



U.S. Citizenship and Immigration Services

Family-Based Petitions

California Service Center/Camp Pendleton Outreach

Agenda

- Form I-129F Introduction and Basic Requirements
- Form I-130 Introduction and Basic Requirements
- Form I-751 Introduction and Basic Requirements
- Q & A Session



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Resources

- www.uscis.gov
- Form Instructions
- How Do I? guides
- Links to other websites
- Filing tips



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FORM I-129F PETITION FOR ALIEN FIANCÉ(E)



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Focus of Presentation

- Purpose of a Form I-129F
- Lifecycle of an Approved Form I-129F
- Eligibility Requirements
- Documentary Requirements
- Withdrawals
- K-2/K-4 Dependents
- Appeals and Motions



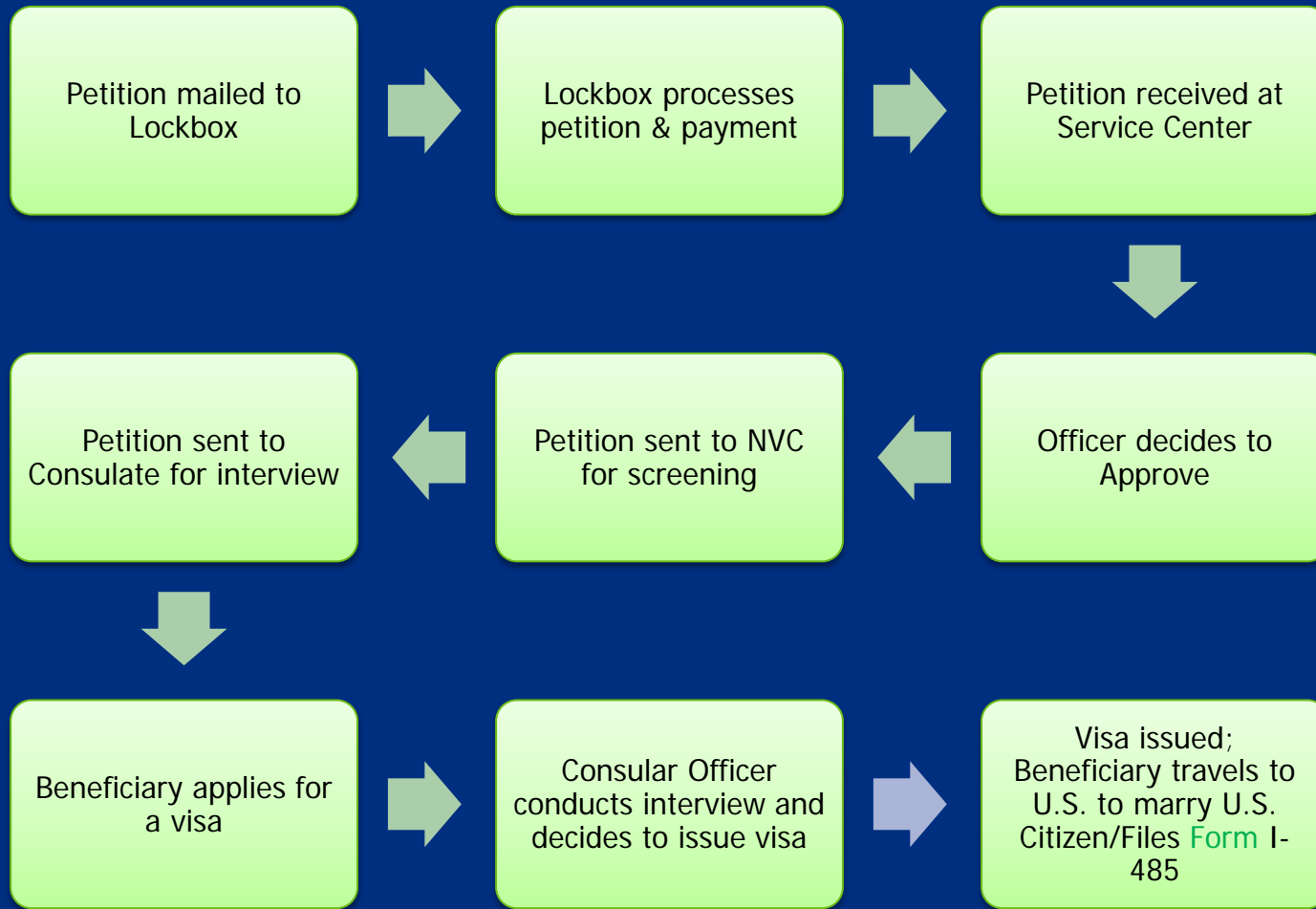
Purpose of the Form I-129F

This form is filed by U.S. citizens to bring the following people to the United States as nonimmigrants:

- The fiancé(e) of a U.S. citizen (K-1) to allow the couple to marry in the U.S. so that the alien beneficiary may pursue adjustment of status. The fiancé(e)'s dependent child (K-2) may accompany the parent.
- The spouse of a U.S. citizen (K-3) and his/her child, (K-4) to allow them to enter the U.S and await the processing of an application for adjustment of status to a lawful permanent resident.



Lifecycle of an Approved I-129F



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K-1 Nonimmigrant Eligibility Requirements:

- The petitioner must be a U.S. citizen.
- The parties must have met in person within 2 years before the filing date of the petition. (This requirement can be waived. 8 C.F.R. § 214.2(k)(2).)
- The parties must have a bona fide intention to marry.
- The parties must be legally free to marry.
- The parties must be willing to conclude a valid marriage in the United States within 90 days after the alien's entry as a K-1 visa holder.



IMBRA Requirements:

- Name of marriage broker, if applicable
- List of any prior petitions filed
- Convictions for any IMBRA specified crimes



K-1 Nonimmigrant Documentary Requirements

- Proof of the petitioner's U.S. citizenship
- If either the petitioner or beneficiary were married previously, evidence the petitioner and beneficiary are free to marry and intend to marry within 90 days of the beneficiary's entry
- Evidence that the petitioner and beneficiary have met in person during the previous 2 years, or evidence to support a waiver of the meeting requirement
- Biographical forms and photos for the petitioner and beneficiary



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Proof of U.S. Citizenship

- U.S. birth certificate issued by a civil authority
- Unexpired U.S. passport issued for a period of at least five years
- Statement executed by U.S. Consular Officer
- Department of State Form FS-240, Report of Birth Abroad of a Citizen of the United States
- Certificate of Naturalization or Certificate of Citizenship
- Department of State issued Passport Card



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Legally Able and Free to Marry

If the petitioner indicates that either party has been previously married, a final divorce decree, decree of annulment, or a death certificate (issued by a civil authority) must be submitted to prove the termination of all previous marriages.



Intent to Marry

- The petitioner must submit evidence that the petitioner and the beneficiary intend to marry each other within 90 days of the K-1 beneficiary's entry.



Evidence of Meeting in Person

Evidence may include:

- Photographs of the petitioner and beneficiary together
- Airline ticket stubs and receipts - that indicate the date(s) of travel
- Copies of passport pages showing admission stamps
- Military orders or letters from commanding officers



Waiver for Meeting Requirements

8 C.F.R. § 214.2(k)

As a matter of discretion, USCIS may waive the 2 year meeting requirement if compliance:

- would result in extreme hardship to the petitioner, or
- would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day.



Validity Period of K-1 Petitions

- An approved K-1 nonimmigrant visa petition is valid for 4 months from the date of USCIS approval (8 C.F.R. § 214.2(k)(5)).
- All Form I-129F petitions returned by DOS to USCIS as expired cases, will remain expired (8 C.F.R. § 214.2(k)(5)).

NOTE: USCIS will not re-open expired K-1 petitions unless there is a clear error regarding statutory eligibility based on the record at the time of the original adjudication of the petition.



K-3 Eligibility Requirements

- Beneficiary must already be married to the USC who filed a Form I-130 on his or her behalf.
- The same USC petitioner who files the Form I-129F K3/K4 nonimmigrant visa petition must file the Form I-130.



K-3 Documentary Requirements

- Proof of USC
- Proof of Form I-130 previously/concurrently filed
- Proof of marriage
- Proof of termination of any prior marriages
- Name of marriage broker, if applicable
- Biographical form and photos



IMBRA Requirements:

- Name of marriage broker, if applicable
- List of any prior petitions filed
- Convictions for any IMBRA specified crimes



Evidence of the Form I-130

- The Form I-130 must be filed prior to or concurrently with the Form I-129F. The filing receipt serves as proof of the Form I-130 filing.
- If the Form I-129F precedes the Form I-130 filing date, the Form I-129F will be denied.



Withdrawals

- The approval of any Form I-129F is automatically terminated when the petitioner dies or files a written withdrawal of the petition, before the beneficiary arrives in the United States



K-2/K-4 Nonimmigrant

- The K-2 nonimmigrant visa allows the unmarried, minor child (under 21) of an alien classified as a K-1 nonimmigrant to accompany the K-1 nonimmigrant to the U.S.
- The K-4 nonimmigrant visa allows the unmarried, under 21, minor child of an alien classified as K-3 nonimmigrant to accompany the K-3 to the U.S.



Appeals and Motions

- The denial of a Form I-129F for a K-1 may be appealed to the Administrative Appeals Office (AAO) in Washington, D.C.
- Form I-130 denials are appealed to the Board of Immigration Appeals (BIA).



FORM I-130

PETITION FOR ALIEN RELATIVE



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Focus of Presentation

- What is a Form I-130?
- Lifecycle of a Form I-130
- Eligibility Requirements
- Numerical Limitations
- Documentary Requirements

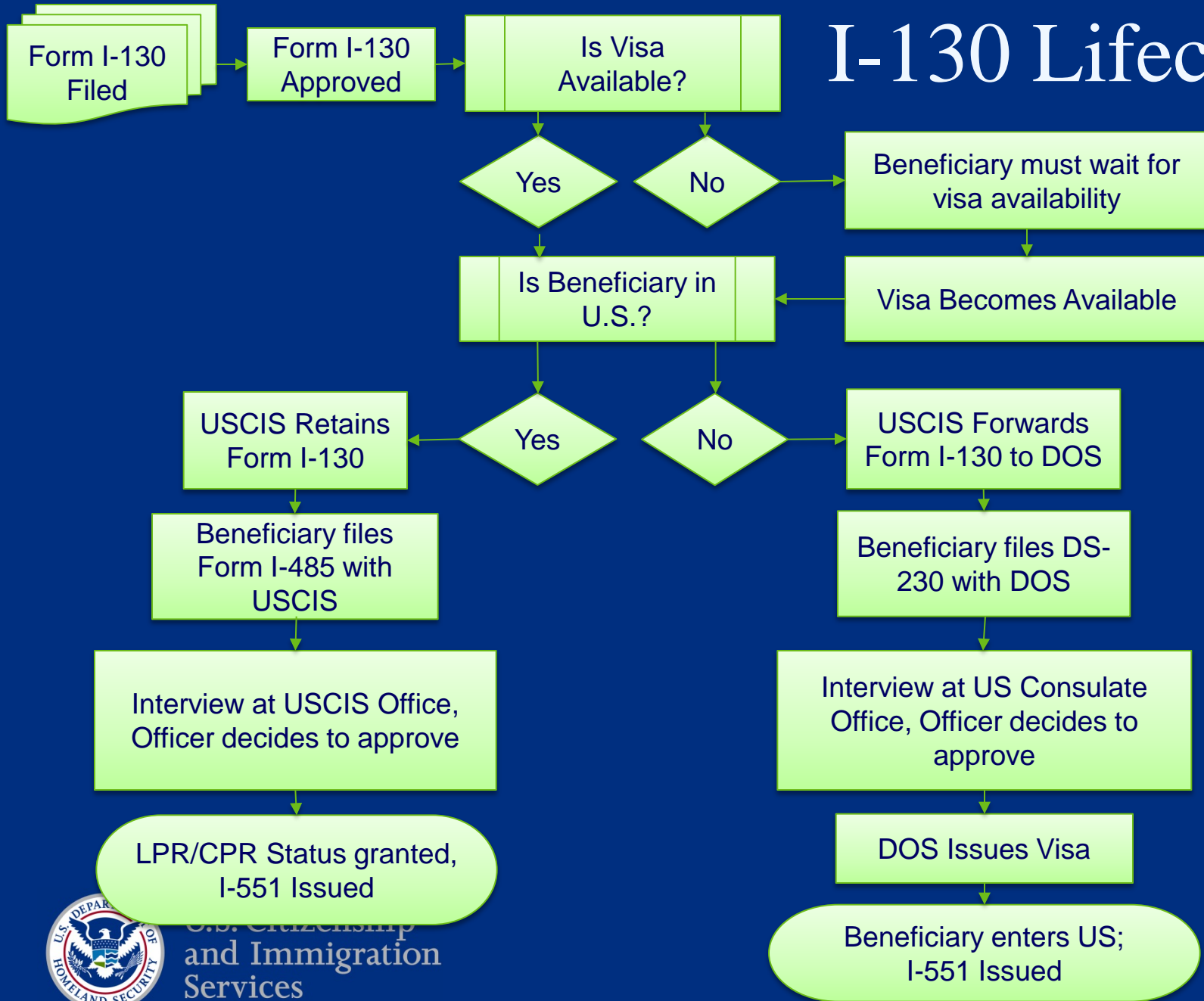


What is a Form I-130?

- Form I-130 is used by a United States Citizen (USC) or Lawful Permanent Resident (LPR) to establish a qualifying relationship with certain relatives so the relative can immigrate to the U.S. or adjust status in the U.S.
- Approval of the Form I-130 does not grant the beneficiary any legal status or work authorization. Instead, it shows that a petitioner has sufficiently established the claimed relationship on which, a subsequent application for an immigrant visa or adjustment of status may be based.



I-130 Lifecycle



U.S. Citizen Petitioners

USCs can file petitions on behalf of the following relatives:

- Spouse
- Child under age 21 (including adopted and step)
- Sibling (as long as the petitioner is 21 years of age at the time he/she filed the petition)
- Parent (as long as the petitioner is 21 years of age at the time he/she filed the petition)
- Unmarried son/daughter
- Married son/daughter



LPR Petitioners

- LPRs can file petitions on behalf of the following relatives:
 - Spouse
 - Child under age 21 (including adopted or step)
 - Unmarried son/daughter
- If an LPR has filed a Form I-130 for his/her child, son, or daughter (F22 or F24), that beneficiary has to be unmarried at time of filing and remain unmarried through adjudication of the Form I-130.
- Once a child, son, or daughter of an LPR marries, the Form I-130 can no longer be approved – even if he/she divorces while the petition is still pending.



Ineligible Beneficiaries

- The following relatives cannot be petitioned for:
 - Uncles/aunts and nieces/nephews
 - Grandparents/grandchildren
 - In-laws
 - Cousins
 - Parents or siblings of LPRs
 - Married sons/daughters of LPRs



Numerical Limitations of Visas

- Numerical Limitations:
 - Congress dictates how many aliens from each country can immigrate to the U.S. each year.
 - There are more aliens with approved visa petitions than visas available based on these limitations, which creates a “waiting list” known as the Visa Bulletin.
 - Not all petitions are subject to the limitations and resulting “waiting list.”



Immediate Relatives

“Immediate Relatives” are not subject to numerical limitations. Immediate relatives include:

- Spouse of a USC
- Child (unmarried and under 21) of a USC
- Parent of a USC (if the petitioner is 21 or older)



Preference Immigrants

- Preference immigrants are subject to numerical limitations, which include:
 - (F1) Unmarried son/daughter of USC (21 or older)
 - (F2A) Spouse of LPR
 - (F2A) Child of LPR (under 21 and unmarried)
 - (F2B) Unmarried son/daughter of LPR (21 or older and unmarried)
 - (F3) Married son/daughter of USC
 - (F4) Brother and sister of USC (USC petitioner must be at least 21)



Priority Date

- All immigrant visa petitions are given a “priority date,” which is the date on which USCIS received the petition (with proper fee and the petitioner's signature).
- The priority date of a visa petition determines the beneficiary’s place in line for the available visas.
- Preference immigrants must wait for their “priority date” to become current before emigrating because they are subject to the numerical limitations.



Visa Bulletin

- The Department of State's Visa Bulletin reflects the “waiting list” and shows the priority dates that are current for each preference category and country.
- A new Visa Bulletin is published each month.
- The Visa Bulletin can be accessed online at www.state.gov



Burden & Standard of Proof

- The burden is always upon the petitioner to establish eligibility for the benefit sought at the time of filing and until adjudication is complete.
- In most circumstances, the standard of proof is a preponderance of the evidence.



Form I-130 Requirements

For a Form I-130 to be approved, the submitted evidence must establish:

- The petitioner's status, and
 - The petitioner's qualifying relationship with the beneficiary.
-
- Eligibility must be established at time of filing the Form I-130.



Evidence of Status

- The first issue the petitioner must establish is his/her eligibility to file the petition, as:
 - A USC;
 - A national of the United States; or
 - A LPR.



Evidence of the Relationship

In addition to establishing eligibility to file the petition, the petitioner must prove that the beneficiary is one of the following, depending on the petitioner's status :

- Spouse
- Child
- Parent
- Unmarried son/daughter
- Married son/daughter
- Sibling



Initial Evidence for Spousal Relationship

- Photographs of both the petitioner and the beneficiary (if the beneficiary is in the U.S.);
- Completed Biographic Information, Form G-325A for both the petitioner and the beneficiary;
- Civilly-registered marriage certificate; and
- Proof of the legal termination of all prior marriage(s) for both the petitioner and the beneficiary.



Relationships Involving Children

- Types of parent/child relationships:
 - Mother of child/son/daughter
 - Father of child/son/daughter
 - Child/son/daughter of mother
 - Child/son/daughter of father
- All of the above revolves around one issue – does the relationship qualify under the definition of “child” found at INA § 101(b)(1)?



Definition of “Child” – INA § 101(b)(1)

- The term "child" means an unmarried person under twenty-one years of age who is:
 - (A) A child born in wedlock;
 - (B) a stepchild,...
 - (C) a child legitimated...,
 - (D) a child born out of wedlock,...
 - (E) (i) a child adopted while under the age of sixteen years...(ii) or if a natural sibling of the child described in (i) under eighteen years.



Child vs. Parent Petitions

- The evidence for the relationship will be similar, whether the petitioner is petitioning for a child or for a parent.
- In either case, the petitioner must establish the parent-child relationship with the beneficiary as described in 8 C.F.R. 204.2(d).
- But only a USC who is 21 years of age or older may petition for a parent.



Initial Evidence for Mother-Child Relationship

- A timely-registered birth certificate issued by the appropriate civil authorities.



Initial Evidence for Father-Child Relationship

- A timely-registered birth certificate issued by the appropriate civil authorities.
- Proof that the child was born in wedlock, legitimated before the age of 18 years, or that the father has shown “active concern” for the child before the child marries or reaches the age of 21 years.



Father-Child Relationship: Child Born in Wedlock

- To qualify under INA § 101(b)(1)(A), the child's biological parents must be married at the time of his/her birth.
- In addition to the child's birth certificate, the petitioner must submit a civilly-registered marriage certificate to show he married the child's mother and
- Divorce certificates and/or divorce decrees to establish that each parent was legally able to marry each other.



Father-Child Relationship: Legitimated Child

- To qualify under INA § 101(b)(1)(C), a child born out of wedlock must be legitimated before reaching the age of 18 years.
- In addition to the child's birth certificate, the petitioner must submit evidence of legitimation, which can include proof of:
 - The father's marriage to the child's mother before the child reached the age of 18 years, or
 - The laws of the father's or child's residence or domicile that deem the child legitimated, along with evidence that the father complied with those laws.



Father-Child Relationship: Child Born out of Wedlock

- A child who was born out of wedlock and who was not legitimated before reaching the age of 18 years may still qualify as a “child” under INA § 101(b)(1)(D).
- In addition to the child’s birth certificate, the petitioner must submit evidence to show that a bona fide parent-child relationship was established before the child marries or reaches the age of 21 years.
- Emotional and/or financial ties, or a genuine concern and interest for the child’s support, instruction or general welfare must be shown.



Stepchild/Stepparent

- To qualify under INA § 101(b)(1)(B), the marriage creating the step-relationship must have occurred before the child reaches the age of 18 years.
- In addition to submitting the child's timely-registered birth certificate, the petitioner must submit the civilly-registered marriage certificate and
- Evidence that any prior marriages were legally terminated before the marriage that created the step-relationship.



Adopted Child

- INA § 101(b)(1)(E) provides the definition of an adopted child for immigration purposes (for adoptions completed in the past). This is the section of law used in Form I-130 Petitions.
- For those USCIs who want to adopt foreign-born orphans, Section 101 (b)(1)(F) and (G) provides the definition of child, and Forms I-600 I-600A or Forms I-800 and I-800A are used.
- .
- Four requirements to establish an adoptive relationship for a Form I-130 Petition:
 - The adoption must be legally valid.
 - The adoption must be finalized before the child reaches the age of 16 years.
 - The child must have been in the legal custody of the adopting parent for 2 years.
 - The adopting parent must have physically resided with the child for 2 years.



Siblings

- Sibling petitions are like any parent-child petition, but:
 - Instead of determining one child's eligibility under INA § 101(b)(1), you have to determine two children's eligibility.
 - The petitioner must be a USC at time of filing.
 - The petitioner must be 21 years of age at time of filing.



Siblings – Cont'd

- The petitioner must submit timely-registered birth certificates for him/herself and the beneficiary.
- Siblings have to have at least one common parent.
- If it's a common mother, each birth certificate must indicate her name as the mother.
- If they only share a common father, each birth certificate must indicate his name as the father and each child must have a qualifying relationship to him under INA § 101(b)(1).



Final Decision:

- Service Centers can make the following decisions:
 - Approve
 - Request for additional evidence
 - Relocate to the District/Field Office for Interview
 - Deny



FORM I-751 PETITION TO REMOVE CONDITIONS ON RESIDENCE



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Focus of Presentation

- Purpose of the Petition to Remove Conditions on Residence (Form I-751)
- Lifecycle of a Form I-751
- Filing Requirements for Form I-751
- How USCIS Processes and Adjudicates a Form I-751

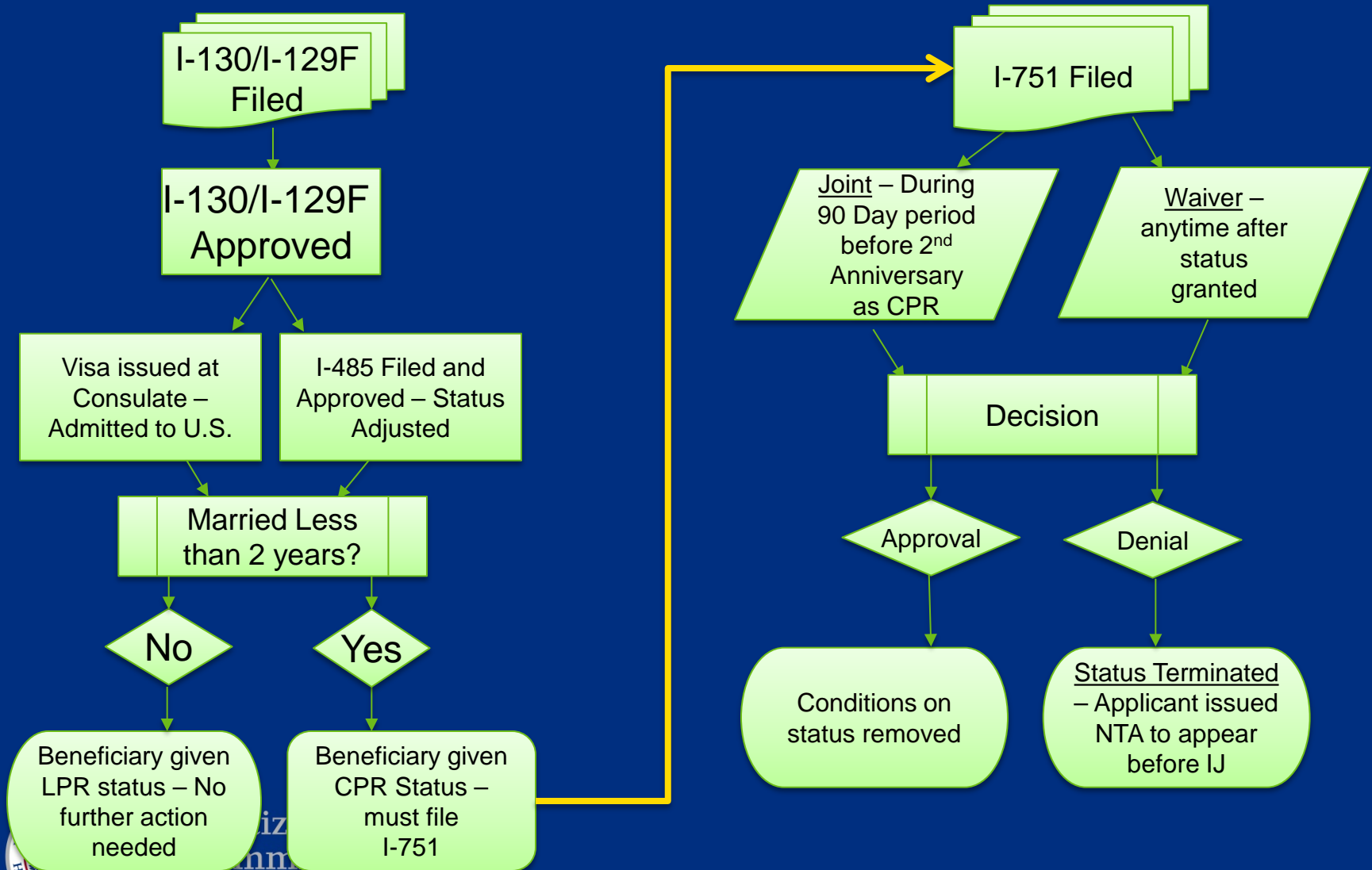


What is a Form I-751?

- The Form I-751 is used by a conditional resident who obtained status through marriage to a petitioning spouse, to request that USCIS remove the conditions on his or her residence.
- Conditional resident status is given to aliens that have been married to the petitioning spouse for less than two years at the time of receiving such resident status.



FORM I-751 PROCESS



What Classifications Need to File the Form I-751?

- Certain spouses of a U.S. citizen = CR1 and CR6
- Fiancé(e) = CF1
- Certain stepchildren of a USC = CR2 or CR7
- Child of a Fiancé(e) = CF2



Who Can File a Form I-751?

- Filing jointly
 - The Conditional Permanent Resident (CPR)
 - The petitioning spouse through whom CPR status was acquired
 - Both must file together
- Filing a waiver
 - The CPR



Children Filing Separately

- CPR children may be included on the parent's petition, unless they cannot for one of the following issues:
 - The child immigrated or adjusted more than 90 days after the CPR parent.
 - The child immigrated or adjusted his/her status before the CPR parent.



Overseas Cases

- Form I-751 cases filed by CPRs who are currently overseas pursuant to military or government orders and who have valid APO/FPO addresses can be processed by Service Centers.
- In order for USCIS to identify filings based on military or government orders, petitioners are required to indicate on top of Form I-751, “ACTIVE MILITARY” or “GOVERNMENT ORDERS”.



Jointly or Waivers?

- If the CPR and the petitioning spouse are still married, the petition is normally filed jointly.
- If the CPR and petitioning spouse are not still married, the CPR must request a waiver of the joint filing requirement.
 - Note: If the CPR files a battered spouse/child waiver then they can still be married to the petitioner.



Waiver Types

There are four circumstances under which a waiver can be filed.

- The petitioning spouse is deceased.
- The petitioning spouse and CPR were married in good faith, but the marriage has been terminated.
- The petitioning spouse and CPR were married in good faith, but the CPR was subjected to battery/extreme cruelty by the petitioning spouse .
- The CPR's removal from the United States would result in extreme hardship (does not require demonstrating a good faith marriage).
- If the CPR qualifies for more than one category of waiver, he/she can apply for all applicable waivers for which he/she qualifies at the time of filing.



When is a Form I-751 Filed?

- If filing jointly, the Form I-751 must be filed by the alien and the petitioning spouse within the 90 day period immediately preceding the second anniversary of the grant of CPR status.
- If the CPR cannot file with the petitioning spouse, then he or she can seek a waiver of the joint petition requirement. The waiver may be filed at any time after status is granted.
- A CPR may file late if he or she provides a written explanation and request that USCIS excuse the late filing. Failure to file before the expiration date may be excused if he or she demonstrates that the delay was due to extraordinary circumstances beyond his or her control and that the length of the delay was reasonable.



How Do CPRs Know to File?

- When granted CPR status at the time of adjustment or after consular processing, an alien should receive an Alien Registration Card (Form I-551) valid for two years.
- Two-year period begins to run on the date the alien is admitted on an immigrant visa or adjusts status as a conditional permanent resident and expires two years later.
- At the time of consular processing or adjustment of status, the alien is notified of the conditional basis of his/her status and the requirement to file a Form I-751.



How Do CPRs Know to File?

- USCIS also sends a second notice shortly before the 90 day period immediately preceding the two-year anniversary of CPR status.
- Failure of USCIS to provide notification to the alien of the filing requirement does not relieve the alien spouse of the requirement to file a Form I-751.



What Happens if the CPR Fails to File?

- CPR status terminates automatically if the CPR fails to timely file the Form I-751 on the 2-year anniversary.
- Additionally, USCIS is required to issue a Notice to Appear (Form I-862) to initiate removal proceedings.



Pre-Adjudication Processing

- Once the petition has been properly filed, a receipt notice will be generated that will include an appointment at an Application Support Center (ASC).
- At the ASC, the CPR spouse and any linked CPR children will have their biometrics (photo, signature and fingerprint) taken.
 - This information is used to produce a Permanent Resident Card should the application be approved.
- Additionally, 10-print fingerprints will be taken for those who are 14-79 years old.
 - This information is used for security checks.



Filing Requirements

- Completed, signed Form I-751, and filing fee.
- Copy of Permanent Resident Card.
- Evidence of the relationship.
- Evidence of qualification for a waiver, if applicable.
- Biometrics fee – even if residing overseas.
- For Overseas Military / Government:
 - Two passport-style photos
 - Two completed fingerprint cards (Form FD-258)
 - A copy of their current military or government orders.



Evidence of Relationship

- Joint ownership of property.
- Joint tenancy in a common property.
- Birth certificates of children born of the marriage.
- Evidence of commingling of financial resources.
- Affidavits.
- Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States



Evidence for a Waiver

- If filing for a waiver, evidence of the qualification for a waiver is also required
 - U.S. spouse deceased – Death certificate.
 - Marriage terminated – Divorce decree or other document showing final termination of marriage.
 - Other evidence to establish the CPR was subjected to battery/extreme cruelty by the USC.
 - Other evidence to establish that the removal of the CPR would result in extreme hardship (does not require demonstrating a good faith marriage).



Decision

- Service Centers can:
 - Approve.
 - Request for additional evidence.
 - Relocate to the District/Field Office for Interview.
 - Deny - Limited
 - Abandonment if there is no response to RFE or the CPR failed to show up for an appointment at the ASC.
 - Divorce was not finalized and ISO had already sent RFE for a divorce decree .



Q&A



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About This Presentation

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