Military emergencies – A U.S. service member, who is abroad but who does not fall under the military blanket authorization for U.S. 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. service member is provided with exceptionally less notice than normally expected.
- Medical emergencies – A petitioner or beneficiary is facing an urgent medical emergency that requires immediate travel.
- Threats to personal safety – A petitioner or beneficiary is facing an imminent threat to personal safety. For example, a petitioner and 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 – A beneficiary is within a few months of aging out of eligibility.
- Petitioner has recently naturalized – A petitioner and family member(s) have traveled for the immigrant visa interview, but the petitioner has naturalized and the family member(s) requires a

new petition based on the petitioner's citizenship.

- Adoption of a child – A 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 petitioner has a full and final adoption decree on behalf of the child and the adoptive parent(s) has had legal custody of and jointly resided with the child for at least 2 years.
- 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 local Form I-130 filings for other emergency or exceptional circumstances of a non-routine nature, 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.<sup>[6]</sup>

## **B. When 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.<sup>[7]</sup>

## **C. Blanket Filing Authorizations**

USCIS<sup>[8]</sup> may issue a blanket authorization for DOS to exercise its discretion to accept locally-filed Form I-130 immediate relative petitions for certain filing categories. Petitioners in these categories do not need to reside in the country of the U.S. embassy or consulate, but they must meet the blanket exception criteria described below in order to file a Form I-130 with DOS.

### *Temporary Blanket Authorizations*

In instances of prolonged or severe civil strife or a natural disaster, USCIS may authorize a blanket exception for DOS to accept Form I-130 immediate relative petitions from petitioners directly affected

by such events.

Temporary blanket authorizations do not require DOS to accept a filing, but rather allow DOS to use its discretion to accept a Form I-130 filed at a U.S. embassy or consulate. Although DOS may accept a local filing by a petitioner who does not reside within the post's jurisdiction, the intent of the temporary blanket authorization is to assist those directly affected by the disruptive event, not to speed up the process for those petitioners who are not directly affected.

#### *U.S. Military Assigned to Military Bases Abroad*

USCIS has granted DOS blanket authorization to accept Form I-130 immediate relative petitions filed by U.S. citizen military service members stationed abroad even in countries with a USCIS presence. This blanket authorization does not apply to service members assigned to non-military bases, such as U.S. embassies, international organizations, or civilian institutions, or to service members on temporary duty orders. Qualifying petitioners do not need to establish exceptional circumstances. This blanket authorization is not time-limited, but USCIS may revoke the authorization if warranted.

### **D. Procedures for Local Filings**

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

If DOS declines to accept a local filing, DOS should inform 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.<sup>[\[9\]](#)</sup>

DOS may approve only those Form I-130 petitions that are clearly approvable. If DOS determines a petition is not clearly approvable, DOS forwards the petition to the USCIS office designated to adjudicate the not clearly approvable petitions. This USCIS office is generally a USCIS service center.<sup>[\[10\]](#)</sup>

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.

## Footnotes

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<sup>[^1]</sup> For more information on self-petitioner categories, see the instructions to [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.

<sup>[^2]</sup> 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\(D\)](#)].

<sup>[^3]</sup> See instructions to the Petition for Alien Relative ([Form I-130](#)).

<sup>[^4]</sup> The USCIS field offices in Accra, Ghana and London, United Kingdom will continue to accept and adjudicate Form I-130 petitions filed by U.S. citizens residing in-country who are filing on behalf of their spouse, unmarried child under the age of 21, or parent (if the U.S. citizen is 21 years of age or older) through March 31, 2020.

<sup>[^5]</sup> 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\(a\)\(1\)](#).

<sup>[^6]</sup> See [9 Foreign Affairs Manual \(FAM\) 504.2-4\(B\)\(1\)\(b\)](#), Adjudicating Exceptional Circumstance I-130 Cases.

<sup>[^7]</sup> 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.

<sup>[^8]</sup> Currently, this is handled by the Refugee, Asylum and International Operations Directorate.

<sup>[^9]</sup> 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.

<sup>[^10]</sup> See [9 Foreign Affairs Manual \(FAM\) 504.2-4\(B\)\(1\)\(b\)](#), Adjudicating Exceptional Circumstance I-130 Cases.

## Chapter 5 - Adjudication of Family-Based Petitions

### A. Petition Review [Reserved]

### B. Interviews [Reserved]

### C. Derogatory Information [Reserved]

### D. 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.<sup>[1]</sup> 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.<sup>[2]</sup>

The beneficiary's history or character is also usually not relevant to the adjudication.<sup>[3]</sup> 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 beneficiary's application for adjustment of status or an immigrant visa.

USCIS approves a Petition for Alien Relative ([Form I-130](#))<sup>[4]</sup> 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 beneficiary.

A beneficiary may apply to immigrate to the United States and become an LPR if there is an available visa<sup>[5]</sup> 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](#)).<sup>[6]</sup>

#### *Notice of Approval*

USCIS notifies the petitioner of the approval on a Notice of Action (Form I-797).<sup>[7]</sup> The approval notice generally acknowledges the petitioner's declaration regarding the 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 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 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.<sup>[8]</sup>

If a mistake is related to the 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 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 beneficiary intends to adjust status in the United States, and the beneficiary is in the United States and eligible to adjust, USCIS retains the petition for adjustment of status processing.<sup>[9]</sup> If the petitioner indicates that the beneficiary intends to consular process, USCIS sends the approved petition to the NVC.<sup>[10]</sup> When an immigrant visa becomes available, the NVC forwards the approved petition to the consulate the petitioner or USCIS designated.<sup>[11]</sup>

It is important for the petitioner to answer the questions completely and accurately on the petition about the beneficiary's location and whether the 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 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.<sup>[12]</sup>

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](#),<sup>[13]</sup> 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 beneficiary's most recent location, including the beneficiary's physical address on the petition.

USCIS generally retains the approved [Form I-130](#) when:

- The petitioner indicates on the Form I-130 that the beneficiary is in the United States and will apply for adjustment of status in the United States;



- The 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 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 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 beneficiary will not apply for adjustment of status and will apply for an immigrant visa through consular processing on the Form I-130;<sup>[14]</sup>
- The 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; or
- The 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.

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.<sup>[15]</sup>

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,<sup>[16]</sup> to change from adjustment of status to consular processing, or update the preferred embassy or consulate.<sup>[17]</sup> 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 beneficiary.<sup>[18]</sup>

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 a relative who does not fall under a category provided for in the Immigration and Nationality Act, such as a grandparent).<sup>[19]</sup>

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

## 3. Requests for Evidence and Notices of Intent to Deny

When USCIS determines that the evidence is not sufficient to establish eligibility, the officer should generally first issue an RFE or NOID to request evidence of eligibility.<sup>[20]</sup>

## E. Post Decision Actions [Reserved]

### Footnotes

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<sup>[^ 1]</sup> 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 [Widower](#) webpage. As used in this section, the term beneficiary may also refer to these Form I-360 self-petitioners.

<sup>[^ 2]</sup> See [INA 204\(b\)](#). If the petitioner establishes the claimed relationship with the 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\(l\)](#).

<sup>[^ 3]</sup> 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 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\(c\)](#).

<sup>[^ 4]</sup> 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 [Widower](#) webpage.

<sup>[^ 5]</sup> See the USCIS [Visa Availability and Priority Dates](#) webpage.

<sup>[^ 6]</sup> 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.

<sup>[^ 7]</sup> See [8 CFR 103.2\(b\)\(19\)](#) and [8 CFR 204.2](#).

<sup>[^ 8]</sup> For additional information, see the [Form I-130](#) webpage.

[^ 9] 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\(g\)\(3\)](#).

[^ 10] 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\(g\)\(3\)](#).

[^ 11] For additional information on NVC visa processing see step two of the DOS's [Immigrant Visa Process](#) webpage.

[^ 12] For additional information about requesting action on an approved petition, see the USCIS [Form I-824](#) webpage.

[^ 13] 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.

[^ 14] 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.

[^ 15] See the [Form I-130](#) webpage for additional instructions on how to contact USCIS to provide updated information on a pending petition.

[^ 16] Certain individuals may be eligible for a fee exemption. For information on fees, see the Fee Schedule ([Form G-1055](#)).

[^ 17] See [8 CFR 103.9](#). See [Form I-824](#).

[^ 18] See [INA 204\(b\)](#). See [8 CFR 204.2](#).

[^ 19] 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\(F\)](#)].

[^ 20] 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\(F\)](#)].

## Chapter 7 - Spouses [Reserved]

## Chapter 8 - Children, Sons, and Daughters

### A. Definition of a Child<sup>[1]</sup>

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

- A child born in wedlock<sup>[2]</sup> to a U.S. citizen or lawful permanent resident (LPR) parent;
- The legitimated<sup>[3]</sup> 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;<sup>[4]</sup>
- 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;<sup>[5]</sup>
- 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;<sup>[6]</sup> or
- A child born out of wedlock to a natural<sup>[7]</sup> 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.<sup>[8]</sup> 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

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[^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 carries 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

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](mailto:PolicyFeedback@uscis.dhs.gov).

[AFM Chapter 21 - Family-based Petitions and Applications \(External\)](#)

# Part D - Surviving Relatives

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