



U.S. Citizenship and Immigration Services

Overview

- This presentation will cover three different types of humanitarian benefits related to the I-130, Petition for Alien Relative.
 - Conversion to I-360 for Surviving Spouses
 - Section 204(I) of the Immigration and Nationality Act
 - Humanitarian Reinstatement



Conversion to I-360 for Surviving Spouses



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Background of I-360 Conversion

- Section 568(c) of the FY 10 DHS Appropriations Act Public Law 111-83, enacted on 10/28/09, amended existing benefits for surviving spouses of U.S. citizens.
 - The DHS Appropriations Act amended the widow/widower provisions to remove the 2 year marriage requirement.



Background of I-360 Conversion (Cont'd)

- An I-130 spousal petition:
 - that was pending when the U.S. citizen spouse died is adjudicated as a pending I-360 widow/widower petition.
 - that was approved when the U.S. citizen spouse died is treated as an approved I-360 widow/widower petition.
- The surviving spouse must meet the legal requirements for widow/widower classification and must not have remarried.



Who Can Receive I-360 Conversion Benefits?

- The surviving spouse, if:
 - The deceased was a U.S. citizen,
 - The deceased spouse had already filed Form I-130 on behalf of the surviving spouse,
 - The marriage to the citizen was bona fide,
 - The surviving spouse and citizen were not legally separated at the time of death, and
 - The surviving spouse has not remarried.



Who Can Receive I-360 Conversion Benefits? (Cont'd)

- Children of widows/widowers are eligible for derivative classification.
 - They can be included in the approved I-360 and follow to join the principal.



Who Can Receive I-360 Conversion Benefits? (Cont'd)

- When the widow/er's approved or pending I-130 converts to an approved or pending I-360, the children are included, regardless of whether the U.S. citizen step-parent had filed separate petitions for them.
 - If the children are able to adjust based on the I-360, any previously submitted I-130, in their behalf, will be terminated.



How is I-360 Conversion Requested?

- Conversion need not be requested, as it occurs automatically for both pending and approved I-130 petitions.
- The beneficiary does, however, need to inform USCIS of the petitioner's death, and provide a death certificate.



Other Ways to Obtain Widow/Widower Classification via Form I-360

If the surviving spouse did not have a pending or approved I-130 on file when the U.S. citizen spouse died, he/she may file Form I-360 in the following situations, if:

- A spousal I-130 was denied before 10/28/09
 - Form I-360 must be filed on or before 10/28/11
- A spousal I-130 was never filed and the citizen's death occurred before 10/28/09
 - Form I-360 must be filed on or before 10/28/11



Other Ways to Obtain Widow/Widower Classification via Form I-360 (Cont'd)

- A spousal I-130 was never filed and the citizen's death occurred on or after 10/28/09
 - Form I-360 must be filed within two years of the citizen's death
- Surviving spouses should file Form I-360 with the appropriate Lockbox, as designated on that form's instructions.



Service Centers' Decision and Notification

- When an I-130 is with Service Center Operations (SCOPS) and is converted to Form I-360:
 - Service Centers will send the beneficiary a written decision notifying him/her of the conversion.
- If not eligible for conversion:
 - The I-130 will be denied/revoked and a notice of the decision will be sent to the beneficiary stating the reason(s) for denial/revocation.



Questions?



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Section 204(I)



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Background of 204(1)

- Section 568(d) of the FY 10 DHS Appropriations Act created INA section 204(I) to provide benefits to other surviving relatives, including the spouses of deceased lawful permanent residents.
 - For family-based petitions, INA 204(I) covers principal and derivative beneficiaries.
 - It also covers the adjustment application (IF eligible to adjust) and related applications.



Who Can Receive Benefits Under 204(1)?

- This law was enacted on October 28, 2009 and applies to any petition adjudicated on or after that date - even if the case was filed before that date.
- While eligibility for relief under 204(I) is not limited to I-130 cases, this presentation will focus on I-130 cases.



Who Can Receive Benefits Under 204(1)? (Cont'd)

- In the context of family-based petitions, the following surviving beneficiaries are potentially eligible for benefits under INA 204(I):
 - The principal beneficiary of an Immediate Relative or family-based preference visa petition
 - The derivative beneficiary of a family-based preference visa petition
 - The family-based petition may have been pending or approved when the petitioner or principal beneficiary passed away



Who Can Receive Benefits Under 204(1)? (Cont'd)

- Further, to qualify for 204(I) benefits, the surviving beneficiary must:
 - Have resided in the U.S. when the qualifying relative (petitioner or principal beneficiary) died; and
 - Continue to reside in the United States on the date of the decision on the pending petition or application.
- If one derivative beneficiary meets the residence requirements, the petition can be approved/reinstated which means the remaining derivative beneficiaries also obtain the benefit.
- A Form I-864, filed by an eligible substitute sponsor, may be required for most family-based petitions.



Who Can Receive Benefits Under 204(1)? (Cont'd)

- All other I-130 eligibility requirements must be met through the submission of all required regulatory documentation.
- Beneficiary must have a qualifying relative willing to act as the substitute sponsor on Form I-864, Affidavit of Support
- No fee is necessary.
- No official form exists.



Qualifying Relative

- Spouse,
- Parent,
- Mother-in-law or father-in-law,
- Sibling,
- Child who is at least 18 years of age, son or daughter,
- Son-in-law or daughter-in-law,
- Sister-in-law or brother-in-law,
- Grandparent
- Grandchild
- Legal Guardian



Qualifying Relative, cont.

- Must be a United States Citizen, National or Lawful Permanent Resident
- 18 years of age or older
- Domiciled in any state of the US, District Columbia or any US territory/possession
- Must demonstrate the means to maintain annual income at least 125% of Federal Poverty Line
 - Form I-864 is not adjudicated until the beneficiary is undergoing the visa issuance or adjustment of status process



How is 204(1) Requested?

- For pending petitions:
 - Send your request for 204(I) consideration, accompanied by the death certificate and evidence of qualifying U.S. residence, to the office that has the relative petition.
- For approved petitions where USCIS has not sent a notice of automatic revocation:
 - Send request to the USCIS office that approved the I-130 OR to the USCIS office with jurisdiction of a pending I-485.



How is 204(1) Requested? (Cont'd)

- For petitions that were denied or where USCIS sent a notice of automatic revocation, 204(1) eligibility can be requested in the following ways:
 - For petitions denied/revoked before 10/28/09:
 - An untimely motion can be submitted on Form I-290B with fee, or fee waiver request.
 - Motion should be accompanied by the death certificate and evidence of qualifying U.S. residence.
 - The motion should be filed with the appropriate Lockbox



How is 204(1) Requested? (Cont'd)

- For petitions denied/revoked on or after 10/28/09:
 - A request for Government motion can be submitted.
 - The request for Government motion should be accompanied by the death certificate and evidence of qualifying U.S. residence.
 - No official form exists for requesting Government motions.
 - There's no fee for a Government motion.
 - The request for Government motion should be sent to the office that denied or revoked the petition.



Service Centers' Decision and Notification

- 204(I) determinations on pending petitions, or approvals returned from the Department of State:
 - When 204(I) eligibility is established:
 - Service Centers will send the beneficiary an electronically-generated approval/reaffirmation notice.
 - If 204(I) eligibility is not established:
 - The I-130 will be denied/revoked and a notice of decision will be sent to the beneficiary that discusses the reason(s) for denial/revocation.



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Humanitarian Reinstatement (HR)



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Background

- An approved petition is revoked automatically upon the death of the petitioner
- The regulations allow USCIS to exercise discretion and reinstate the approval of a family-based immigrant visa petition, for humanitarian reasons
 - By regulation, only automatically revoked *family-based* petitions are eligible for consideration
- USCIS determines whether to exercise discretion on a case-by-case basis, given the humanitarian considerations of the particular case



Who Is Eligible?

- By regulation, the principal beneficiary of an approved family-based immigrant visa petition
 - The petition must have been approved prior to the death of the petitioner
- Derivative beneficiaries entitled to accompany or follow to join principal beneficiary



How to Apply?

- Principal beneficiary makes request
 - No official form
 - Letter of request and supporting documentation is sent to the USCIS office that rendered the most recent decision
- Beneficiary must have a qualifying relative willing to act as the substitute sponsor on Form I-864, Affidavit of Support
- No fee
- Request may be submitted at any time



Relatives Eligible to be Substitute Sponsors for Form I-864

- Spouse,
- Parent,
- Mother-in-law or father-in-law,
- Sibling,
- Child who is at least 18 years of age, son or daughter,
- Son-in-law or daughter-in-law,
- Sister-in-law or brother-in-law,
- Grandparent
- Grandchild
- Legal Guardian



Substitute Sponsors (Cont'd)

- Must be a United States Citizen, National or Lawful Permanent Resident
- 18 years of age or older
- Domiciled in any state of the US, District Columbia or any US territory/possession
- Must demonstrate the means to maintain annual income at least 125% of Federal Poverty Line
 - Form I-864 is not adjudicated until the beneficiary is undergoing the visa issuance or adjustment of status process



What to Submit

- Required letter from the Beneficiary requesting reinstatement describing the reasons for the request
- Evidence of substitute sponsor's status in the US
- Form I-864 (must contain original signature of substitute sponsor)
- Evidence to support humanitarian reason for request



Helpful Documentation

- Evidence of relationship with substitute sponsor
- Death certificate of the petitioner
- Copy of approval notice (Form I-797)
- Any correspondence received from the Department of State



Factors Considered

- The impact of revocation on the family unit in the United States, especially on U.S. citizen or LPR relatives or other relatives living lawfully in the United States;
- The beneficiary's advanced age or poor health;
- The beneficiary's having resided in the United States lawfully for a lengthy period;
- The beneficiary's ties to his or her home country; and
- Significant delay in processing the case after approval of the petition and after a visa number has become available, if the delay is reasonably attributable to the Government rather than the alien.



Processing Requests

- No standard processing time
- Expedited handling may be requested and is held to the same standards as any pending application/petition
- If a favorable decision is made,
 - Approval is reinstated and reaffirmed
 - Petition is forwarded back to the NVC or housed in beneficiary's A-file
 - Notification is sent to the estate of the deceased in care of the substitute sponsor
- If unfavorable decision is rendered,
 - Petition remains revoked
 - Notice is sent to the estate of the deceased in care of the substitute sponsor with an explanation of why the request did not meet the criteria
 - Decision cannot be appealed
 - Motion to reconsider may be filed with fee



Who Is Not Eligible for Humanitarian Reinstatement under INA 205?

- Principal, family-based beneficiaries are not eligible if the petitioner's death occurred before the petition was approved
 - Such beneficiaries may seek benefits under 204(I) if they meet the residence requirements
- Derivative beneficiaries, regardless of when the petitioner or principal beneficiary passed away and regardless of the place of residence at the time of death.
 - A derivative may seek benefits under 204(I) when the principal passed away if they meet the residence requirements



What are the Differences Between INA 204(I) and 8 CFR 205.1 Reinstatement?

- **INA 204(I) provides for reinstatement on:**
 - Pending and approved petitions
 - Family-based principal and derivative beneficiaries

Please Note: INA 204(I) requires the principal/derivative beneficiary to be residing in the U.S. when the qualifying relative died.



What are the Differences Between INA 204(1) and 8 CFR 205.1 Reinstatement? (Cont'd)

- **8 CFR 205.1 provides for reinstatement on:**
 - Family-based petitions that were approved while the petitioner was alive, but approval was revoked automatically when the petitioner died, regardless of where the beneficiary was residing.
- **8 CFR 205.1 does not cover:**
 - Any *pending* family-based petitions
 - Derivative beneficiaries (if the principal beneficiary died)



When are INA 204(l) and 8 CFR 205.1 Available?

- **Both the 204(l) and 205.1 options are available on family-based cases where:**
 - Surviving relative is the principal beneficiary;
 - Petition was already approved when the petitioner died; and
 - Principal beneficiary resided in the U.S. when the petitioner died.
- Unless exempt under 8 CFR 213a.2(a)(2)(ii), a legally binding I-864 will be required from an eligible substitute sponsor.



Only INA 204(1) is Available ...

- **Only the 204(I) option is available if the:**
 - Surviving relative is the derivative beneficiary; and/or
 - Petition was pending or approved when the petitioner died.



Only 8 CFR 205.1 is Available ...

- **Only the 8 CFR 205.1 option is available if the:**
 - Surviving relative is the principal beneficiary of a family-based petition
 - The petition was approved when the petitioner died.
 - The surviving relative was not residing in the U.S. when the petitioner died.



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