U.S. Citizenship and Immigration Services

Refugee/Asylee Relative Petition (Form I-730)

USCIS National Stakeholder Engagement

February 22, 2011

Essential Criteria for Form I-730

Who can file a Form I-730?

– A principal refugee or asylee; or

– A lawful permanent resident who acquired that status as a principal refugee or asylee.

Essential Criteria for Form I-730

What is the time limitation to file Form I-730?

- A petitioning asylee must file within two years of the date he/she was granted asylum by a USCIS asylum office or an immigration judge.
- A petitioning refugee must file within two years of the date of admission as a refugee to the U.S.

Essential Criteria for Form I-730

<u>If the asylee or refugee has not filed the I-730 within the prescribed 2-year period, can this requirement be waived?</u>

USCIS can grant an extension of the two-year filing period for humanitarian reasons:

- **USCIS may exercise discretion and grant an extension of the two-year filing period for humanitarian reasons based on a request by the petitioner.**
- **Although a waiver request by the petitioner is normally required, USCIS also retains discretion to grant, on its on initiative *(e.g., sua sponte),* an extension of the filing requirement for humanitarian reasons.**

Essential Criteria for Form I-730

May the asylee or refugee request a waiver of the two-year limitation in order to file the I-730 after two years? (Cont.)

Please note, USCIS determines eligibility for the humanitarian waiver on a case by case basis. Therefore, a petitioner should completely explain the circumstances that prevented him/her from filing timely and provide the necessary documentation to support his/her claims.

Essential Criteria for Form I-730

On whose behalf may a refugee or asylee file the I-730?

An asylee or refugee petitioner may petition for his/her:

- Spouse of a marriage that existed as of the date of admission to the U.S. as a refugee or the date of the grant of asylum;
- Unmarried children who were under the age of 21 at the time the refugee or asylum application was filed;
- Children in utero at the time of the parent's admission to the U.S. as a refugee or date of grant of asylum.

Essential Criteria for Form I-730

Are there any special rules for stepchildren or adopted children?

- In order for USCIS to consider someone as the petitioning asylee's or refugee's stepchild:
  - The marriage that created the relationship must have occurred before the child became 18 years old.

- In order for USCIS to consider someone as the petitioning asylee's or refugee's adopted child:
  - The adoption must have occurred before the child became 16 years old and the child must have been in legal custody and residing with the adoptive parent or parents for at least 2 years. There is an exception to the 2 year residence requirement for certain children who have been battered or subjected to extreme cruelty.

Essential Criteria for Form I-730

Are there any ineligible family members?

- An asylee or refugee petitioner may not petition for his/her:
  - Parent
  - Brother or sister
  - Uncle or aunt
  - Grandparent
  - A spouse or child who has previously been granted refugee or asylee status
  - A person who is not a spouse or child as defined in section 101 of the INA (unless the child is covered under the Child Status Protection Act (CSPA))

Essential Criteria for Form I-730

How do I know if a child is covered under the CSPA?*

- The child was under 21 when the parent filed his/her refugee or asylum application and the child was listed on the form prior to final determination of the application.

OR

- If the child was not included in his/her parent's refugee or asylum application, the child was under 21 when his/her parent filed the I-730.

*Note: General information provided for information purposes only. For detailed guidance, please go to: http://www.uscis.gov/portal/site/uscis and conduct a search under "Child Status Protection Act".

Fees for Form I-730

Are there any fees or costs associated with the I-730?

- There is no fee to file the I-730.
- A fee or fee waiver request is required to file Form I-290B for a motion to reopen/reconsider.

Documentation for Form I-730

What documents should I send to USCIS to establish that I am an asylee or refugee?

- *Examples* of the Most Common Documentation of Refugee or Asylee Status:
  - Copy of passport or Form I-94 containing an admission stamp indicating refugee status.
  - Copy of the approval letter from the USCIS Asylum Office granting asylum.
  - Copy of the decision by the immigration judge or Board of Immigration Appeals (BIA) granting asylum.

Documentation for Form I-730

What documents should I send to USCIS to establish that the beneficiary is my spouse?

- Spouse:
  - Refer to the Department of State reciprocity table for list of evidence available by the country where marriage occurred. In most cases, it will be a civilly registered marriage certificate in the country where the marriage occurred.
  - *http://travel.state.gov/visa/fees/fees_3272.html*
    - Please note, marriage certificates issued by religious organizations, churches, or temples are generally not sufficient in most cases unless supported by foreign law that establishes they are legally recognized in the country where the marriage occurred.
  - Proof of legal termination of all previous marriages of both the petitioner and the beneficiary.

Documentation for Form I-730

<u>What other documents should I send to USCIS to establish that the beneficiary is my spouse?</u>

- Although not required in all cases, it is best to send copies of any documents that establish the bona fides of the relationship.

Documentation for Form I-730

What documents should I send to USCIS to establish that the beneficiary is my child?

- Refer to the Department of State reciprocity table for list of evidence available by the country where birth occurred. In most cases, it will be a civilly registered birth certificate in the country where the child was born.

- *http://travel.state.gov/visa/fees/fees_3272.html*
  - Please note, baptismal or birth certificates issued by religious organizations, churches, or temples are generally not sufficient in most cases unless supported by foreign law that established they are legally recognized in the country of the child's birth.

- The birth certificate for a biological child must include both the child's name and the petitioning parent's name listed on the record.

Documentation for Form I-730

<u>What is the legal definition of child for immigration purposes?</u>

The legal definition of child is found in section 101(b)(1) of the Act and means an unmarried person under 21 years of age who is--

(A) a child born in wedlock;

(B) a stepchild – born in or out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the relationship occurred;

(C) a legitimated child – the legitimation must have occurred under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States; the legitimation must take place before the child turns 18; and the child must be in the legal custody of the legitimating parent or parents at the time of legitimation;

Documentation for Form I-730

What is the legal definition of child for immigration purposes? (Cont.)

(D) a child born out of wedlock – a child born out of wedlock by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)(i) an adopted child – the adoption must have occurred while the child was under age 16 and the adopted child must have been in the legal custody of, and resided with, the adopting parent or parents for at least 2 years.

(ii) the natural sibling of an adopted child – was under age 18 when the adoption of the sibling occurred and the custody and residency requirements have been met.

NOTE: There is an exception for the 2-year custody and residence requirement for children who have been battered or subjected to extreme cruelty by the adoptive parent(s) or by a family member of the adopting parent(s) residing in the same household.

Documentation for Form I-730

What documents should I send to USCIS to establish that the beneficiary is my child?

Adopted Child:

- **Legal document from the court or government granting full adoption of the child by the petitioning asylee or refugee before the child's 16th birthday.**
- **Documentary evidence that the adoptive parent(s) had legal custody of, and resided with, the adopted child for 2 years before their refugee admission or asylum grant.**
- **Evidence may include:**
  - **School records of child citing adopting parent's name;**
  - **Medical records of child citing adopting parent's name;**
  - **Financial records of child citing adopting parent's name;**
  - **Common residence of both adopted child and adopting parent.**
- **If the child was not in the legal custody of/did not reside with the adoptive parent or parents for 2 years because of battery or extreme cruelty by the adoptive parent(s) or by a family member residing in the same household, evidence such as police reports or medical records establishing the beneficiary qualifies for the exception should be submitted.**

Documentation for Form I-730

<u>What documents should I send to USCIS to establish that the beneficiary is my child?</u>

Stepchild:

- Birth certificate (or other record of birth) that has both the child's name and the biological parent's name listed on the record
- For adopted stepchildren, provide documentation necessary to establish an adoption.
- Marriage certificate between the petitioning stepparent and the child's biological or adopting parent showing the marriage occurred before the stepchild reached the age of 18.
- Marriage must also have occurred before the petitioner entered as a refugee or was granted asylum.
- Evidence of the termination of any prior marriages of the petitioner and natural parent of the stepchild.

Documentation for Form I-730

<u>What if I do not have the regular documents to show that the beneficiary is my spouse or child?</u>

- All other documents outside of records of birth, marriage, or adoption decrees are called “secondary evidence” and may be accepted in the discretion of USCIS.
- It is best to send as many secondary documents as possible in order to show a true relationship between the petitioning asylee or refugee and the beneficiary.

Blood or DNA Tests

<u>What if I do not have any documents to show that the beneficiary is my child?</u>

- If no other documentary evidence is available/sufficient to establish eligibility, the petitioning asylee or refugee may provide results of a DNA test to show his paternity or her maternity with the beneficiary child.
- If USCIS suggests that DNA could be helpful in establishing a qualifying biological relationship, USCIS will provide instructions on how to obtain a DNA test. The testing must be conducted by a parentage testing laboratory that is accredited by the American Association of Blood Banks (AABB).
  - Note: USCIS highly recommends that petitioners do not incur unnecessary expense by utilizing any testing facility that is not accredited by the AABB. Test results from unaccredited sources will be rejected.

Blood or DNA Tests

What if I do not have any documents to show that the beneficiary is my child? (Cont.)

- Beneficiaries who are overseas and who need to be tested will be contacted by the appropriate USCIS office or Embassy to come in for a DNA swab, following USCIS/Embassy guidelines. The DNA testing is voluntary for the petitioner and beneficiary. The burden, however, is always on the petitioner and beneficiary to establish the required relationship.
  - A current list of the AABB accredited parentage testing laboratories can be viewed at the following website: www.aabb.org.

NOTE: The cost of any blood test or DNA test is conducted solely at the expense of the petitioner and does not guarantee approval of the I-730.

The Virtual Law Library

How can I familiarize myself with current immigration interpretations concerning family relationships?

- Several binding decisions from the Board of Immigration Appeals (BIA) dictate eligibility concerning the I-730, such as polygamous marriage cases, legitimation cases, customary marriage cases, and adoption requirements, to name a few.
  - These decisions are invaluable for determining eligibility on the I-730 and are available to the public at the website: www.justice.gov/eoir/vll/intdec/lib_indecitnet.html.

Additional Resources

- National Customer Service Center:
  - (800) 375 – 5283
- Texas Service Center Asylum/Refugee Inquiries:
  - asylum.tsc@uscis.dhs.gov
- Nebraska Service Center Asylum/Refugee Inquiries:
  - ncscfollowup.nsc@dhs.gov

U.S. Citizenship and Immigration Services

Asylum-based Form I-485, Application to Register Permanent Residence or Adjust Status

USCIS National Stakeholder Engagement

February 22, 2011

Introduction

- Adjustment of status is a means by which an individual granted asylum may obtain lawful permanent residence without leaving the United States.
  - Derivative asylees can apply for adjustment of status independently of principal asylees if they meet eligibility requirements.

Introduction (Cont'd.)

- What are the requirements for an asylee to become a lawful permanent resident?
  - Apply for adjustment of status;
  - Have been physically present in the United States for at least one year from the date asylum was granted;
  - Continue to meet the definition of a refugee [defined in § 101(a)(42)], or be the spouse or child of a refugee;
  - Not be firmly resettled in any foreign country; and
  - Be admissible to the United States (or be eligible to receive a waiver).

Introduction (Cont'd.)

- Service Centers adjudicate asylum-based adjustment of status applications when the asylee is eligible for an interview waiver

Criteria

- The provisions found in 8 C.F.R. § 209.2 provide the sole and exclusive procedure for asylum-based adjustment of status.
  - NOTE: The provisions found in 8 C.F.R. § 245 are not applicable to asylum-based adjustment of status.

Who May File?

- Any individual who has been granted asylum under INA § 208 may file for adjustment of status:
  - Principal asylee
  - Derivative spouse granted asylum
  - Derivative child granted asylum

*Child Status Protection Act (CSPA)**

- An unmarried child who was under 21 years of age on the date that his or her parent applied for asylum will continue to be classified as a child, even if the child turned 21 years of age after his or her parent's application for asylum was filed.

- *Note: General information provided for information purposes only. For detailed guidance, please go to: http://www.uscis.gov/portal/site/uscis and conduct a search under "Child Status Protection Act".

Derivative Asylees

- The qualifying relationship between a principal and any derivative asylees must continue to exist.
  - If the relationship has ceased to exist, the derivative asylee cannot adjust status. He or she can file for asylum in his or her own right, or file for asylum *nunc pro tunc.*

When Does a Relationship Cease to Exist?

- The relationship between a principal and derivative asylee ceases to exist when any of the following scenarios occur:
  - The applicant is no longer a child/not eligible under CSPA;
  - The applicant marries (at any age);
  - A spouse divorces the principal asylee;
  - A principal asylee naturalizes.

Properly Completed Application for Adjustment of Status

- To be properly filed, the asylee must submit a completed and signed Form I-485, along with the appropriate fee or a properly documented fee waiver.

  – Form I-912, *Request for Fee Waiver* was recently developed to standardize fee waiver requests. While this form is not mandatory, it facilitates the fee waiver request.

Initial Evidence

- Evidence of asylee status
- Photographs
- Form G-325A, *Biographic Information* signed and submitted by asylees between the ages 14 and 79.
- Form I-693, *Report of Medical Examination and Vaccination Record* (Most current version), in a sealed envelope and signed by the asylee and a designated USCIS civil surgeon

Inadmissibilities

- The following grounds of inadmissibility are not applicable to asylees:
  - 212(a)(4) public charge
  - 212(a)(5)(A), (B) & (C) labor certification, unqualified physicians, uncertified health care workers
  - 212(a)(7)(A)(i) immigrant documentary requirements
  - 212(e) foreign residence requirement

Inadmissibilities (Cont'd.)

- The following grounds of inadmissibility may not be waived:
  - 212(a)(2)(C) controlled substance traffickers
  - 212(a)(3)(A) espionage, sabotage, unlawful activity, overthrow
  - 212(a)(3)(B) terrorist activities
  - 212(a)(3)(C) potentially serious adverse foreign policy consequences
  - 212(a)(3)(E) participants in Nazi persecutions or genocide

Inadmissibilities (Cont'd.)

- Any other ground of inadmissibility found in INA § 212 may be waived for
  - humanitarian purposes,
  - to assure family unity, or
  - when it is otherwise in the public interest.
- A waiver application may be requested depending on case-specific factors.
- Generally, violent or dangerous crimes will not be waived as a matter of discretion, except in exceptional and extraordinary circumstances.

Conditional Asylees

- Conditional asylees cannot apply for adjustment of status until his/her conditions have been removed.
- This provision was enacted in 1996 when the Illegal Immigration Reform and Responsibility Act (IIRIRA) amended the refugee definition to include persons who have been persecuted in the past or have a well-founded fear of future persecution on the basis of a forced abortion, involuntary sterilization, failure or refusal to undergo such a procedure, or for other resistance to Coercive Population Control (CPC) practices.
- The original cap was 1,000 on the number of individuals who were admitted as refugees or approved for asylum status on a claim relating to CPC practices during any fiscal year.
- Individuals who were found to be eligible for asylum based solely on their resistance to CPC, and whose security checks were complete and allowed for a final grant, were given a conditional grant, pending assignment of a final approval authorization number within the 1,000-per-year cap.

Conditional Asylees (Cont'd.)

- The Real ID Act of 2005, signed on May 11, 2005, lifted the cap on refugee admissions and grants of asylum based on resistance to CPC. CPC asylees still cannot receive a final grant of asylum until they clear updated background, identity, and security checks.
  - The EOIR periodically provides USCIS with an updated list of CPC asylees who were issued conditional grants of asylum by EOIR, but who have not yet cleared the security checks.
  - USCIS sends scheduling notices for fingerprints to the individual's last known address on file at EOIR.
  - CPC asylees must provide change of address information to EOIR and USCIS. Incorrect or outdated address information jeopardizes their eligibility for full asylum benefits.

Decisions

- USCIS notifies the applicant of the decision. If the adjustment of status application is denied, USCIS will provide the reasons for the denial.
  - There is no right to the appeal process.
  - The applicant may file a motion to re-open/ reconsider the denial.

Decisions (Cont'd.)

- If the application is approved, the asylee's permanent residence is recorded as of the date one year before the date of approval. The approval codes are as follows:
  - AS6 - Principal
  - AS7 - Derivative spouse
  - AS8 - Derivative child

Additional Resources

- National Customer Service Center:
  - (800) 375 – 5283
- Texas Service Center Asylum/Refugee Inquiries:
  - asylum.tsc@uscis.dhs.gov
- Nebraska Service Center Asylum Refugee Inquiries:
  - ncscfollowup.nsc@dhs.gov