Part K - Reserved

Volume 4 - Refugees and Asylees

Part A - Reserved

Part B - Reserved

Part C - Relative Petitions

Chapter 1 - Purpose and Background

A. Purpose

Aliens admitted as refugees[1] or granted asylee status[2] may petition for a qualifying spouse or child to be granted derivative refugee or asylee status. USCIS is responsible for adjudicating these petitions.

There are different ways for refugees and asylees to bring qualifying family members to the United States. This Part only discusses the Refugee/Asylee Relative Petition (Form I-730) process.

B. Background

An alien admitted to the United States as a principal refugee[3] or an alien who is a principal asylee[4] in the United States, may file a Form I-730 to request that their qualifying spouse[5] and unmarried children[6] receive derivative refugee or asylee status.

If USCIS approves the Form I-730, a spouse or child beneficiary receives derivative refugee or derivative asylee status, depending on whether the petitioner received refugee or asylum status. The beneficiary of a Form I-730 filed by a refugee petitioner is referred to as a following-to-join refugee (FTJ-R), and the beneficiary of a Form I-730 filed by an asylee petitioner is referred to as a following-to-join asylee (FTJ-A).

The term following-to-join, in this context, refers to the process of the qualifying family member receiving refugee or asylum status after the petitioner, regardless of whether the qualifying family member resides in or outside the United States. A spouse or child who was not included as a derivative on the principal refugee's Registration for Classification as Refugee (Form I-590), the principal asylee's Application for Asylum and for Withholding of Removal (Form I-589), or the Record of Determination/Credible Fear Worksheet (Form I-870), and who did not accompany the petitioner, may receive following-to-join benefits.

For beneficiaries residing outside the United States for whom USCIS has approved the Form I-730 and who are approved to travel, U.S. Customs and Border Protection makes the decision whether to admit such beneficiaries in derivative refugee or asylee status at the port of entry.

C. Legal Authorities

- INA 207(c)(2) – Admission status of spouse or child (of refugees)
- INA 208(b)(3) – Treatment of spouse and children (of asylees)
- INA 101(a)(35) – Definition of wife, spouse, or husband
- INA 101(b)(1)(A); INA 101(b)(1)(B); INA 101(b)(1)(C); INA 101(b)(1)(D); and INA 101(b)(1)(E) – Definitions of child
- INA 101(b)(2) – Definition of parent, father, or mother
- 8 CFR 103.2 – Submission and adjudication of benefit requests
- 8 CFR 103.3 – Denials, appeals, and precedent decisions
- 8 CFR 103.5 – Reopening or reconsideration
- 8 CFR 207.7 – Derivatives of refugees
- 8 CFR 208.21 – Admission of the asylee's spouse and children

Footnotes

[^ 1] See INA 207(c)(2). See 8 CFR 207.7.

[^ 2] See INA 208(b)(3). See 8 CFR 208.21.

[^ 3] See 8 CFR 207.7(d).

[^ 4] See 8 CFR 208.21(c) and 8 CFR 208.21(d).

[^ 5] See Chapter 2, Eligibility Requirements, Section D, Beneficiaries, Subsection 1, Spousal Beneficiaries [4 USCIS-PM C.2(D)(1)].

[^ 6] See Chapter 2, Eligibility Requirements, Section D, Beneficiaries, Subsection 2, Child Beneficiaries [4 USCIS-PM C.2(D)(2)].

Chapter 2 - Eligibility Requirements

The Immigration and Nationality Act (INA) provides for the admission of alien spouses and children (derivatives) of asylees, refugees, and lawful permanent residents (LPRs) who received this status as a principal refugee or principal asylee.[1]

A. General Eligibility Requirements

An eligible petitioner may petition for their spouse and children by filing a Refugee/Asylee Relative Petition (Form I-730). The petitioner must file a separate Form I-730 for each qualifying family member.[2]

1. Petitioners

For a petitioner to be eligible to file a Form I-730, the petitioner must:

- Be a principal refugee or asylee, or have LPR status based on being a principal refugee or asylee;
- File a separate Form I-730 for each qualifying family member within 2 years of the date on which the petitioner was admitted as a refugee into the United States, or the petitioner was approved as an asylee;[3] and
- File based upon a relationship with a qualifying family member.

For general eligibility, the relationship between a petitioner and a qualifying family member must exist:

- On the date the petitioner was approved for asylum[4] or admitted as a refugee;[5]
- On the date the petitioner filed the Form I-730;[6]
- On the date USCIS adjudicates the Form I-730;[7] and
- On the date the beneficiary is admitted into the United States, if the beneficiary resided abroad when USCIS approved the Form I-730.[8]

2. Beneficiaries

Qualifying family members for purposes of a Form I-730 include a spouse[9] and unmarried children.[10] A spouse or child may be living inside or outside of the United States.

Spouses generally include persons recognized as married under the laws where the marriage took place (the place of celebration).[11] However, the INA does not recognize unconsummated proxy marriages[12] and polygamous marriages.[13] The INA limits spousal relationships for immigration purposes to those where the parties to a marriage were both present during the marriage ceremony or consummated the marriage following the ceremony if the parties were not present together.[14] Generally, to demonstrate a qualifying spousal relationship for Form I-730, the petitioner must provide evidence of a legally recognized marriage to the alien spouse.

In limited circumstances, a marriage may violate the strong public policy of the United States or the state in which the couple resides and may therefore not be valid for U.S. immigration purposes.[15] Some examples of when a marriage may violate public policy include polygamous marriages, marriage between close relatives, and marriage involving minors.[16] If the petitioner or beneficiary was previously married, the petitioner must also establish by a preponderance of the evidence that any prior marriage was legally terminated.

Eligible children must be under age 21 on the date the petitioner files an application for asylum or applies for refugee status. The child of an asylee continues to be a child for Form I-730 eligibility if the child is under 21 years of age on the date on which the parent applied for asylum.[17] The child of a refugee continues to be a child for Form I-730 eligibility if the child is under 21 years of age on the date that the parent applied for refugee status, which is the date that USCIS first interviews the principal refugee applicant.[18]

Eligible children include children born in wedlock, out of wedlock, adopted children, legitimated children, and stepchildren.[19] Children who are conceived but not yet born before the petitioner's admission as a refugee or asylum approval are also eligible.[20]

Asylee beneficiaries must not be subject to certain bars to asylum.[21] Refugee beneficiaries must be admissible or eligible for a waiver of inadmissibility, and they must not have engaged in persecution as described in the second sentence of INA 101(a)(42).[22]

B. Two-Year Filing Deadline and Humanitarian Waiver

By regulation, the petitioner must file the Form I-730 within 2 years of the petitioner's admission as a refugee or grant of asylum.[23]

USCIS may waive the 2-year filing deadline for humanitarian reasons on a case-by-case basis.[24] If USCIS determines that humanitarian reasons exist for extending the filing deadline, USCIS may do so, and there is no set limit on the length of extension that USCIS may approve.

The petitioner may directly request a waiver or USCIS may approve a waiver on its own accord if there are sufficient humanitarian reasons. In general, the petitioner should initiate the request for a humanitarian waiver of the 2-year filing deadline.

The petitioner should provide a letter or explanation and all appropriate evidence that supports the waiver request. Although the following is not an exhaustive list, USCIS may consider the following factors in determining whether to approve a waiver request:

- Significant harm is likely to occur to the beneficiary if not allowed to join family in the United States;
- Petitioner's earlier belief that a relative was deceased or missing, but the petitioner later learned the relative was alive;
- Mental or physical health of the petitioner and impact on the petitioner's ability to know, understand, and comply with filing requirements;
- Age of the beneficiary;
- Advanced age of the petitioner;
- Educational background of the petitioner and ability to understand the Form I-730 or form instructions;
- Petitioner's diligence in trying to obtain competent assistance to complete Form I-730;
- Availability of competent assistance to the petitioner;
- Ineffective assistance of counsel or other representative;
- Whether the petitioner willfully or recklessly disregarded the Form I-730 filing deadline;
- Whether the petitioner previously filed a timely Form I-730 that was ultimately abandoned or denied;
- Existence of significant misinformation that the petitioner received that contributed to the petitioner's belief that the petitioner was ineligible to file a Form I-730;

- Circumstances that have generated public confusion generally about the ability of the petitioner to file Form I-730 (for example, when the petitioner had a conditional asylum approval, and there was uncertainty as to when the relationship needed to have been in existence to meet following to join criteria), or other statutory or regulatory immigration changes that may create confusion and uncertainty;
- Community attention and presence of sympathetic factors (for example, the beneficiary or family members have been victims of highly publicized crime or natural disaster); or
- Other public interest factors.

C. Petitioners

Principal asylees or principal refugees are eligible to file a Form I-730. Petitioners who acquire LPR status after they are admitted to the United States as a principal refugee or approved as a principal asylee are also eligible to file a Form I-730.

An asylee or refugee who becomes a naturalized citizen is not eligible to file a Form I-730.[25] However, if the petitioner became a naturalized U.S. citizen after filing the Form I-730, USCIS will generally continue to process the petition.

A refugee petitioner must have been admitted to the United States as a principal refugee. The primary[26] classes of admission that would qualify a petitioner to be eligible to file a Form I-730 are:

- RE1; or
- RE6 (approved as principal on a refugee application).

D. Beneficiaries

The relationship between the petitioner and the family member must exist:

- On the date the petitioner was approved for asylum[27] or admitted as a refugee[28] (except for children who were conceived but not yet born when their parent was admitted as a refugee or approved for asylee status);[29]
- On the date the petitioner filed a Form I-730;[30]
- On the date USCIS adjudicates the Form I-730;[31] and
- On the date the beneficiary is admitted into the United States, if the beneficiary resided abroad when USCIS approved the Form I-730.[32]

Relationships created after the petitioner was admitted as a refugee or acquired asylee status do not qualify for Form I-730 petition purposes. However, a principal refugee or asylee may be eligible to file a Petition for Alien Relative (Form I-130) for a spouse or child if the principal refugee or asylee becomes an LPR.[33]

1. Spousal Beneficiaries

A spouse must meet the INA's definition of a spouse.[34] In general, the legal validity of a marriage is determined by the law of the place where the marriage was celebrated ("place-of-celebration rule"). Under this rule, a marriage is valid for immigration benefit purposes where the marriage is valid under the law of the jurisdiction in which it is performed.[35]

Generally, USCIS does not recognize the following relationships as marriages, even if valid in the place of celebration:

- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the parties later consummate the marriage;[36] or
- Relationships that are contrary to public policy in the United States, including those involving certain minors, polygamy, or incest.[37]

2. Child Beneficiaries

Definition of a Child

For purposes of Form I-730 eligibility, a child is an unmarried person under 21 years of age who is:

- A child born in wedlock[38] to the petitioner;
- The legitimated[39] child of the petitioner who was under 18 and in the legal custody of the legitimating parent or parents at the time of legitimation;
- The stepchild[40] of the petitioner who was 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[41]) who has been in the legal custody of and jointly resided with the petitioner for at least 2 years;[42] or
- A child born out of wedlock to a natural[43] 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.[44]

Child's Marital Status

To receive derivative asylum or refugee status, the child must be unmarried at the time:

- The petitioner files the Form I-730; and
- USCIS adjudicates the petition (and, if the child beneficiary is outside the United States, at the time the beneficiary is admitted into the United States).[45]

As long as a beneficiary child is unmarried at these points in time, an intervening marriage and divorce or termination through an annulment does not result in their ineligibility.

Child's Age

Congress enacted the Child Status Protection Act (CSPA) to protect certain children from aging out of certain immigration benefits, including beneficiaries of Form I-730 petitions. The CSPA went into effect on August 6, 2002.[46] Under the CSPA, USCIS continues to classify a child who is under 21 at the time their parent applied for refugee[47] or asylum[48] status to be a child regardless of their actual age at the time of the adjudication of Form I-730.

For asylees, USCIS continues to classify children who turn 21 years old after the petitioning parent files an asylum application, but before USCIS adjudicates the Form I-730, to be children and remain eligible for derivative asylum status.[49]

For refugees, USCIS continues to classify children who turn 21 years old after the petitioning parent applies for refugee status, but before USCIS adjudicates the Form I-730, to be children and remain eligible for derivative refugee status.[50]

If the petitioner filed an application for refugee or asylum status before August 6, 2002, and their child turned 21 years of age before that date, that application must have been pending on August 6, 2002, for the child to continue to be classified as a child.[51]

Children In Utero

A child who was conceived, but not yet born on the date the petitioner was admitted to the United States as a refugee or approved for asylum is eligible for derivative refugee or asylum status as a Form I-730 beneficiary.[52]

Accordingly, a child who was born within approximately 9 months after the date on which the petitioner acquired status may be eligible to be a beneficiary, so long as the beneficiary falls within one of the definitions of a child.[53]

Non-Biological Parent-Child Relationship

A child might qualify as the child of the principal refugee or asylee even if the petitioner is not the biological parent. For example, the petitioner may have been married to the child's mother when the child was born and may also have been in the United States continuously since before the earliest possible date of the child's conception, preventing the father's biological paternity. Although not the biological child of the petitioning father, the beneficiary could meet the definition of an in-wedlock child or stepchild.

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. As such, a petitioning father or mother's nonbiological child with a lawful spouse meets the definition of an in-wedlock child if the law of the jurisdiction in which the child was born recognizes the petitioner and spouse as the child's legal parents.[54]

Additionally, even if the law does not establish a legal parental relationship, when a child is born as the legal child of only one partner of a married couple, USCIS considers the child to be the stepchild of the other partner for immigration purposes.[55] Because the child qualifies as the petitioner's stepchild,[56] USCIS does not need to decide if the child otherwise meets the definition of a child.[57]

E. Beneficiaries in Removal Proceedings

1. Beneficiaries in Removal Proceedings or with a Final Order of Removal

USCIS may approve beneficiaries in the United States who are in removal proceedings or have a final order of removal for derivative asylum or refugee status if the beneficiaries meet all other eligibility requirements for Form I-730.[58]

If a Form I-730 beneficiary has a removal order, a Form I-730 approval provides the beneficiary with derivative refugee or derivative asylee status, and the removal order becomes unenforceable.[59]

2. Beneficiaries Who Re-Entered the United States After Removal

In general, an alien who re-enters the United States without prior authorization after having been previously removed or having departed voluntarily while under an order of exclusion, deportation, or removal from the United States, is subject to reinstatement of removal.[60] USCIS does not have the authority to reinstate prior orders of removal.

When adjudicating Form I-730, if an officer encounters an applicant who has re-entered without prior authorization after a prior order of removal, USCIS contacts U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE ERO) about potential reinstatement of the order of removal. ICE ERO can choose to complete and effectuate service of a Notice of Intent/Decision to Reinstate Prior Order (Form I-871).

Similarly, if a beneficiary has re-entered without inspection and ICE ERO has already signed and served a Form I-871, USCIS generally denies the Form I-730.

Footnotes

[^ 1] See INA 207(c)(2)(A) and INA 208(b)(3).

[^ 2] See 8 CFR 207.7(d), 8 CFR 208.21(c), and 8 CFR 208.21(d).

[^ 3] See 8 CFR 207.7(d), 8 CFR 208.21(c), and 8 CFR 208.21(d).

[^ 4] See 8 CFR 208.21(b).

[^ 5] See 8 CFR 207.7(c).

[^ 6] See 8 CFR 207.7(c) and 8 CFR 208.21(b).

[^ 7] See 8 CFR 207.7(c) and 8 CFR 208.21(b).

[^ 8] See 8 CFR 207.7(c) and 8 CFR 208.21(b). U.S. Customs and Border Protection (CBP) determines whether a beneficiary is eligible for admission or parole at the port of entry.

[^ 9] See INA 101(a)(35).

[^ 10] See INA 101(b)(1)(A)-(E).

[^ 11] See *Matter of P-*, 4 I&N Dec. 610, 613 (Acting A.G. 1952) (“But, apart from saying that picture and proxy marriages will not create the status of ‘wife’ for immigration purposes, the Congress has not said what will. In the absence of such legislative provision, the generally accepted rule is that the validity of a marriage is governed by the law of the place of celebration.”).

[^ 12] See INA 101(a)(35).

[^ 13] See INA 101(a)(35). See *Matter of H-* (PDF), 9 I&N Dec. 640 (BIA 1962) (holding that polygamous marriages are not recognized for immigration purposes, even if recognized as lawful in the jurisdiction where the marriage took place).

[^ 14] See INA 101(a)(35), which excludes proxy marriage from meeting the qualifications of a spouse, wife, or husband. USCIS does not consider a marriage to be valid for immigration purposes if both contracting parties to the marriage were not physically present together during the marriage ceremony, unless the parties have consummated the marriage.

[^ 15] See *Matter of H-* (PDF), 9 I&N Dec. 640 (BIA 1962); *Matter of Zappia* (PDF), 12 I&N Dec. 439 (BIA 1967); and *Matter of Da Silva* (PDF), 15 I&N Dec. 778, 779 (BIA 1976) (A marriage complying with all the requirements of the state of celebration is invalid if it violates the strong public policy of the state where one of the parties is domiciled at the time of the marriage and where the couple intends to reside after the marriage.). However, the Board of Immigration Appeals in *Matter of Hirabayashi* (PDF), 10 I&N Dec. 722 (BIA 1964) determined a marriage may be valid if evidence establishes that the parties did not travel to the state of celebration with a primary purpose of evading prohibitions in their state of residence.

[^ 16] There are no statutory minimum age requirements for the petitioner or beneficiary of a spousal immigration petition. However, USCIS evaluates whether the age of the beneficiary or petitioner, or both, at the time of marriage, violates the law of the place of celebration or violates the law or public policy of the state where the couple will reside.

[^ 17] See INA 208(b)(3)(B).

[^ 18] See INA 207(c)(2)(B).

[^ 19] See INA 101(b)(1)(A)-(E).

[^ 20] See 8 CFR 207.7(c) and 8 CFR 208.21(b).

[^ 21] See Chapter 3, Admissibility and Waiver Requirements [4 USCIS-PM C.3]. See INA 208(b)(2)(A)(i)-(v). See 8 CFR 208.21(a).

[^ 22] See Chapter 3, Admissibility and Waiver Requirements [4 USCIS-PM C.3]. See INA 207(c)(2)(A).

[^ 23] Before February 28, 1998, there was no 2-year deadline in 8 CFR 207.7 or 8 CFR 208.21. Therefore, if a petitioner acquired their status on or before February 27, 1998, the petitioner could have filed their Form I-730 at any time before February 28, 2000.

[^ 24] See 8 CFR 207.7(d), 8 CFR 208.21(c), and 8 CFR 208.21(d).

[^ 25] See, for example, INA 208(b)(3) (“A spouse or child . . . of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.”).

[^ 26] RE4 and REF have also previously been used for a refugee class of admission codes, including some principal applicants, but are no longer in use for newly admitted refugees.

[^ 27] See 8 CFR 208.21(b).

[^ 28] See 8 CFR 207.7(c).

[^ 29] See 8 CFR 207.7(c) and 8 CFR 208.21(b).

[^ 30] See 8 CFR 207.7(c) and 8 CFR 208.21(b).

[^ 31] See 8 CFR 207.7(c) and 8 CFR 208.21(b).

[^ 32] See 8 CFR 207.7(c) and 8 CFR 208.21(b). CBP determines whether a beneficiary is eligible for admission at the port of entry.

[^ 33] See 8 CFR 204.2.

[^ 34] See INA 101(a)(35).

[^ 35] See, for example, *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005); *Matter of Da Silva*, 15 I&N Dec. 778 (BIA 1976); and *Matter of H-*, 9 I&N Dec. 640 (BIA 1962). This guidance is effective for the Refugee/Asylee Relative Petition (Form I-730), Application for Asylum and for Withholding of Removal (Form I-589), and Registration for Classification as Refugee (Form I-590) as of March 3, 2025, and applies to requests pending or filed on or after that date.

[^ 36] See INA 101(a)(35).

[^ 37] See *Matter of H-* (PDF), 9 I&N Dec. 640 (BIA 1962) (holding that polygamous marriages are not recognized for immigration purposes, even if recognized as lawful in the jurisdiction where the marriage took place).

[^ 38] See INA 101(b)(1)(A). See Volume 6, Immigrants, Part B, Family-Based Immigrants, Chapter 8, Children, Sons, and Daughters, Section A, Definition of a Child, Subsection 1, Child Born In or Out of Wedlock [6 USCIS-PM B.8(A)(1)].

[^ 39] See Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens, Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section B, Legitimated Child [12 USCIS-PM H.2(B)]. 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 (12th ed. 2024). In most cases, a person's residence is the same as a person's domicile. A legitimated child includes a child of a Form I-730 petitioner who is the child's genetic parent, or their gestational parent at the time of the child's birth, if the relevant jurisdiction recognizes the gestational parent as the child's legal parent.

[^ 40] See INA 101(b)(1)(B).

[^ 41] See INA 101(b)(1)(E)(ii).

[^ 42] See INA 101(b)(1)(E).

[^ 43] A natural parent may be a genetic parent, or a gestational parent (who carries and gives birth to the child) if the relevant jurisdiction recognizes the gestational parent as the child's legal parent. See INA 101(b).

[^ 44] See INA 101(b)(1)(D).

[^ 45] See INA 101(b)(1). See 8 CFR 207.7(c) and 8 CFR 208.21(b).

[^ 46] See Pub. L. 107-208 (PDF) (August 6, 2002).

[^ 47] See INA 207(c)(2)(B).

[^ 48] See INA 208(b)(3)(B).

[^ 49] See INA 208(b)(3)(B). For purposes of determining a beneficiary's eligibility under the CSPA, the petitioning parent's asylum application is either an Application for Asylum and for Withholding of Removal (Form I-589), or the written record of the petitioning parent's positive credible fear determination if USCIS grants asylum through the Asylum Merits Interview (AMI) process. For aliens who receive their grant of

asylum through the AMI process, USCIS considers the date USCIS serves the positive credible fear determination on the alien to be the asylum application date.

[^ 50] See INA 207(c)(2)(B). See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act, Section E, Derivative Refugees, Subsection 2, Determining Child Status Protection Act Age [7 USCIS-PM A.7(E)(2)]. USCIS considers the date a USCIS officer interviews the principal refugee parent for Registration for Classification as Refugee (Form I-590), as the date that the parent applied for refugee status.

[^ 51] See Child Status Protection Act, Pub. L. 107-208 (PDF) (August 6, 2002).

[^ 52] See 8 CFR 207.7(c) and 8 CFR 208.21(b).

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

[^ 54] See Volume 6, Immigrants, Part B, Family-Based Immigrants, Chapter 8, Children, Sons, and Daughters, Section A, Definition of a Child, Subsection 1, Child Born In or Out of Wedlock [6 USCIS-PM B.8(A)(1)].

[^ 55] See INA 101(b)(1)(B) (Stepchildren are included in the INA definition of a child so long as the parents married when the stepchild, or the spouse's biological child, was under the age of 18.).

[^ 56] See INA 101(b)(1)(B).

[^ 57] See INA 101(b)(1)(A), INA 101(b)(1)(C), and INA 101(b)(1)(D).

[^ 58] See 8 CFR 208.21(c) (explaining that an otherwise eligible beneficiary may be approved "regardless of the status of that spouse or child in the United States").

[^ 59] See 8 CFR 208.22.

[^ 60] See INA 241(a)(5).

Chapter 3 - Admissibility and Waiver Requirements

Derivative asylees and derivative refugees are subject to different grounds of ineligibility. These bars and grounds of inadmissibility are summarized below.

Derivative asylees are subject to most asylum bars while derivative refugees are subject to certain grounds of inadmissibility. Both derivative asylees and refugees are subject to the persecutor bar.

A. Following-to-Join Asylee Bars to Asylum

Following-to-join asylee (FTJ-A) beneficiaries are subject to the first five asylum bars noted in the Immigration and Nationality Act (INA).[1] The sixth bar regarding firm resettlement does not apply.[2] The

five applicable bars include:

- Persecution of another person on account of race, religion, nationality, membership in a particular social group, or political opinion;[3]
- Convicted of a particularly serious crime that makes the alien a danger to the community of the United States;[4]
- Serious reasons to believe the alien has committed a serious non-political crime outside of the United States before the alien arrived in the United States;[5]
- Reasonable grounds for regarding the alien as a danger to the security of the United States;[6] and
- All terrorism-related inadmissibility grounds (TRIG) in INA 212(a)(3)(B)(i)(I) - (IV), INA 212(a)(3)(B)(i)(VI) and INA 237(a)(4)(B) (encompassing all TRIG except for INA 212(a)(3)(B)(i)(V)), unless in the case of an alien described in INA 212(a)(3)(B)(i)(IV), the Attorney General determines in their discretion that there are not reasonable grounds for regarding the alien as a danger to the security of the United States.[7]

B. Following-to-Join Refugee Grounds of Inadmissibility and Waivers

Following-to-join refugee (FTJ-R) beneficiaries must not have ordered, incited, assisted, or otherwise participated in the persecution of another, and must be otherwise admissible as an immigrant.[8] A few exemptions to admissibility requirements apply and FTJ-R beneficiaries may seek a waiver for other applicable inadmissibility grounds.

1. Exemptions

The following grounds of inadmissibility do not apply to refugees, including derivatives:

- Public charge;[9]
- Labor certification;[10] and
- Documentation for immigrants.[11]

2. Applicable Inadmissibility Grounds

- Health-related;[12]
- Crime-related;[13]
- Security-related;[14]
- Illegal entrants and immigration violators;[15]
- Ineligibility for citizenship;[16]
- Aliens previously removed;[17] and
- Miscellaneous.[18]

3. Waivers

USCIS may waive all applicable inadmissibility grounds listed above for humanitarian purposes, to assure family unity, or when it is in the public interest, except for controlled substance traffickers[19] and security-related grounds.[20]

Footnotes

[^ 1] See INA 208(b)(2)(A)(i)-(v). See 8 CFR 208.21(a).

[^ 2] See INA 208(b)(2)(A)(vi).

[^ 3] See INA 208(b)(2)(A)(i).

[^ 4] See INA 208(b)(2)(A)(ii).

[^ 5] See INA 208(b)(2)(A)(iii).

[^ 6] See INA 208(b)(2)(A)(iv).

[^ 7] See INA 208(b)(2)(A)(v). See the Terrorism-Related Inadmissibility Grounds (TRIG) webpage.

[^ 8] See INA 207(c)(2)(A).

[^ 9] See INA 212(a)(4).

[^ 10] See INA 212(a)(5).

[^ 11] See INA 212(a)(7)(A).

[^ 12] See INA 212(a)(1).

[^ 13] See INA 212(a)(2).

[^ 14] See INA 212(a)(3).

[^ 15] See INA 212(a)(6).

[^ 16] See INA 212(a)(8).

[^ 17] See INA 212(a)(9).

[^ 18] See INA 212(a)(10).

[^ 19] See INA 212(a)(2)(C).

[^ 20] See INA 212(a)(3)(A), INA 212(a)(3)(B), INA 212(a)(3)(C), and INA 212(a)(3)(E).

Chapter 4 - Documentation and Evidence

A. Filing

The petitioner must file the Refugee/Asylee Relative Petition (Form I-730) in accordance with the form instructions.[1] The petitioner must file a separate petition for each qualifying family member.[2]

The petitioner must file Form I-730 within 2 years of the petitioner's refugee admission or asylum approval.[3] USCIS may exercise discretion to waive the filing deadline for humanitarian reasons.[4]

B. Burden of Proof

The petitioner bears the burden of establishing that their qualifying spouse and children[5] are eligible to receive following-to-join benefits.[6] The petitioner must establish that the beneficiaries meet all eligibility requirements at the time of filing through adjudication.[7]

C. Standard of Proof

The standard of proof is the amount of evidence needed to establish eligibility for the benefit sought. USCIS evaluates the Form I-730 under the preponderance of the evidence standard.[8] Therefore, even if there is some doubt with respect to eligibility criteria, if the petitioner submits relevant, probative, and credible evidence that leads an officer to believe that the claim is probably true or more likely than not true, then the petitioner has satisfied the standard of proof.[9]

However, with respect to following-to-join refugees (FTJ-Rs), there is one exception to the preponderance of the evidence standard. If there is evidence that would permit a reasonable person to conclude that the FTJ-R beneficiary may be inadmissible, the petitioner or beneficiary must demonstrate that the beneficiary is admissible under the higher "clearly and beyond doubt" standard.[10] Thus, if evidence of an FTJ-R beneficiary's inadmissibility emerges, then the petitioner or beneficiary bears the burden to establish that the beneficiary is clearly and beyond a doubt entitled to be admitted and is not inadmissible under Section 212(a) of the Immigration and Nationality Act (INA).

The clearly and beyond doubt standard is higher than the preponderance of the evidence standard. This means that evidence must be stronger and more persuasive to meet the clearly and beyond doubt standard than the evidence necessary to satisfy the lower preponderance of evidence standard.[11] If the petitioner has not met the required standard, the officer may request additional evidence, issue a Notice of Intent to Deny, or deny the case.[12]

D. Evidence

To meet the burden of proof by a preponderance of the evidence, the petitioner must submit evidence of the qualifying spouse or child relationship.[13] The regulations provide that the petitioner should submit primary documentation of the qualifying relationship where possible, and the regulations also allow for

USCIS to consider secondary evidence, affidavits, and credible oral testimony if civilly issued documents are not available to the petitioner.[14]

1. Petitions for a Spouse

The petitioner should list the spouse on the petitioner's application for refugee or asylum status. While the lack of the claimed spouse's information on those applications may raise doubts regarding the claimed relationship, the petitioner's failure to list a spouse on these applications is not a bar to approving the petition for the spouse beneficiary. Officers should elicit testimony and consider any other relevant evidence as to whether a qualifying relationship exists.

The petitioner may still meet their burden of demonstrating eligibility by the preponderance of the evidence where there is a reasonable explanation for not including the spouse on the previously filed application, or where the absence of the spouse's name on the form was factually accurate at the time of filing.

Primary evidence for a petitioning spouse is generally a civilly issued marriage certificate from the country where the marriage occurred and, if applicable, evidence of the legal termination of previous marriages, such as a divorce or death certificate.[15] The petitioner should also submit evidence of any legal name change of either spouse, if applicable.

2. Petitions for Children

The petitioner should generally have listed their children on the petitioner's application for refugee or asylum status. While the lack of the claimed child's information on those applications may raise doubts regarding the claimed relationship, the petitioner's failure to list a child on these applications is not a bar to approving the petition for the child beneficiary. Officers should elicit testimony and consider any other relevant evidence as to whether a qualifying relationship exists.

The petitioner may still meet their burden of demonstrating eligibility by the preponderance of the evidence where there is a reasonable explanation for not including the child on the previously filed application, or where the absence of the child's name on the application was factually accurate at the time of filing.

Primary Evidence

Primary evidence for a petitioning parent on behalf of a child depends on whether the petitioner is the father or mother and whether the beneficiary child is a child born in wedlock, a stepchild, a legitimated child, an out-of-wedlock child, or an adopted child.[16]

Primary evidence for a petitioning mother on behalf of a natural child, whether the child was born in or out of wedlock, is generally a birth certificate showing both the child's name and the petitioning mother's name.[17] If applicable, the petitioner should submit evidence of any legal name change.[18]

Whether born in or out of wedlock, primary evidence of a father-child relationship generally includes the child's birth certificate showing both the child's name and the petitioning father's name.[19]

For a child born in wedlock where the father is the petitioner, primary evidence is generally a marriage certificate showing the petitioning father is married to the beneficiary's mother.[20] If applicable, the petitioning father must also submit evidence of the legal termination of any prior marriages and the beneficiary's mother's previous marriages, such as a divorce or death certificate.[21]

For a child born out of wedlock, the petitioning father must submit:

- Evidence that the child was legitimated under the laws of the jurisdiction of the petitioner or beneficiary child's residence;[22] or
- Evidence that a bona fide father-child relationship exists or existed between the father and beneficiary child.[23]

Evidence of a bona fide father-child relationship should demonstrate emotional and financial ties to the child, and that the petitioner has shown genuine interest in the child's general welfare. Evidence of a bona fide father-child relationship may include, but is not limited to, the following:

- Money order receipts or canceled checks showing financial support of the child;
- Income tax returns in which the petitioner claims the child as a dependent and a member of their household;
- Medical or insurance records that include the child as a dependent;
- School records for the child that include the petitioner's name;
- Correspondence between the petitioner and the child;
- Notarized affidavits of reliable persons who are knowledgeable about the relationship; or
- If applicable, the petitioner must submit evidence of any legal name change related to the relationship.

Primary evidence for a stepchild generally includes the child's birth certificate and the marriage certificate between the petitioner and the child's natural parent showing the marriage occurred before the beneficiary child turned 18 years old.[24]

If the petitioner or the child's natural parent were ever previously married to other people, the petitioner must submit evidence of the legal termination of the previous marriages.[25] The petitioner must also submit evidence of any legal name changes, if applicable.[26]

Primary evidence for an adopted child generally includes a copy of the adoption order demonstrating the adoption was finalized before the child's 16th birthday and evidence that the child resided with the petitioner and was in the petitioner's legal custody for at least 2 years.[27] Primary evidence of legal custody usually consists of a court order for legal custody or the adoption order.[28]

Evidence that the child resided with the petitioner in a familial relationship usually consists of documents demonstrating parental control like the adoptive parents owning or maintaining the property where the child resides and providing support and day-to-day supervision.[29]

USCIS considers the total period of legal custody in the aggregate, like it does for joint residence. Therefore, a break in legal custody or joint residence does not affect time already fulfilled.[30] The petitioner must also submit evidence of any legal name changes, if applicable.[31]

3. Secondary Evidence

If the petitioner is not able to obtain primary documentation such as a civilly registered marriage or birth certificate, the petitioner may submit secondary evidence in support of the qualifying relationship.[32] It is not necessary for the petitioner to submit a statement from the civil authority certifying document unavailability for secondary evidence to meet the petitioner's burden.

Additionally, it is not necessary for a document to be listed as "unavailable" in the U.S. Department of State (DOS) reciprocity table for USCIS to consider secondary evidence submitted by the petitioner.[33] Whether primary or secondary evidence, however, a certified English translation must accompany all documents that are not in English.[34]

USCIS considers secondary evidence to meet the petitioner's burden of proof if primary documentation is not available to the petitioner. This secondary evidence may include baptismal certificates, school records, hospital records, census records, and affidavits. Petitioners may also voluntarily submit parentage testing (DNA) where reliable evidence is otherwise unavailable.

Affidavits are written statements from third parties that the petitioner may provide to meet the burden of proof. Petitioners relying on affidavits should generally submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances.[35] The author of an affidavit does not have to be physically present in the United States, have lawful status in the United States, or be a U.S. citizen.

Affidavits should contain the following information regarding the affiant:

- Full name;
- Address;
- Date and place of birth;
- Their relationship to the petitioner or beneficiary;
- Full information concerning the event; and
- Complete details explaining how the affiant acquired personal knowledge of the event.

The lack of a sworn statement, lack of the affiant's address, or lack of personal knowledge is not disqualifying, but the affidavit may be considered as less probative and may not be sufficient evidence to

meet the petitioner's burden without other secondary evidence.

Footnotes

[^ 1] See 8 CFR 103.2(a)(1). See instructions for the Refugee/Asylee Relative Petition (Form I-730).

[^ 2] See 8 CFR 207.7(d), 8 CFR 208.21(c), and 8 CFR 208.21(d).

[^ 3] See 8 CFR 207.7(d), 8 CFR 208.21(c), and 8 CFR 208.21(d).

[^ 4] See 8 CFR 207.7(d), 8 CFR 208.21(c), and 8 CFR 208.21(d).

[^ 5] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 6] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 7] See 8 CFR 207.7(c), 8 CFR 208.21(b), and 8 CFR 103.2(b)(1).

[^ 8] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 9] See *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (defining more likely than not as a greater than 50 percent probability of something occurring). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 4, Burden and Standards of Proof, Section B, Standards of Proof [1 USCIS-PM E.4(B)].

[^ 10] USCIS generally applies the "clearly and beyond doubt" standard in INA 235(b)(2)(A) and INA 240(c)(2) to admissibility determinations. See *Matter of Bett* (PDF), 26 I&N Dec. 437, 440 (BIA 2014).

[^ 11] See *Matter of Patel* (PDF), 19 I&N Dec. 774, 783 (BIA 1988) (citing *Matter of Carrubba* (PDF), 11 I&N Dec. 914, 917 (BIA 1966)).

[^ 12] For more information, 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)].

[^ 13] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 14] See 8 CFR 207.7(e) and 8 CFR 208.21(f) (cross-referencing to relevant sections of 8 CFR 204.2). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence [1 USCIS-PM E.6].

[^ 15] See 8 CFR 204.2.

[^ 16] See 8 CFR 204.2(d)(2).

[^ 17] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 18] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 19] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 20] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 21] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 22] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 23] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 24] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 25] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 26] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 27] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 28] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 29] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 30] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 31] See 8 CFR 207.7(e) and 8 CFR 208.21(f).

[^ 32] See 8 CFR 207.7(e) and 8 CFR 208.21(f) (stating, “[w]here possible [evidence] will consist of the documents specified in [8 CFR] 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter”). Therefore, Form I-730 petitioners are not subject to the general presumption of ineligibility at 8 CFR 103.2(b)(2)(i) since 8 CFR 207.7(e) and 8 CFR 208.21(f) supersede that general rule.

[^ 33] See DOS’s U.S. Visa: Reciprocity and Civil Documents by Country webpage for country-specific information on the availability and reliability of various foreign documents.

[^ 34] See 8 CFR 103.2(b)(3) (“Any document containing foreign language submitted to USCIS [must] be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that [the translator] is competent to translate from the foreign language into English.”).

[^ 35] See 8 CFR 207.7(e) and 8 CFR 208.21(f) (cross-referencing to relevant sections of 8 CFR 204.2). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence [1 USCIS-PM E.6].

Chapter 5 - Adjudication

In general, the Refugee/Asylee Relative Petition (Form I-730) adjudication process has the following steps when the U.S. Department of State (DOS) interviews the beneficiary at a location where USCIS does not have a presence:

- Receipt;
- Initial domestic processing;
- USCIS decision;
- Beneficiary interview; and
- Travel eligibility determination.[1]

In general, the Refugee/Asylee Relative Petition (Form I-730) adjudication process has the following steps when USCIS interviews the beneficiary at an international or domestic field office:

- Receipt;
- Initial domestic processing;
- Beneficiary interview; and
- USCIS decision.

USCIS has multiple directorates involved in processing Form I-730 petitions. After receipt and intake, USCIS generally completes initial domestic processing.

If the beneficiary is located within the United States, USCIS forwards the petition to the appropriate USCIS domestic field office based on the beneficiary's residence to interview the beneficiary and adjudicate the petition.

If the beneficiary is located outside of the United States, USCIS sends the petition through the DOS National Visa Center (NVC) to a USCIS international field office or a DOS embassy or consulate. If the Form I-730 beneficiary is located outside of the United States in a country where USCIS has an international field office presence, USCIS interviews the beneficiary at the appropriate international field office and adjudicates the petition.[2]

If the Form I-730 beneficiary is located outside of the United States in a country with no USCIS international field office presence, USCIS adjudicates the petition before sending it to a DOS embassy or consulate. DOS interviews and completes processing of the beneficiary on USCIS' behalf and determines the beneficiary's eligibility to travel to the United States.

If the Form I-730 beneficiary completes an interview and additional processing at a DOS embassy or consulate and the DOS consular officer determines the beneficiary is ineligible to travel to the United States, DOS returns the Form I-730 petition to the USCIS domestic processing office with a consular return memo outlining the ineligibility reasons.

The USCIS initial domestic processing office then reviews the information provided by DOS and determines whether to reaffirm the initial approval of the Form I-730 petition or reopen and reconsider the

approval and issue a Notice of Intent to Deny (NOID) to the Form I-730 petitioner.

A. Receipt

By regulation, all Form I-730 petitions must be filed with and adjudicated by USCIS.[3] USCIS receives all Form I-730 filings and enters the Form I-730 data into USCIS systems. USCIS then routes the petitions to an officer depending on two main factors:

- Whether the petitioner received refugee or asylee status; and
- Where the beneficiary is currently located.

B. Initial Domestic Processing

During initial domestic processing of Form I-730 petitions, USCIS conducts an initial eligibility review for eligibility, timeliness, and completeness.

During the initial eligibility review, an officer:

- Determines whether the petitioner is eligible to file the Form I-730 petition;[4]
- Determines whether the petitioner timely filed the Form I-730 petition;[5]
- Determines whether a qualifying family relationship exists between the petitioner and beneficiary listed on the Form I-730;[6] and
- Reviews preliminary security checks.

If the petitioner has not submitted all required evidence or the evidence in the record does not establish eligibility, the officer may issue a Request for Evidence (RFE) or a NOID. The officer issues a denial notice if the officer determines that the petitioner is not eligible to file the Form I-730 petition or the beneficiary is not eligible for following-to-join status.[7]

If USCIS does not issue a denial for a Form I-730 petition during initial domestic processing, and the petition is proceeding to adjudication, USCIS forwards the petition or adjudicates it, depending on whether a USCIS domestic or international field office or DOS embassy or consulate will complete the next processing steps.

If USCIS has a domestic field office or international field office with jurisdiction over the country where the beneficiary is located, USCIS forwards the unadjudicated Form I-730 to a local office for a beneficiary interview and adjudication by a USCIS officer. USCIS sends the Form I-730 petitioner a transfer notice listing the USCIS domestic or international field office where the beneficiary will be interviewed. The petitioner may also be requested to appear for an in-person interview at a USCIS field office on a case-by-case basis.

If the beneficiary lives outside of the United States and USCIS does not have an international field office with jurisdiction over the country where the beneficiary is located, USCIS adjudicates the Form I-730

petition and forwards it to the DOS embassy or consulate where the beneficiary is located, for the beneficiary interview and verification of travel eligibility.

When initial domestic processing is complete, USCIS issues an approval notice to the Form I-730 petitioner stating that USCIS has forwarded the petition to the NVC to be sent to the appropriate DOS embassy or consulate.

C. Beneficiary Interview

Generally, USCIS does not require interviews for Form I-730 petitioners. However, USCIS retains the discretion to interview petitioners on a case-by-case basis.[8]

As a matter of policy, USCIS or DOS interviews Form I-730 beneficiaries to determine their eligibility.[9] The purpose of the interview is for the USCIS or DOS officer to verify the beneficiary's identity and claimed relationship to the petitioner. The officer also elicits information to determine if the beneficiary is barred or inadmissible.

1. Beneficiaries Located Within the United States

USCIS has jurisdiction over Form I-730 for a beneficiary who lives in the United States. After USCIS completes initial intake, receipt, and initial domestic processing, USCIS forwards the petition to the appropriate domestic USCIS field office with jurisdiction for further processing and adjudication. USCIS interviews and adjudicates both following-to-join refugee (FTJ-R) and following-to-join asylee (FTJ-A) petitions for beneficiaries who live in the United States.

If the petitioner filed a Form I-730 petition for a beneficiary who was located abroad but then later enters the United States, the petitioner should notify USCIS that the beneficiary has relocated to the United States in order for USCIS to re-route the petition for further domestic processing.[10] If USCIS has not adjudicated the Form I-730 petition, USCIS notifies the petitioner that it is transferring the petition to another USCIS office and sends the unadjudicated petition to the appropriate domestic field office for interview and adjudication.

If an I-730 beneficiary is in the United States, USCIS generally requests that the beneficiary appear for an interview. USCIS sends a written notice of the date, time, and place of the scheduled interview to the beneficiary.

2. Beneficiaries Located Outside the United States

After USCIS completes initial domestic processing for a beneficiary living outside of the United States, USCIS sends the petition to the NVC for forwarding to the appropriate DOS office or USCIS international field office.[11]

USCIS interviews beneficiaries located outside of the United States in locations abroad where there is a USCIS international field office with jurisdiction. DOS consular officers interview beneficiaries in locations abroad without USCIS international field office jurisdiction. USCIS or DOS notifies the beneficiary of the date, time, and place of their interview. Subject to local office or DOS embassy or consulate policy, USCIS or DOS may require the beneficiary to bring their own interpreter.

3. Interviews

Documentation for Interviews

The beneficiary must provide a certified English translation for any documents provided in support of the Form I-730 if the documents are not in English.[12]

USCIS Interviews

USCIS staff contact and schedule Form I-730 beneficiaries for an interview in a location abroad with a USCIS international field office. During the beneficiary interview, the USCIS officer:

- Confirms the beneficiary's identity;
- Reviews documentation;
- Completes required biographic and biometric checks (which may require coordination with DOS and other vetting partners);
- Verifies the qualifying family relationship;
- Determines whether any mandatory bars or inadmissibility grounds apply; and
- Arranges medical examination and sponsorship assurance (for Form I-730 FTJ-R beneficiaries only).

If the USCIS international office determines that the Form I-730 beneficiary is eligible for following-to-join benefits, USCIS or DOS provides the beneficiary with travel documentation.

DOS Interviews

When the Form I-730 beneficiary resides in a location abroad where there is no USCIS presence or jurisdiction, staff from the DOS embassy or consulate contact the beneficiary to schedule their interview. DOS processing of Form I-730 petitions is similar to USCIS processing of Form I-730 petitions.

However, DOS does not have the authority to adjudicate Form I-730 petitions, and instead conducts a travel eligibility determination of the petition that USCIS previously approved. Generally, a travel eligibility interview by DOS is similar to a USCIS interview; however, DOS officers refer to the Foreign Affairs Manual (FAM) for agency procedures. If DOS determines that the Form I-730 beneficiary is eligible for travel, DOS issues travel documentation to the beneficiary.

D. USCIS Approval

For FTJ-R beneficiaries, if the Form I-730 petitioner files timely and meets all eligibility requirements, and the beneficiary meets all eligibility requirements and admissibility requirements, the USCIS officer approves the petition.[13]

For FTJ-A beneficiaries, if the Form I-730 petitioner files timely and meets all eligibility requirements, and the beneficiary meets all eligibility requirements and admissibility requirements, the USCIS officer may approve the petition as a matter of discretion.[14]

The location of a beneficiary of a Form I-730 determines when USCIS approves a Form I-730 petition.

- For a beneficiary in a location with a USCIS domestic or international field office jurisdiction, the USCIS domestic or international field office adjudicates the Form I-730 petition.
- For a beneficiary abroad in a location without a USCIS presence or jurisdiction, if the petitioner and beneficiary appear eligible and the petitioner establishes the qualifying relationship during initial domestic processing of the Form I-730 petition, USCIS approves the Form I-730 petition and forwards it to the NVC. The NVC then transfers the Form I-730 petition to the appropriate DOS embassy or consulate to interview the beneficiary and verify travel eligibility.

1. Travel Document Issuance

Approved Form I-730 beneficiaries located abroad need a transportation letter or boarding foil from USCIS or DOS to travel to the United States. These documents provide assurance to airline carriers that they may transport the Form I-730 beneficiary to the United States without liability.[15]

Form I-730 beneficiaries who complete processing with USCIS international field offices may receive either a transportation letter or a boarding foil. Form I-730 beneficiaries who complete processing with a DOS embassy or consulate receive a boarding foil.

The Form I-730 beneficiary presents the transportation letter or boarding foil to the U.S. Customs and Border Protection official at the port of entry to be admitted to the United States.

E. Final Eligibility Determination and Department of State Consular Returns

When USCIS interviews Form I-730 beneficiaries domestically or abroad, the USCIS officer approves the petition after all interview and procedural steps have been completed. Processing steps include:

- Verifying the beneficiary's identity and qualifying family relationship;
- For Form I-730 FTJ-R beneficiaries, determining that the beneficiary has not engaged in the persecution of others and applicable inadmissibility grounds do not apply, and that the beneficiary does not have an existing grant of asylum or refugee status by the United States that remains valid;
- For Form I-730 FTJ-A beneficiaries, determining that no mandatory bars apply, and the beneficiary merits a favorable exercise of discretion;

- Confirming that USCIS has completed all required vetting, biometric, and biographic checks and the checks are current; and
- Confirming that the beneficiary has cleared medical requirements through a valid medical exam.

When DOS consular officers interview Form I-730 beneficiaries abroad, the USCIS initial domestic processing office approves the Form I-730 petition before sending the petition to DOS. At the beneficiary interview, if the DOS consular officer does not find the Form I-730 beneficiary eligible to travel to the United States, the officer then completes a consular return memo.

1. Consular Returns

If, during the DOS travel eligibility determination, a DOS consular officer uncovers adverse information that suggests USCIS should not have approved a Form I-730 petition, or that grounds of ineligibility apply, DOS completes a consular return memo and returns the petition to the USCIS office responsible for initial domestic processing for further action.[16]

To facilitate this process, the DOS consular officer prepares a consular return memo outlining the specific issue and reason for returning the petition to USCIS for reconsideration of the approval decision.[17]

When USCIS receives a consular return memo, the USCIS office responsible for initial domestic processing reviews the DOS consular officer's determination. If USCIS finds the reason for the return insufficient to reopen the approval, USCIS reaffirms the petition and sends it to NVC for forwarding to the DOS embassy or consulate for further processing with a memorandum explaining why the reason for the consular return was insufficient to reopen the approved petition.

If USCIS concurs with the ineligibility finding, USCIS issues a motion to reopen and NOID to notify the petitioner of the derogatory information and of the agency's intent to reopen and deny the previously approved Form I-730 petition.[18] Depending on the evidence the petitioner provides, USCIS may then reapprove the petition and return it to DOS for continued processing or deny the petition.

Unless the petitioner withdraws a reopened Form I-730 petition or USCIS denies the petition, USCIS must forward the petition and all accompanying documents to the DOS embassy or consulate responsible for interviewing the beneficiary. USCIS explains how the petitioner overcame DOS's ineligibility finding in the consular return memo in a memorandum attached to the re-approved petition.

When USCIS receives a consular return for a beneficiary and the sole issue is the beneficiary's failure to appear at the interview, the USCIS officer administratively closes the case and sends a notice to the petitioner of the administrative closure. If the beneficiary is still interested in joining the petitioner in the United States and is available to appear at the DOS embassy or consulate, the petitioner may contact USCIS to request that USCIS reopen and resume processing of the petition.[19]

F. Denial

When a petitioner fails to establish eligibility, or the beneficiary fails to meet eligibility requirements, USCIS denies the petition and notifies the petitioner of the reasons in writing.[20] The petitioner cannot appeal the denial of a Form I-730.[21] USCIS explains the specific reasons for the denial in the denial decision[22] and informs the petitioner of the opportunity to file a motion to reopen or reconsider.[23]

1. Denial on the Merits

If, after evaluating all evidence submitted (including in response to an RFE or NOID, if applicable), the officer determines that eligibility has not been established, the officer denies the Form I-730 on the basis of the applicable ineligibility ground or grounds.[24]

2. Denial Solely for Abandonment

If the petitioner fails to respond to an RFE or NOID, the officer may deny the Form I-730 for abandonment only (and not on the merits) after verifying that USCIS followed appropriate notice procedures.[25]

3. Denial for Abandonment and the Merits

The officer may deny the Form I-730 based both upon the merits and for abandonment if:[26]

- The officer determines that the totality of the evidence does not establish eligibility; and
- The petitioner failed to reply to an RFE or NOID, if applicable.

G. Administrative Closures

USCIS administratively closes approved Form I-730 petitions when the beneficiary fails to appear for an interview and the DOS embassy or consulate returns the approved Form I-730 to the USCIS domestic office. When a beneficiary fails to appear for interview, USCIS issues a notice to the petitioner that USCIS has administratively closed the case.[27]

If the petitioner responds that the beneficiary can appear for an interview within 6 months of the date of the response, USCIS reopens, resumes processing and sends the Form I-730 to the appropriate DOS embassy or consulate for additional processing.

If the petitioner does not respond, indicates the beneficiary is unable to appear for an interview, or is unable to specify when the beneficiary can appear, the case remains administratively closed. To request that the petition resume processing, the petitioner must contact USCIS. There is no fee to request that processing of the petition resume.[28]

H. Withdrawals

For beneficiaries located outside of the United States, the petitioner may withdraw their Form I-730 petition at any time until the beneficiary is admitted to or has arrived in the United States. For

beneficiaries located inside the United States, the petitioner may withdraw their Form I-730 petition at any time up until the beneficiary is granted derivative asylee or refugee status. A withdrawal may not be retracted.[29]

Only the petitioner can request withdrawal of the Form I-730. The beneficiary can defer or refuse to travel but cannot withdraw the Form I-730.[30]

The petitioner should sign and date the withdrawal request. An unsigned request from the petitioner to withdraw the petition, or a request to withdraw the petition signed by someone other than the petitioner, including an attorney or accredited representative, is generally insufficient.

If the withdrawal request is insufficient, USCIS should contact the petitioner and inform the petitioner that their request was insufficient for USCIS to accept the withdrawal and, if the petitioner wishes to withdraw the petition, the petitioner should submit a written withdrawal request signed and dated by the petitioner.

I. Appeals and Motions to Reopen or Reconsider

A petitioner may not appeal the denial of a Refugee/Asylee Relative Petition (Form I-730).[31] However, a petitioner may file a Notice of Appeal or Motion (Form I-290B) to request that USCIS reopen the case or reconsider the decision.[32]

The petitioner must file the Form I-290B within 30 days from the date USCIS issued the denial notice (or 33 days if the petitioner received the notice by mail). The filing must include the appropriate filing fee, or fee waiver request, and other documentation in support of the motion.[33]

Footnotes

[^ 1] As a matter of law, authority to adjudicate and process affirmative asylum applications, including Form I-730 following-to-join derivatives of asylees, rests exclusively with DHS. See INA 207 and INA 208. The eligibility determination could include DOS initiating a consular return, as appropriate, to ask USCIS to reconsider the grant. See Section E, Final Eligibility Determination and Department of State Consular Returns, Subsection 1, Consular Returns [4 USCIS-PM C.5(E)(1)].

[^ 2] See the International Immigration Offices webpage for a list of the current field offices outside the United States. Note that there are some countries in which USCIS does not have an international field office, but an office retains jurisdiction over Form I-730 processing. For example, the USCIS Nairobi international field office processes following-to-join refugee petitions in Uganda and Burundi.

[^ 3] See 8 CFR 207.7 and 8 CFR 208.21.

[^ 4] See Chapter 2, Eligibility Requirements, Section A, General Eligibility Requirements, Subsection 1, Petitioners [4 USCIS-PM C.2(A)(1)].

[^ 5] See Chapter 2, Eligibility Requirements, Section A, General Eligibility Requirements, Subsection 1, Petitioners [4 USCIS-PM C.2(A)(1)].

[^ 6] See Chapter 2, Eligibility Requirements, Section A, General Eligibility Requirements, Subsection 1, Petitioners [4 USCIS-PM C.2(A)(1)].

[^ 7] See Section F, Denial [4 USCIS-PM C.5(F)].

[^ 8] See 8 CFR 103.2(b)(9) (“USCIS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request, or any group or class of such persons submitting requests, to appear for an interview and/or biometric collection.”).

[^ 9] See 8 CFR 103.2(b)(9) (“USCIS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request, or any group or class of such persons submitting requests, to appear for an interview and/or biometric collection.”).

[^ 10] If USCIS is not informed of an address change for the Form I-730 beneficiary, the Form I-730 may remain pending until notification.

[^ 11] See 8 CFR 208.21(d) (“USCIS also will send the approved request to the Department of State for transmission to the U.S. Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located.”).

[^ 12] See 8 CFR 103.2(b)(3).

[^ 13] See 8 CFR 207.7(a).

[^ 14] See 8 CFR 208.21(a).

[^ 15] See INA 273(b), which requires the airline carrier to examine travel documents before boarding passengers.

[^ 16] A USCIS international office may also issue a consular return memo if the office is processing a petition that was approved during initial domestic processing. This may occur in situations where the petition was treated as a travel eligibility case during initial domestic processing with the expectation that the beneficiary would be interviewed abroad by DOS, and intervening circumstances (for example, beneficiary relocation or USCIS international office opening) resulted in the beneficiary instead being interviewed by USCIS.

[^ 17] See 8 CFR 103.5(a)(5)(ii).

[^ 18] See 8 CFR 103.2(b)(16).

[^ 19] See Section G, Administrative Closures [4 USCIS-PM C.5(G)].

[^ 20] See 8 CFR 103.3(a).

[^ 21] See 8 CFR 207.7(g) and 8 CFR 208.21(e).

[^ 22] See 8 CFR 103.3(a)(1)(i), 8 CFR 207.7(g), and 8 CFR 208.21(e).

[^ 23] See 8 CFR 103.5.

[^ 24] See 8 CFR 103.2(b)(8).

[^ 25] See 8 CFR 103.2(b)(13) and 8 CFR 103.2(b)(15).

[^ 26] See 8 CFR 103.2(b)(13).

[^ 27] USCIS follows the terms of the *Tsamcho* settlement agreement when administratively closing an I-730 petition if the beneficiary fails to appear for an interview. See the Important Notice of Proposed Class Action Settlement for Individuals Who Have Filed a Refugee/Asylee Relative Petition (Form I-730 Petition) on Behalf of a Relative webpage. See *Tsamcho v. Napolitano*, 1:10-cv-02029 (E.D.N.Y. Feb. 25, 2013).

[^ 28] Petitioners are not required to submit an Application for Action on an Approved Application or Petition (Form I-824) in order to resume processing of Form I-730.

[^ 29] See 8 CFR 103.2(b)(6).

[^ 30] See 8 CFR 103.2(b)(6).

[^ 31] See 8 CFR 207.7(g) and 8 CFR 208.21(e).

[^ 32] See 8 CFR 207.7(g).

[^ 33] For filing requirements, see 8 CFR 103.5.

Volume 5 - Adoptions

Part A - Adoptions Overview

Chapter 1 - Purpose and Background

A. Purpose

Each year, thousands of U.S. citizens and lawful permanent residents adopt children from other countries. The adoption or legal custody of a foreign-born child alone does not convey U.S. immigration status to the child or enable the child to travel to the United States. Congress enacted legislation so that eligible foreign-born adoptees can obtain citizenship or lawful immigration status in the United States.