

I-730 Refugee/Asylee Family Reunification Practice Manual



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.



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This guide is intended to assist lawyers and DOJ accredited representatives. It does not constitute legal advice, nor is it a substitute for independent analysis of the law applicable in the practitioner's jurisdiction.

Please note that the hyperlinks referenced in this advisory were last visited in September of 2019.

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I. PUBLICATION

The manual was co-authored by Rebecca R. Schaeffer, who is a Department of Justice (DOJ) accredited representative with Church World Service in Durham, NC, and Katherine Reynolds, who is the Interim Director of the Elon University School of Law Humanitarian Immigration Law Clinic in Greensboro, NC; both worked on this project in their individual capacities. It was edited by Victoria Neilson, managing attorney of the Defending Vulnerable Populations program at the Catholic Legal Immigration Network, Inc. (CLINIC), and Reena Arya, senior attorney with the Training and Legal Support program of CLINIC, and published in coordination with the United Nations High Commissioner for Refugees (UNHCR).

Drawing from CWS Durham's longstanding partnership with the Duke University School of Law's Immigrant and Refugee Project, law students from DIRP assisted in drafting several of the appendices, including: Summary Chart for Form I-730 Processing; Flow Charts for Current Form I-730 Processing; Sources of Law for Form I-730 Refugee/Asylee Relative Petitions; Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws; and Resources by Regional Focus.

II. DISCLAIMER

This manual has been prepared to assist authorized immigration practitioners (licensed attorneys and DOJ accredited representatives) in their understanding of the United States Citizenship and Immigration Services (USCIS) Form I-730 Refugee/Asylee Relative Petition and its processing with USCIS and the U.S. Department of State (DOS). This manual is NOT meant to assist *pro se* applicants, although they may find it helpful. This manual is NOT to be used by anyone engaged in the unauthorized practice of immigration law. Additionally, as USCIS policies may change over time, practitioners should note that this manual was published and is up-to-date as of September 2019. Practitioners can check the Catholic Legal Immigration Network, Inc. website for possible future updates. This manual is not intended to constitute legal advice. Practitioners must perform their own research and perform their own analysis; every case is very fact-specific and the law is constantly changing. Finally, this manual does not have an answer to every scenario that may arise; however, we hope that practitioners will find it to be a useful starting point and resource for Refugee/Asylee family reunification.

III. HOW TO USE THIS MANUAL

Information contained in this manual is intentionally redundant, anticipating that a practitioner may refer to only one section in an instance of looking for assistance for a specific question. However, especially for practitioners new to Form I-730 filings, it is recommended that this manual be read in its entirety at least once before relying on it as a quick reference guide. Nothing in this manual should be copied verbatim, rather, the statutes, regulations, and case law cited can be used in crafting case-specific responses for individual petitioners.

A separate section outlining the Sources of Law for Form I-730 Refugee/Asylee Relative Petitions is included in Appendix v. Additionally, relevant excerpts of the Immigration and Nationality Act (INA), Code of Federal Regulations (CFR), USCIS Policy Manual, DOS Foreign Affairs Manual (FAM), and other sources of U.S. law, regulation, and policy are referenced throughout the manual. Practitioners wishing to conduct legal research beyond the scope of this manual should consult the Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws in Appendix vi.

The information contained in this manual is current as of its publication date of October 2019. Questions

regarding the manual's content and suggestions for future revisions can be directed to Victoria Neilson and Reena Arya at the Catholic Legal Immigration Network, Inc. at vneilson@cliniclegal.org and rarya@cliniclegal.org.

I. INTRODUCTION TO THE FORM I-730

U.S immigration law¹ provides a specific process to enable certain refugees and asylees in the United States to be reunited (i.e. “follow-to-join”) with petitionable² spouses and unmarried children. This process is initiated by the principal refugee or asylee’s filing of Form [I-730 Refugee/Asylee Relative Petition](#)³ which is adjudicated by the U.S. Citizenship and Immigration Services (USCIS). Field Offices or the U.S. Department of State (DOS), depending on the beneficiary’s location. USCIS or DOS will complete the processing of an approved Form I-730 by interviewing the beneficiary, scheduling medical examinations, and issuing visa foil numbers. The Form I-730 follow-to-join process allows a principal applicant who was granted asylum or was resettled in the United States as a refugee, to request derivative status for their spouse and/or unmarried children. The spouse and/or unmarried children can be from any country, living as a citizen or national of that country, or living outside of the country of citizenship in any status. This process of reunification is referred to as “follow-to-join,” regardless of the beneficiary’s location.

The follow-to-join process may be used for spouses and unmarried children who live overseas or who live in the United States. Although follow-to-join processing for refugee and asylee beneficiaries has many similarities, there are significant differences between the processes for refugees and asylees regarding the petition’s initial adjudication, consular processing, and the beneficiary’s ultimate travel to the United States.

Department of Justice (DOJ) accredited representatives and licensed attorneys who represent petitioners in filing Form I-730 petitions may wish to contact local refugee resettlement agencies and immigration attorneys who handle asylum cases, in order to make them aware that they will assist refugees and asylees in follow-to-join petitions. Many resettlement agencies do not have a legal program and asylum attorneys may not be aware of or may not want to be involved in Form I-730 petitions. Be an advocate for family reunification!

1 See Appendix v. Sources of Law for Form I-730 Refugee/Asylee Relative Petitions.

2 This manual uses the term “petitionable” to mean a spouse or unmarried child who is legally eligible to be the beneficiary of a Form I-730 petition. This term is not used in the Immigration and Nationality Act or the regulations.

3 See USCIS, [Form I-730 Refugee/Asylee Relative Petition](#).

II. FREQUENTLY USED TERMINOLOGY

Form I-730 Refugee/Asylee Relative Petition is the USCIS Form for Refugee/Asylee family reunification. It is also referred to as an “I-730 petition” or “follow-to-join petition.”

Principal Applicant (PA)/Petitioner refers to the primary individual from whom the refugee or asylee benefits are derived—that is the refugee or asylee who is petitioning for their relative(s). The petitioner has the legal right to file a Form I-730 for petitionable spouses and unmarried children. For immigration practitioners, the petitioner is also almost always the client. Only PAs can file Form I-730s for petitionable family members; the derivative asylees and refugees who obtained their status through their spousal or parent-child relationship to the PA are not eligible to file Form I-730s.

Beneficiary is the spouse or unmarried child on whose behalf the petitioner is requesting reunification. A beneficiary does not have the right to file a Form I-730 on behalf of other family members. A beneficiary may withdraw from the follow-to-join process by refusing to attend an interview or refusing to travel to the United States after an interview.

Derivative Asylee is a PA asylee’s spouse or child who is granted derivative asylee status based on their relationship to the PA. An individual may acquire derivative asylee status at the time of the asylum grant (if they were included on the Form I-589 and physically present in the United States) or after asylum is granted, following approval of the Form I-730. In the context of follow-to-join, they are also referred to as **Visa 92 or V92 beneficiaries**.⁴

Derivative Refugee is a PA refugee’s spouse or child who is granted derivative refugee status based on their relationship to the PA. An individual may acquire derivative refugee status at the time of refugee resettlement processing or following approval of the Form I-730. In the context of follow-to-join, they are also referred to as **Visa 93 or V93 beneficiaries**.⁵

Follow-to-Join refers to the process whereby eligible spouses and unmarried children can be reunited and/or receive lawful status from their principal asylee or principal refugee family member through the adjudication of a Form I-730.⁶ Anyone who was not included as a derivative on the PA’s Form I-589/Form I-590 and who did not accompany the petitioner (i.e. who did not receive asylum or refugee status *at the same time* as the petitioner) can receive follow-to-join benefits. Follow-to-join refers to the process of a derivative spouse or child receiving refugee or asylee status *after* the petitioner, regardless of whether the derivative family member is living in the United States or another country, as the family member is following the petitioner in time (vs. accompanying the PA and receiving status at the same time as the PA). Depending on the beneficiary’s location, there may be various reasons why the beneficiary could not have received derivative refugee or asylee status at the same time as the petitioner.⁷

⁴ See DOS Foreign Affairs Manual, [9 FAM 203.5-4](#).

⁵ *Id.*

⁶ *Id.*

⁷ See, generally, [8 CFR § 207.7](#); [8 CFR § 208.21](#).

Consular Post is a **U.S. Embassy** or **Consulate**. A U.S. Embassy is the headquarters for U.S. Government representatives serving in a foreign country. An embassy is normally located in the capital city. It may have branches, known as Consulates, in other cities.

USCIS District or Field Office may be located in the United States or another country.

USCIS Service Center located only in the United States and where Form I-730s are initially reviewed for the first step in adjudicating.

Note: The Trump administration recently announced plans to close all USCIS offices abroad.⁸ Several months following this announcement, USCIS clarified that all but seven of its 23 international offices will be closed by August 2020.⁹ This change will dramatically alter Form I-730 processing and is likely to take effect in Fiscal Year 2020. This manual references instances where the closure of USCIS international offices is likely to affect future Form I-730 processing; however, as of the time of publication, neither the exact timeline for implementation nor the extent to which the announced closings will affect Form I-730 adjudication is known.¹⁰

Note: Common abbreviations are defined in Appendix i. Other terms used in this manual will be defined in their first instance.

⁸ See Miriam Jordan, *Trump Administration Plans to Close Key Immigration Operations Abroad*, N.Y. TIMES, Mar. 12, 2019.

⁹ See USCIS, *USCIS Will Adjust International Footprint to Seven Locations*, Aug. 9, 2019. USCIS plans to maintain operations at its international field offices in Beijing and Guangzhou, China; Nairobi, Kenya; and New Delhi, India. USCIS had previously announced the continuation of operations in Guatemala City, Guatemala; Mexico City, Mexico; and San Salvador, El Salvador, as part of a whole-of-government approach to address what the administration has termed, the crisis at the southern border.

¹⁰ Please be advised to check the USCIS website for an update of USCIS office closures, <https://www.uscis.gov/about-us/uscis-office-closings>.

III. INITIAL ELIGIBILITY DETERMINATIONS FOR THE FORM I-730

I. WHO CAN FILE A FORM I-730 REFUGEE/ASYLEE RELATIVE PETITION?

An individual who is residing in the United States and who was granted asylum or refugee status as a Principal Applicant¹¹ (PA) may file a Form *I-730 Refugee/Asylee Relative Petition*. Relatives who are granted derivative refugee or asylee status based on their relationship to the PA cannot file a Form I-730 for other family members; only a principal asylee or refugee can file a Form I-730 petition.

In the case of asylees, the PA is the person who filed Form I-589 and in whose name the asylum approval letter or immigration judge decision was issued. To determine whether the potential asylee client is a PA, review the admission category on their I-94 card/document. For refugees, the PA is the person on an overseas resettlement case whose claim is adjudicated for resettlement to the United States. The PA is indicated as a Principal Applicant on the Transportation Security Administration (TSA) letter issued by the U.S. Department of State, Bureau of Population, Refugees, and Migration (PRM).

The person filing the Form I-730 petition is known as the Petitioner. The family member for whom the petition is filed is known as the Beneficiary. A Petitioner may apply for multiple beneficiaries, although a separate Form I-730 must be filed for each beneficiary and evidence must be filed in support of each petition.

At U.S. Embassies and Consulates (hereinafter Consular Posts) and USCIS offices (in the United States and overseas), the beneficiaries of Form I-730 filed by asylees are known as follow-to-join asylees (or Visa 92 beneficiaries). Beneficiaries of a Form I-730 filed by refugees are known as follow-to-join refugees (or Visa 93 beneficiaries).¹²

A petitioner may file a Form I-730 if they have refugee or asylee status, and also if they have become a Lawful Permanent Resident (LPR) based on refugee or asylee status. Naturalized U.S. citizens however, may NOT file a Form I-730 for family members, but rather should file a Form *I-130, Petition for Alien Relative*.¹³ A refugee or asylee may naturalize before reunification with the beneficiary without affecting the adjudication of the Form I-730. The key is that the Form I-730 petition was *filed prior to* the Petitioner's naturalization.¹⁴ However, since it

11 See 9 FAM 203.5-4 to determine whether a refugee or asylee is a Principal Applicant, *see* also the Eligibility Screening questions in Section IV. i..

12 *Id.*

13 See USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019. See also Section XII. Additional Family Reunification Options Beyond the Form I-730.

14 Note: Filing a Form I-730 before the petitioner's naturalization would still require a humanitarian extension if filed after the two-year filing deadline. For asylees, It is also important to note that naturalization of the petitioner will require the derivative to file a Form I-589 for a *nunc pro tunc* (meaning "now for then") asylum application and have it approved by USCIS before the derivative asylee may file a Form I-485 to adjust status to lawful permanent resident. This is because a principal asylee who has naturalized no longer meets the definition of a refugee. Therefore, once the principal asylee has naturalized, a spouse or child is no longer eligible to adjust status as a derivative asylee because they no longer qualify as the spouse or child of a refugee. See INA § 101 (a)(42). Naturalization of a principal refugee does not affect a derivative refugee's eligibility for adjustment of status to permanent resident.

is difficult to predict with certainty how long it will take from filing an application to naturalize and completion of the process, it may be prudent for former asylee or refugee LPRs to wait to seek to naturalize until their relative has been granted derivative status. Likewise, if the Form I-730 is denied and needs to be refiled it would be best for the petitioner not to have naturalized before having to refile.

Note: A refugee or asylee petitioner may file both a Form I-730 petition and a P-3 Affidavit of Relationship (AOR) for the same beneficiary/ies if they are already registered refugees and come from certain countries that have been designated to allow for this status. In some cases, it will be in the client's best interest to file both, particularly in cases where there is limited evidentiary support.¹⁵

II. WHEN SHOULD THE FORM I-730 BE FILED?

A petitioning asylee must file the Form I-730 within two years of the date they were granted¹⁶ asylum by a USCIS Asylum Office or an Immigration Judge.

A petitioning refugee must file the Form I-730 within two years of the date of admission¹⁷ (entry) as a refugee into the United States. Although refugees are approved for refugee status while outside the United States, they do not actually obtain refugee status until they are admitted as refugees upon arrival at a U.S. port of entry.¹⁸

In either scenario, the petitioner should file a separate Form I-730 and supporting evidence with USCIS for each beneficiary for whom they seek reunification.¹⁹

USCIS may exercise discretion and grant an extension of the two-year filing period for humanitarian reasons, based on a request by the petitioner. USCIS determines eligibility for extensions on a case-by-case basis.²⁰ A petitioner should completely explain the circumstances that prevented them from filing in a timely manner and provide the necessary documentation to support their claims. As long as there is an objectively reasonable basis for having missed the deadline, it is worthwhile to request a humanitarian extension.

Based on practice experience, some examples of possible valid reasons for a late filing and requesting a humanitarian extension could include: illness of the petitioner, the inability to locate the beneficiary prior to the expiration of the filing period, and ineffective assistance of counsel if the petitioner received incomplete or faulty

See also, USCIS Policy Manual, Adjustment of Status, [Part L Refugee Adjustment](#) and [Part M Asylee Adjustment](#).

15 *See* Section III.vi. Differences Between the Form I-730 and a P3/AOR and Section XII. Additional Family Reunification Options Beyond the Form I-730.

16 *See* [8 CFR § 208.21\(c\)-\(d\)](#). Note: An asylee's approval date is listed on the approval letter given by the USCIS Asylum Office or the Immigration Judge's order granting asylum.

17 *See* [8 CFR § 207.7\(d\)](#). Note: A refugee's arrival date is listed on the I-94 Arrival Form and stamped on the TSA letter issued by the Bureau of Population, Refugees and Migration (PRM). If the refugee has a passport, this date will also be indicated in the refugee's passport along with a refugee admission stamp.

18 *See* [8 CFR § 207.7\(d\)](#).

19 *See* [8 CFR § 207.7\(d\)](#); [8 CFR § 208.21\(c\)](#).

20 *See* [8 CFR § 207.7\(d\)](#); [8 CFR § 208.21\(c\)-\(d\)](#).

immigration advice.

Note: A petitioner may file both a Form I-730 and a P-3/Affidavit of Relationship (AOR) for the same beneficiary/ies if they are registered refugees from certain designated countries. Having already filed a P-3/AOR with a refugee resettlement agency should NOT in and of itself be a reason for a petitioner to not file a Form I-730, as the processes and eligibility requirements vary for each program.²¹

For those who miss the two-year filing deadline, it is best to request a humanitarian extension at the time the Form I-730 is filed, but USCIS also retains discretion to grant, on its own initiative (i.e. *sua sponte*), an extension of the two-year filing requirement for humanitarian reasons. Part 3 of the Form I-730 provides limited space to explain why the petition was not filed within two years of a grant of asylum or admission as a refugee. A petitioner may also explain the reason in the cover letter that accompanies the Form I-730. When requesting the humanitarian extension, it is best to supplement the Form I-730 petition with as much supporting evidence as possible, such as hospital records, Red Cross/ICRC family tracing documents, and/or communications with prior representatives.

Note: While extensions of the two-year filing period are possible, petitioners seeking to reunite with family members are strongly encouraged to file a Form I-730 within the two-year deadline whenever possible to avoid having to request a discretionary humanitarian extension that may be denied.²²

III. WHO CAN BENEFIT FROM A FORM I-730?

The Immigration and Nationality Act (INA) is the primary source of law for refugee/asylee follow-to-join petitions.²³ The beneficiary can be from any country, living as a citizen or national of that country, or living outside of that country in any status.²⁴ **It is not necessary that the beneficiary meet the refugee definition as the benefit sought through Form I-730 is based on the beneficiary's relationship to the petitioner.**

A beneficiary of Form I-730 may be:

- **A spouse.** To be eligible for a Form I-730 petition, the marriage must have existed prior to the refugee's

21 See Section III.vi. Differences Between the Form I-730 and a P3/AOR and Section XII. Additional Family Reunification Options Beyond the Form I-730

23 See Appendix v. on the Sources of Law for I-730 Refugee/Asylee Relative Petitions for more information. [INA § 207](#) governs refugee admissions, with INA § 207(c)(2) discussing refugee derivative admissions. [INA § 208](#) governs asylum procedures with INA § 208(b)(3) discussing derivative asylees.

24 USCIS [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019, states that a family member may be eligible for following-to-join benefits, "whether living inside or outside of the United States."

date of admission (also known as the date of entry) to the United States, or the asylee's date of asylum grant.²⁵ The marriage must also continue to exist at the time the Form I-730 is filed and the beneficiary is admitted to the United States, or—in the case of a beneficiary already in the United States—is granted status by the approval of Form I-730. Consistent with all spousal immigration petitions, the marriage must be legally valid under the laws of the country in which it was entered into²⁶ and must be *bona fide* (i.e. not entered into solely for immigration purposes).²⁷

A petitionable “spouse” is not explicitly defined in the INA. However, the INA does define who is NOT a spouse in [INA § 101\(a\)\(35\)](#):

“The term “spouse,” “wife,” or “husband,” does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.”²⁸

- An **unmarried child** (defined below), **under 21 years of age** (defined below). The child may be a biological, adopted,²⁹ or a step-child, as defined in [INA § 101\(b\)](#):

The term “child” means an unmarried person under twenty-one years of age who is:

- A. a child born in wedlock;
- B. a **stepchild**, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;
- C. a **child legitimated** 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, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;
- D. 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 their natural mother or to their **natural father** if the father has or had a *bona fide* parent-child relationship with the person;
- E. (i) a **child adopted** while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the

25 See [8 CFR § 208.21\(b\)](#). For a marriage occurring after a refugee's date of entry or an asylee's date of asylum grant, see the Additional Family Reunification Options Beyond the Form I-730 in Section XII.

26 See *Matter of Zeleniak*, [26 I&N Dec. 158, 160 \(BIA 2013\)](#) (“The issue of the validity of a marriage under State law is generally governed by the law of the place of celebration of the marriage.”).

27 See [USCIS Adjudicators Field Manual 21.3](#). See also Appendix vi. on Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws below for guidance on researching relevant country conditions and applicable laws.

28 See [INA § 101\(a\)\(35\)](#). Note: Consummation of a marriage can only occur after the ceremony; there is no such thing as “pre-consummation” of a marriage.

29 For a child to be considered adopted, the adoption must be legally valid under the law of the country where the adoption occurred, must take place when the child is below the age of 16 and the child must have resided with the adoptive parent for at least two years. See [INA § 101\(b\)\(1\)\(E\)](#). See also Appendix vi. Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws below for discussion of country conditions and relevant family/adoption laws.

adopting parent residing in the same household, provided that no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

- The child must be under 21 years of age:
 - > **For Refugee Petitioners** the child must be under 21 at the time that the refugee’s **Form I-590 is filed with USCIS**³⁰ in order to continue to be classified as a child for the purposes of determining Form I-730 eligibility;
 - » Under the Child Status Protection Act (CSPA), the child’s age is frozen as of the date of the principal’s application for refugee status—Form I-590 Registration for Classification as a Refugee—is filed, provided that the child was **listed on the Form I-590** before it was adjudicated.³¹
 - > **For Asylee Petitioners** the child must be under 21 at the time that the Form I-589 **asylum application is filed**³² with USCIS or the Immigration Court in order to continue to be classified as a child under the CSPA and for the purposes of determining Form I-730 eligibility.
 - » Under the CSPA, the child’s age is frozen as of the date that the principal parent filed for asylum, provided that the child was **listed on the Form I-589** before it was adjudicated. If the **parent failed to list the child** on Form I-589, then the child’s age is **frozen** as of the date that the **Form I-730 is filed**.³³

Note: Due to the slow processing times involved in both asylum adjudications and refugee resettlement, the petitioner may have a child born or conceived after filing the Form I-589 or Form I-590 but before the asylum or refugee application is adjudicated. If the child was born after filing the Form I-589 application but before the interview or removal hearing, then the applicant should disclose the child during the asylum interview or during the removal hearing. For refugee admissions, refugees should disclose the child during the USCIS interview or immediately to UNHCR or whomever the referring agency is. In either case, if the applicant does not disclose a child when it would have been possible to do so before a grant of asylum or admission of a refugee, the applicant will have to meet a higher evidentiary burden for the Form I-730 rising to a “clear and convincing” evidence standard.³⁴

- The term “**unmarried**” child is defined in [INA § 101\(a\)\(39\)](#):

30 See [USCIS Child Status Protection Act \(CSPA\)](#), Last Reviewed/Updated: Feb. 2, 2018. To determine a refugee’s date of initial USCIS interview and/or date of approval of DHS refugee status, see Section IV. ii. on Freedom of Information Act (FOIA) Requests below.

31 *Id.* More information can be found in Immigrant Legal Resource Center’s [ILRC, Practice Advisory: Application of the Child Status Protection Act to Asylees and Refugees](#), May 2018. According to this advisory, the filing date of the Form I-590 by the principal refugee is also the date that the principal refugee is interviewed by USCIS abroad. If the parent failed to list the child on Form I-590, then the child’s age is frozen as of the date that the Form I-730 is filed rather than on the filing date of the I-590.

32 *Id.* To determine an asylee’s date of Form I-589 filing, see the Eligibility Screening questions in Section IV. i.

33 *Id.*

34 See [USCIS Adjudicator’s Field Manual, Chapter 11.1](#). See also Section V. Evidentiary Burden of Proof.

When used in reference to any individual as of any time, the term “unmarried” means an individual who at such time is not married, whether or not they were previously married.

In all cases, in order to be eligible for Form I-730 follow-to-join benefits, the child must **continue to be unmarried** until the Form I-730 is approved, for beneficiaries who are in the United States, or until entry into the United States for those who are abroad. [9 FAM 203.5-4\(A\)\(e\)\(5\)](#) states:

(a) Consistent with procedures for immigrant visa derivatives, unmarried children approved as beneficiaries of Form I-730 petitions lose eligibility if they marry after approval of their travel authorization but prior to arrival in the United States. For this reason, Form I-730 child beneficiaries age 14 and older are required to sign a Notice on Pre-Departure Marriage & Declaration at interview to affirm they are unmarried and understand they can no longer derive status from their petitioning parent if they marry before arriving in the United States (see [9 FAM 203.5-4\(A\)\(e\)\(5\)](#)).

(b) However, if the married child subsequently divorces before traveling to the United States, they should be considered eligible, including any applicability of the CSPA [Child Status Protection Act], as if the marriage had not occurred. Per [INA § 101\(a\)\(39\)](#), the term unmarried when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married. As such, a child must be unmarried when he or she seeks (in present tense) to accompany or follow to join. A new I-730 does not need to be filed; the previously approved I-730 may still be used (see [9 FAM 203.5-4\(A\)\(e\)\(5\)](#)).

- A child *in utero* is a child who was conceived before and born after the petitioning father³⁵ was admitted to the United States as a refugee. This child is classified as a child for the purposes of determining Form I-730 eligibility.³⁶
 - For an asylee, a child can only be considered *in utero* if the child was conceived while the petitioning father’s asylum application was pending and born outside the United States after the asylum was granted. If the child was born in the United States, the child would be a U.S. citizen at birth.³⁷

Note: The child’s mother, if not the principal refugee/asylee, shall not be eligible to accompany or follow-to-join the principal refugee/asylee unless the child’s mother was the principal refugee/asylee’s

35 See [8 CFR § 207.7\(c\)](#) and [8 CFR § 208.21\(b\)](#). Note: If the child is *in utero* at the time of the mother’s admission to the United States as a refugee or date of asylum grant, that child will be born in the United States. In this case, no form needs to be filed, as the child is a U.S. citizen at birth. See also [USCIS Adjudicator’s Field Manual, Chapter 21.1](#), which states: “Unlike other classifications, the regulations at 8 CFR 207.7 and 8 CFR 208.21 governing following to join dependents of refugees and asylees allow a child to qualify even if the child was not born until after the petitioner acquired refugee or asylee status, provided such child was *in utero* (i.e., had been conceived) prior to the date on which the petitioner acquired such status. Accordingly, an I-730 petition may be approved for a child who was born within approximately 9 months after the date on which the petitioner acquired status, so long as the beneficiary falls within one of the definitions of child set forth in section 101(b)(1) of the Act.”

36 *Id.* See also USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019, which state, “If the person you are filing for is a child who was conceived but not yet born on the date you were admitted to the United States, the relationship will be considered to exist as of the date you were admitted to the United States.”

37 See [8 CFR § 208.21\(b\)](#).

spouse on the date of the principal refugee's admission as a refugee or on the date the principal asylee was granted asylum.³⁸ An in utero child must have a bona fide relationship with the petitioner under [INA § 101\(b\)\(1\)\(D\)](#), and the petitioner and beneficiary are usually issued a Request for Evidence to submit to a voluntary DNA test. Although USCIS may refer to this as voluntary DNA testing, if a petitioner or beneficiary does not elect to submit to DNA testing to demonstrate the biological relationship, particularly for an in utero child who was not claimed on the petitioner's Form I-589/Form I-590, there is an increase likelihood that USCIS will deny the Form I-730 if the evidence provided does not meet the appropriate standard of proof. Additionally, once the Form I-730 is approved, the child's mother must give legal consent for the child to travel to the United States.³⁹

IV. WHO CANNOT BENEFIT FROM A FORM I-730

No relatives other than spouses and unmarried children under age 21 are eligible to be beneficiaries under Form I-730.

People ineligible for refugee/asylee follow-to-join benefits include:

- A spouse or child who has previously been granted refugee or asylee status.⁴⁰
- A husband or wife, if each was not physically present at the wedding (i.e. proxy marriage) and the marriage was NOT consummated after the ceremony.⁴¹
- A spouse who was married to the petitioner after the refugee's date of arrival in the United States or after the asylee's date of asylum grant.
- A husband or wife, if it is determined that they have attempted or conspired to enter into marriage for the purpose of evading immigration laws.⁴²
- The mother or father of a Form I-730 eligible child who was NOT married to the petitioner prior to the refugee's admission to the United States or the asylee's date of asylum grant.⁴³
- A child who marries while the Form I-730 is in process, including Consular Processing of an approved Form I-730. The refugee or asylee beneficiary's status must remain unmarried on the date the Form I-730 petition is filed, and at the time it is decided by USCIS.⁴⁴ A person cannot meet the definition of "child"

38 See [8 CFR § 207.7\(c\)](#) and [8 CFR § 208.21](#).

39 Additional information on the Hague Convention on the Civil Aspects of International Child Abduction can be found on the [State Department website](#). See also Section IV.iii. Documents to File with an I-730 Petition for more information on legitimation.

40 See [8 CFR § 207.7\(b\)\(1\)](#) and USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019.

41 See [8 CFR § 207.7\(b\)\(4\)](#) and USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019.

42 See [8 CFR § 207.7\(b\)\(5\)](#) and USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019.

43 See [8 CFR § 207.7\(c\)](#) and [8 CFR § 208.21\(b\)](#).

44 See USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019 and [USCIS, Child](#)

under the INA if they are married.

- A child born out-of-wedlock to a father who has not legitimated the child.⁴⁵
- A step-child, if the marriage that created the relationship took place after the child became 18 years old.⁴⁶
- An adopted child, if the adoption took place after the child became 16 years of age, or if the child has not been in legal custody and living with the adoptive parent(s) for at least two years.⁴⁷
- Parents.
- Siblings.
- Uncles or Aunts.
- Nieces or Nephews.
- Grandparents.
- Grandchildren.
- Cousins.
- Any other relatives who do not meet the definition of a spouse or a child under the INA.

Note: As with other immigration petitions, practicing polygamists are not eligible for Form I-730 follow to join benefits because any immigrant coming to the United States to practice polygamy is inadmissible.⁴⁸

Note: If an eligible beneficiary child has a child of their own (i.e. the petitioner's grandchild), that child is NOT eligible for Form I-730 benefits; however, they may be eligible for the U.S. Refugee Admissions P-3/AOR Family Reunification Program (in certain exceptional circumstances, and only if the Petitioner is filing for additional eligible family members),⁴⁹ Humanitarian Parole⁵⁰ and/or a Form I-130 Petition for Alien Relative (in some cases as a derivative of an eligible child

[Status Protection Act \(CSPA\)](#), Last Reviewed/Updated: Feb. 2, 2018.

45 See [USCIS Policy Manual, Volume 12, Part H, Chapter 2](#) for more information on legitimation.

46 See [8 CFR § 207.7\(b\)\(3\)](#) and USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019.

47 See [8 CFR § 207.7\(b\)\(2\)](#) and USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019.

48 See [INA § 212\(a\)\(10\)\(A\)](#).

49 Only U.S. refugee resettlement agencies contracted with DOS are eligible to file P-3/AOR Family Reunification petitions. Before advising a client on potential P-3/AOR eligibility, legal practitioners should contact one of the [nine voluntary agencies](#) contracted with DOS for a P-3/AOR consultation.

50 See the Additional Family Reunification Options Beyond the Form I-730 in Section XII. for further discussion of Humanitarian Parole.

beneficiary).⁵¹ This is sometimes referred to as the “no derivative of a derivative” rule for Form I-730s and Immediate Relatives (certain relatives of U.S. citizens).

V. P-3 AFFIDAVITS OF RELATIONSHIP (AORS)

Principal Applicant asylees and Principal Applicant refugees of certain nationalities are eligible to file both Priority 3 (P-3) AORs and Form I-730s for derivatives in certain locations.⁵² A P-3 AOR allows the PA asylee or PA refugee’s family member to access the U.S. Refugee Assistance Program (USRAP) for their own individual refugee status determination, without a referral from UNHCR, a U.S. Embassy, or a local non-governmental organization.⁵³ Additionally, derivative asylees and refugees are also eligible to file P-3-AORs on behalf of their spouse or unmarried child(ren), as the program grants access for eligible family members to the USRAP.

To be potentially eligible for P-3/AOR processing, the family member beneficiary/ies must be registered refugees living outside of their country of origin *and must also demonstrate their own claim to refugee status*. Beneficiaries must also prove the family relationship to the PA through DNA testing. In addition to spouses and children beneficiaries, the P-3/AOR program also allows refugees and asylees to apply for their parents, allowing for additional family reunification options beyond the Form I-730.⁵⁴

While most refugees will already be in contact with the refugee resettlement agency that first received their case and provided Reception and Placement (R&P) services, an asylee should be referred to a local refugee resettlement agency if they wish to file a P-3/AOR. Unlike refugees, asylees often do not have relationships with refugee resettlement offices, although many agencies receive funding from the Office of Refugee Resettlement (ORR) to serve both refugees and asylees.⁵⁵ Currently, several USCIS Asylum Offices are offering new Asylee Orientations to provide information on the services and benefits available after an asylum grant.⁵⁶

The P-3 (or Priority 3) program is one of the ways in which refugees living outside the United States can be to the USRAP for resettlement.⁵⁷ Other refugees are referred by UNHCR through Priority 1 and Priority 2 referrals, based on individual refugee claims and group designations for certain nationalities outlined in

51 See the Additional Family Reunification Options Beyond the Form I-730 in Section XII. for further discussion of I-130 Petitions for Alien Relatives.

52 The nationalities of refugees and asylees who are eligible to file P-3/AOR applications and the beneficiary locations from which a P-3/AOR can be filed are subject to change from year to year, per the Presidential Determination. As of the publication of this manual, the following nationalities are eligible for P-3/AOR processing: Afghanistan, Burundi, Central African Republic, Cuba, Democratic People’s Republic of Korea (DPRK), Democratic Republic of Congo (DRC), Eritrea, Ethiopia, Iran, Iraq, Mali, Somalia, South Sudan, Sudan, Syria. DOS, *Proposed Refugee Admissions for Fiscal Year 2019 Report to Congress*. Practitioners should consult with a local refugee resettlement agency for eligibility. A list of all resettlement agencies can be found on wrapsnet.org.

53 See Congressional Research Service, [Refugee Admissions and Resettlement Policy](#), December 18, 2018.

54 See USCIS, [The United States Refugee Admissions Program \(USRAP\) Consultation & Worldwide Processing Priorities](#), Last Reviewed/Updated: March 5, 2019.

55 A list of all resettlement agencies can be found on wrapsnet.org.

56 As an example, see the new [Asylee Orientation Dates](#) hosted at the USCIS San Francisco Asylum Office. Advocates should check with their local Asylum Office to see whether it is offering a similar orientation.

57 See [INA § 207](#) and USCIS, [The United States Refugee Admissions Program \(USRAP\) Consultation & Worldwide Processing Priorities](#), Last Reviewed/Updated: March 5, 2019.

the annual Presidential Determination.⁵⁸ The AOR is a form to verify the family relationship and provide an opportunity for eligible family members to reunite with their refugee and asylee spouses, children, and parents through the U.S. resettlement program.

VI. DIFFERENCES BETWEEN FORM I-730 AND P-3/AOR

A refugee or asylee may file both a Form I-730 petition and a P-3 Affidavit of Relationship (AOR) for the same beneficiary/ies. Particularly in cases where there is limited evidentiary support, it may be in the client's best interest to file both a Form I-730 through USCIS and a P-3/AOR through DOS when the petitioner and beneficiary/ies are eligible for both, as the processes and eligibility requirements vary. Filing for both provides the highest likelihood of reunification, provided that the information is consistent between both applications. For refugees, both programs are subject to the refugee ceiling outlined in the Presidential Determination and therefore neither process should be assumed to be faster than the other.⁵⁹ For asylees, the P-3/AOR is subject to the Presidential Determination, as it would grant refugee, not asylee, status to the beneficiaries; however, asylee Form I-730 processing is not affected by the Presidential Determination, as it grants derivative asylee, not refugee, status. The Form I-730 must be filed with USCIS by a licensed attorney, DOJ Accredited Representative, or the petitioner *pro se*. A P-3/AOR must be filed with DOS by a refugee resettlement agency.

*Note: For a marriage to be valid for a Form I-730, it must be legally valid under the laws of the country in which it was entered into.*⁶⁰ For P-3/AORs, the Department of State, Bureau of Population, Refugees and Migration (PRM) will allow an asylee or refugee to file for an unmarried life partner if it was not legally possible for the couple to marry in their host country or country where the couple had previously lived as refugees.

PRM announced this policy in a Program Announcement dated October 17, 2016:

Cognizant that same-sex marriage is not legal in the vast majority of refugee producing and refugee hosting countries, the United States will allow a qualifying individual to file for P-3 access for a same sex-partner if he/she can provide evidence that he/she had a relationship with the partner for at least one year overseas prior to the submission of the AOR and considered that person to be his/her spouse or life partner, and that the relationship is ongoing, together with evidence that the legal marriage was not an obtainable option due to social and/or legal prohibitions. Under certain circumstances, a qualifying individual may file for P-3 access for an opposite-sex partner if he/she can provide evidence that he/she had a relationship with the partner for at least one year overseas prior to the submission of the AOR and considered that person to be his/her spouse or life partner, and that the relationship is going, together with evidence that the legal marriage was not an obtainable option due to social and/or legal prohibitions.⁶¹

58 *Id*

59 See USCIS, [The United States Refugee Admissions Program \(USRAP\) Consultation & Worldwide Processing Priorities](#), Last Reviewed/Updated: March 5, 2019. See also Section XII. Additional Family Reunification Options Beyond the Form I-730 for more information on P3-AOR filings.

60 See *Matter of Zeleniak*, 26 I. & N. Dec. 158 (BIA 2013). (Recognizing same-sex marriages for immigration purposes so long as the marriage is valid under the laws of the jurisdiction where it was celebrated); [USCIS Policy Manual, Chapter 21](#) Family based Petitions and Applications.

61 Note: This Policy Announcement was provided directly to refugee resettlement agencies and is not publicly accessible at this time.

Petitioners wishing to file a P-3 AOR for an unmarried life partner should contact their local refugee resettlement agency.⁶²

VII. SPECIAL CONSIDERATIONS FOR BENEFICIARIES WHO ARE IN THE UNITED STATES UNLAWFULLY

There is no requirement for a beneficiary who is in the United States to have lawful status or even to have entered lawfully.⁶³ However, the decision to approve the petition remains at the discretion of USCIS, taking into account all relevant factors in the beneficiary's case.

Note: More broadly, the inadmissibility grounds in [INA § 212\(a\)](#) do not apply specifically at the time of granting asylum or follow-to-join asylee status.⁶⁴ This is because asylum is not considered an “admission” in immigration terms.⁶⁵ However, inadmissibility grounds apply to refugees and those following-to-join at the time of admission, as well as to refugees and follow-to-join beneficiaries when applying for adjustment of status to Lawful Permanent Resident.⁶⁶ Officers can grant waivers to these inadmissibility grounds, and often do.⁶⁷ If an inadmissibility waiver is granted during the Form I-730 processing, it is generally given deference at the time of adjustment of status to Lawful Permanent Resident.

On June 28, 2018, USCIS announced in a new policy memo,⁶⁸ that the agency may issue a Notice to Appear (NTA)⁶⁹ based on the denial of many applications for immigration benefits if a beneficiary is no longer in a period of authorized stay and does not depart the United States. Beginning November 19, 2018, USCIS specifically added beneficiaries with denied Form I-730s to the list of applicants against whom removal proceedings may be commenced if they are in the United States without lawful status.⁷⁰ Any information provided in completing the petition may be used as a basis for initiating, or as evidence in, removal proceedings, even if the petition is later withdrawn. Unexcused failure of the beneficiary to appear for an appointment to provide biometrics (such as fingerprints) and other biographical information within the time allowed may result in denial of the petition.⁷¹

62 A list of all resettlement agencies can be found on wrapsnet.org.

63 See USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019, which state that a petitioner may apply for a beneficiary “whether living inside or outside of the United States.”

64 See [USCIS Policy Manual, Volume 7, Part M](#), Chapter 3.

65 See *Matter of V-X*, 26 I&N Dec. 147 (BIA 2013) (grant of asylum is not an admission).

66 See [INA § 207\(c\)](#) and [INA § 212\(a\)\(D\)\(5\)](#).

67 For more information about waivers for refugees and derivatives see USCIS, [Adjudicator's Field Manual Chapter 41.6](#).

68 USCIS, *PM-602-0050.1: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, June 28, 2018.

69 A Notice to Appear (NTA) is the charging document that signals the initiation of removal proceedings.

70 See [USCIS Teleconference on Notice to Appear \(NTA\), Updated Policy Guidance, Nov.15, 2018](#).

71 See [8 CFR § 103.2\(b\)\(13\)](#) and USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019.

USCIS will continue to send denial letters for these petitions to ensure adequate notice regarding the period of authorized stay, travel compliance, and validating departure from the United States.⁷² The agency will continue to prioritize cases of individuals with criminal records, fraud, or national security concerns for referral for removal proceedings, but anyone in the United States without lawful status should be prepared to be placed in proceedings if their application is denied.⁷³

Note: In light of this NTA policy, legal representatives have a duty to carefully screen a potential Form I-730 beneficiary for any grounds of removability BEFORE filing a Form I-730 to determine whether the beneficiary is at risk of removal if the Form I-730 is denied. The legal representative must follow the rules of professional responsibility to explain the potential consequences of filing the Form I-730 petition. Although a follow-to-join asylee is not subject to the inadmissibility grounds at the time of Visa 92 grant, any potential inadmissibility would be considered a negative discretionary factor in determining whether to initiate removal proceedings if the petition is denied. Thus all potential Form I-730 beneficiaries who are in the United States should be carefully screened BEFORE filing. It is ultimately up to the client whether to proceed—the petitioner has the legal right to file the Form I-730, although the adverse consequence of doing so for a beneficiary in the United States unlawfully would fall disproportionately on the beneficiary if the Form I-730 is denied.

Practitioners who intend to represent both the petitioner and beneficiary, should be aware of the relevant dual representation ethical rules in their jurisdiction.

It is also possible to file a Form I-730 for a beneficiary who has a final order of removal. If the Form I-730 is approved, the beneficiary can move to reopen and terminate the removal proceedings. However, in the current environment, which emphasizes enforcement, clients should be counseled that filing any application with USCIS after the issuance of a final order of removal could lead to the individual being detained and physically removed by Immigration and Customs Enforcement. If a beneficiary left the United States under an order of removal and then illegally re-entered, USCIS can still grant the Form I-730, although the beneficiary is still subject to reinstatement of the prior order,⁷⁴ especially if the Form I-730 is denied. Anecdotally, USCIS has been approving Form I-730 petitions for those with executed final orders of removal, who have re-entered the US. However, this may change.

⁷² See USCIS, [Notice to Appear Policy Memorandum](#) guidance, Last Reviewed/Updated: Feb. 26, 2019.

⁷³ See USCIS, *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, June 28, 2018. See also *CLINIC Practice Pointer: USCIS Issues New NTA Guidance Memo*, Dec. 19, 2018.

⁷⁴ For more on reinstatement of removal, see [American Immigration Council](#), *Reinstatement of Removal*, April 29, 2013. Some practitioners report that I-730s are still being approved despite the existence of old removal orders, however, representatives should check with other local practitioners before filing an I-730 in this situation since the risk of detention and removal is great.

IV. STEPS TO FILE THE FORM I-730

Refugees and asylees should **consult with a legal practitioner as soon as possible** after arriving in the United States as refugees or after being granted asylum to begin the Form I-730 process for their family members. It can take significant time for proper intake screening and obtaining documentary evidence to present the initial case to USCIS and meet the petitioner’s burden of proof without administrative delays, and, as discussed above, Form I-730 petitions must generally be filed within two years of the PA’s grant of status.

I. ELIGIBILITY SCREENING FOR AN I-730 PETITION

Before filing a Form I-730 Refugee/Asylee Relative Petition, legal representatives should screen potential applicants to ensure eligibility, solicit relevant information regarding case history and family relationships, and safeguard that any and all potentially derogatory information is addressed affirmatively, giving the petitioner adequate time to address any potential inconsistencies.

Petitioner Screening – Potential Questions

- Is the refugee or asylee the Principal Applicant? *Only PAs may file a Form I-730*
 - > **For a refugee case**, the Principal Applicant, Derivative Spouse, and/or Derivative Child/ren will be listed in the TSA letter issued by the PRM. Refugees should have this document in their possession, and the refugee’s resettlement agency may also be able to provide a copy if this document is lost.
 - > **For an asylee**, the Principal Applicant will be the individual named in the letter of asylum grant from the USCIS Asylum Office or in the Immigration Judge’s order.
 - > **For a refugee LPR**, the Principal Applicant will have RE6 as their Class of Admission (RE7 for a Derivative Spouse; RE8 for a Derivative Child).
 - > **For an asylee LPR**, the Principal Applicant will have AS6 as their Class of Admission (AS7 for a Derivative Spouse; AS8 for a Derivative Child).

Note: Refer to the following chart if the person seeking reunification is not the PA.

Person Seeking Reunification	Potential Beneficiary	Is that person Form I-730 eligible?
Spouse of PA	Their child (PA’s stepchild or adopted child), when the PA is not a biological parent of that child	Yes, if that person meets the definition of child under INA § 101(b) as it relates to the PA, e.g. “stepchild,” or “adopted child” and the PA is willing to be the petitioner.
Child of PA	Their child (the grandchild of the PA)	No, PA cannot file a Form I-730 for a grandchild.
Child of PA	Their spouse (PA’s daughter-in law or son-in-law)	No (see note below). <i>If the marriage occurred before a refugee child’s admission or asylee child’s grant of derivative status, then that child may have their status rescinded, because they did not meet the definition of “child” at the time it was granted because they were married.</i>

Note: If the derivative child marries AFTER their admission in the United States as a derivative refugee or grant of derivative asylum, the derivative child’s refugee or asylee status is not in jeopardy. That married, adult child could file a Form I-130 for their new spouse once they become an LPR or U.S. Citizen, which would then be treated as any other LPR or U.S. citizen petitioning for a spouse.⁷⁵ However, the “no derivative of a derivative” rule prevents them from filing a Form I-730 petition for that spouse.

- Has the refugee or asylee filed a P-3/AOR or any previous immigration applications, such as the Form I-485 Application to Adjust Status to Permanent Resident, Form I-131 Application for Travel Document, and/or a Form I-730 for another family member?
 - > If so, obtain documentation of all information and a copy of the petition(s)/application(s), if possible, to ensure that the information provided on the Form I-730 is consistent with prior information provided to USCIS.
- Did the petitioner enter the United States as a refugee or obtain asylum less than two years ago?
 - » If not, why didn’t the petitioner file the Form I-730 yet? Is a humanitarian extension warranted?⁷⁶
 - If a humanitarian extension is not warranted, consider additional family reunification options beyond the Form I-730.⁷⁷
- Is the desired beneficiary Form I-730 eligible?⁷⁸ In other words, does a petitionable relationship exist?
 - > If the beneficiary is not Form I-730 eligible, consider additional family reunification options beyond the Form I-730:⁷⁹
- Did the relationship exist prior to the refugee’s arrival or asylee’s grant of asylum?
 - > If not, see additional family reunification options beyond the Form I-730⁸⁰
- Was the beneficiary claimed on the asylee’s Form I-589 or refugee’s Form I-590?
 - > If not, why not?
 - » If there was a delay of many months before the asylum grant or admission as a refugee, perhaps the relationship may not have existed at the time of the asylee’s Form I-589 filing (or asylum interview/hearing before an immigration judge) or a refugee’s Form I-590 interview (with a USCIS refugee officer). If the relationship became “petitionable” after the USCIS interview but before the petitioner’s admission to the United States—such as a new marriage or a child conceived after

75 See Section XII. Additional Family Reunification Options Beyond the Form I-730.

76 See Section III. ii. When Should the I-730 Form be Filed? for further discussion of Humanitarian Extensions.

77 See Section XII. for further discussion of Additional Family Reunification Options Beyond the Form I-730.

78 See Section III. iii. for further discussion of Who Can Benefit From a Form I-730 for further discussion.

79 See Section XII. for further discussion of Additional Family Reunification Options Beyond the Form I-730.

80 See Section XII. for further discussion of Additional Family Reunification Options Beyond the Form I-730.

a USCIS Form I-589/Form I-590 interview but before the refugee entry or asylum grant—the “non-disclosure” will need to be addressed with Form I-730’s filing. This initial screening is also a good time to submit a Freedom of information Act request (FOIA) to obtain a complete copy of the petitioner’s immigration file. It is most helpful to file a FOIA using Form G-639, before filing the Form I-730 and/or assisting the petitioner in drafting any sworn statements explaining alleged non-disclosure of a relative on their Form I-589/Form I-590.⁸¹

- For a Spouse – Did the petitioner marry after the interview for the Form I-589/Form I-590 but before asylum grant/refugee arrival? Was a fiancé(e) disclosed on the Form I-589/Form I-590 if an explicit space was provided to do so?⁸² Was a fiancé(e) disclosed during an interview or court hearing regarding the Form I-589/Form I-590?
- For a Child – Was the **child** born after the last opportunity to disclose the child during the Form I-589 or Form I-590 adjudication?
 - › Note: For children born during Form I-589/Form I-590 adjudication but not disclosed, CSPA protection is forfeited and the burden of proof for Form I-730 adjudication rises to the level of “clear and convincing.”⁸³
 - » Was the child outside the United States⁸⁴ and *in utero* on the date asylum was granted or of a refugee’s admission to the United States? If yes, there is a petitionable relationship and it would not constitute nondisclosure, as the child was not yet born (or possibly not even conceived) during Form I-589/Form I-590 adjudication, due to the delay between interview date and grant of asylum or refugee admission.

Note: If a child was conceived after the asylum grant and born outside the United States⁸⁵ after the asylum grant, the child is not Form I-730 eligible.⁸⁶

- Has the petitioner already applied for lawful permanent resident (LPR) status?
 - › If yes, did they disclose the beneficiary on the Form I-485 Application to Adjust Status to Permanent Resident?
- How many times has the petitioner been married?
 - › How did each of these marriages begin and end?

81 See Section IV.ii. for further discussion of Freedom of Information Act (FOIA) Requests.

82 Note: There is no explicit space to disclose a fiancé(e) on the Form I-589. Although there is now a separate Fiancé(e) section of the current Form I-590, earlier versions of the form did not address this question explicitly. In a case where no space is provided on the form itself, if the PA disclosed their intent to marry during the refugee or asylum interview, the USCIS officer may indicate a fiancé(e) through a handwritten notation under spouse.

83 See 8 CFR § 207.7(e). See also Section V. for additional discussion of the Burden of Proof.

84 A child born in the United States would be a U.S. citizen at birth.

85 A child born in the United States would be a U.S. citizen at birth.

86 See Section XII. Additional Family Reunification Options Beyond the Form I-730 for more information on I-130 eligibility.

- How many times has the beneficiary spouse been married?
 - > How did each of these marriages begin and end?
- Has either the petitioner or beneficiary spouse engaged in polygamous relationships?⁸⁷
- How many children does the petitioner have? Include children who are missing, dead, in any country, born out of wedlock, born in wedlock, stepchildren, or adopted or culturally adopted children.
- How many children does the beneficiary have? Include children who are missing, dead, in any country, born out of wedlock, born in wedlock, stepchildren, or adopted children.
 - > If the petitioner’s derivative child beneficiary has children (i.e. the petitioner’s grandchildren), these children are NOT Form I-730 eligible.⁸⁸
- Is the petitioner applying for a minor child whose other parent will not travel with them?
 - > If yes, the petitioner should proceed in filing the Form I-730 within the two-year filing deadline; however, you should advise the petitioner that consent from the other parent will be necessary at the Consular Processing stage, before the beneficiary can travel to the United States, which could be several years later. Lack of parental consent should not hold up filing the Form I-730, as filing will preserve the beneficiary’s eligibility for follow-to-join benefits while the parents determine whether coming to the United States is in the best interests of the child.

Note: It is helpful to ask for every possible relationship, “alive, missing, or dead” and “in the United States, in your country of origin, in any other country in the world,” etc. to make it clear to the petitioner that every marital and parent-child relationship that ever existed must be accounted for, in order to provide effective legal representation.⁸⁹

- Has the beneficiary ever traveled to the United States or applied for a visa to the United States?
 - > If so, obtain documentation of all information on record.
 - > If the beneficiary is outside the United States, have they previously accrued unlawful presence in the United States? (This issue will matter at the adjustment of status stage but not the form I-730 petition stage).⁹⁰

87 As defined in [INA § 212\(a\)\(10\)\(A\)](#), any foreign national who is coming to the United States to practice polygamy is inadmissible. Neither petitioner nor beneficiary may be a practicing polygamist.

88 See Section XII. Additional Family Reunification Options Beyond the Form I-730 for more information.

89 See *Deshields v. Johnson*, 2016 U.S. Dist. LEXIS 28561 (M.D. Fla. Mar. 7, 2016) (unpublished) (holding that Child Status Protection Act did not apply to child who aged out where the child’s mother had failed to include her on the I-589 application for asylum).

90 Refugee and asylum applicants are not subject to inadmissibility grounds, including I-730 applicants. Nevertheless, once the form I-730 is approved, the beneficiary may require a [Form I-602 Application for Refugee for Waiver of Grounds of Excludability](#) in order to be eligible for Adjustment of Status to Permanent Resident if they have accrued unlawful presence pursuant to INA §212(a)(9)(B). See also Section III. vii. for Special Considerations for Beneficiaries in the U.S. Unlawfully for further discussion of unlawful presence.

- What documents exist to prove the relationship between the petitioner and the beneficiary?
 - > Is the petitioner or beneficiary in possession of these documents?
 - > If not, can additional copies be obtained? Note: Even late-issued documents are better than no documents.⁹¹
 - > If these documents were lost or destroyed in the family’s flight from their home country or country of claimed persecution, describe the circumstances in a sworn affidavit. However, DO NOT assist the petitioner in drafting a statement or sworn affidavit without first reviewing the information on record through a FOIA request, if possible.⁹² This is to ensure that the petitioner or beneficiary does not provide sworn testimony which may later be found to be inconsistent with the information previously disclosed on record.

Note: A PA is often in the position of listing family members’ names (often transliterated from non-Roman alphabets) and dates of birth from memory when filling out the Form I-589 (or, in the case of a refugee, when verbally confirming the information contained in the Form I-590, which is often completed by the International Organization for Migration (IOM) or another resettlement support center). Because of this, there are often inconsistencies in the information on record, which are important to address affirmatively when filing the Form I-730, or else they may be more difficult to correct once the information has been provided to USCIS.

II. FREEDOM OF INFORMATION ACT (FOIA) REQUESTS

To determine what was disclosed on the record—including whether a petitioner claimed the beneficiary on their Form I-589 Application for Asylum or Form I-590 Registration for Classification as a Refugee—practitioners should file a Form *G-639 Freedom of Information Act (FOIA)* request as soon as possible following an initial intake, and if at all possible, before submitting any sworn testimony from the petitioner. If a petitioner has doubts about answers or cannot remember whether a family member was disclosed on record, it is best to file a FOIA request before submitting a Form I-730, so as to be prepared to address the non-disclosure affirmatively when filing the Form I-730, or at the very least in response to a subsequent Request for Evidence (RFE). USCIS will likely issue an RFE requesting that the petitioner address any non-disclosure of an immediate family member in prior immigration matters, usually as a sworn statement from the petitioner if one was not provided at the time of filing.

If the alleged “nondisclosure” exists because the marriage or birth occurred *after* an interview or court hearing, but *before* an approval was granted, then the burden of proof should remain “a preponderance of the evidence” although USCIS may erroneously claim that the standard should be raised.⁹³ The different evidentiary standards are based on whether there was a willful nondisclosure, or whether the facts at the time of the Form I-589/

⁹¹ See Section V, ii. for further discussion of Primary vs. Secondary Evidence.

⁹² See Section IV. ii. for more information on Freedom of Information Act (FOIA) requests.

⁹³ See 8 CFR § 207.7(e) and USCIS, [Adjudicator’s Field Manual, Chapter 11.1](#). See also Section V. for additional information regarding the Burden of Proof for Form I-730 petitions.

Form I-590 interview (or court hearing) were not the same as the facts at the time of the grant of asylum or refugee admission. If USCIS finds that the petitioner deliberately failed to disclose a family relationship, the burden of proof for the petition is raised from the usual “preponderance of the evidence” standard to a “clear and convincing” evidence standard.⁹⁴

A FOIA request is also helpful to determine the date that a USCIS Refugee Officer interviewed the petitioner for Form I-590 adjudication. Any marriages entered into, or children born after, the interview date may still be eligible for Form I-730 reunification, so long as the evidentiary burden is met.

Note: If a child beneficiary was not disclosed on a refugee’s Form I-590 or an asylee’s Form I-589 and is now over 21, that child is NOT protected under the CSPA and may be ineligible for Form I-730 reunification based on their age.⁹⁵

Note: If a marriage occurred after a refugee’s Form I-590 interview but before the refugee’s arrival, it is only considered nondisclosure if the date of marriage pre-dates the Form I-590 submission; however, USCIS will often refer back to the Form I-590 and may allege nondisclosure if the petitioner’s intention to marry a fiancé(e) was not disclosed.

A FOIA request may be filed seeking the entire A-file or only the Form I-589 or Form I-590. It is best to request the entire A-file, because the file should include any marriage document, birth certificate, or other evidence of the relationship that has already been provided to USCIS. Receiving a copy of a full A-file after filing a FOIA request takes at least four months and often takes longer, depending on USCIS case volume. Representatives may check the status of a submitted FOIA request via the [USCIS website](#).

Note: FOIA requests to USCIS are now processed online, which requires that the legal representative set up an account.⁹⁶ This has advantages over receiving responses on CDs by mail; however, practitioners should take care that someone in their program or firm will be able to access the FOIA responses should the legal representative who filed the request depart the place of employment.

Although a FOIA request may be filed at any time, practitioners should review the FOIA results prior to submitting the Form I-730 whenever possible to ensure consistency of information on record, especially when there is reason to doubt whether the beneficiary was disclosed on the petitioner’s prior application for refugee or asylee status. However, if the two-year deadline for filing the Form I-730 is approaching, the practitioner should

⁹⁴ See USCIS, [Adjudicator’s Field Manual, Chapter 11.1](#).

⁹⁵ See Section XII. for Additional Family Reunification Options Beyond the Form I-730.

⁹⁶ See [USCIS Online Account Setup](#), Last Reviewed/Updated: Apr. 18, 2018.

be sure to file within the two years, rather than wait for the FOIA results, since it is discretionary whether or not USCIS will grant a humanitarian extension to the filing deadline. It is likely that the FOIA response will be received before USCIS issues an RFE for the Form I-730. The FOIA results should indicate whether there was prior non-disclosure or other obstacles to having the Form I-730 petition approved.

Note: Be mindful that the new USCIS NTA guidance applies to withdrawn applications as well as adjudicated applications. Thus, if the FOIA reveals derogatory information, withdrawing the I-730 would not protect a beneficiary in the United States from being placed in removal proceedings.

III. DOCUMENTS TO FILE WITH A FORM I-730 PETITION

- Proof of the following should be included with the form I-730 to verify the petitioner’s identity and meet the petitioner’s burden of proof “by a preponderance of the evidence”⁹⁷ to establish the relationship between the petitioner and beneficiary. As outlined in [8 CFR § 207.7\(e\)](#), the documentary evidence provided must “consist of documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary.”

Note: Practitioners may find it useful to consult Section V. Evidentiary Burden of Proof below, particularly Section ii. discussing the differences between primary and secondary evidence, before submitting an initial Form I-730 filing.

For the Petitioner:

- (Required) Proof of Refugee or Asylee Status
 - > (For Refugees) Copy of **passport containing an admission stamp** indicating refugee status and/or **Form I-94** indicating RE (refugee) class of admission.
 - » (Highly recommended) TSA letter issued by PRM indicating that the petitioner is the Principal Applicant refugee.
 - > (For Asylees) Copy of the **approval letter** from the **USCIS Asylum Office** granting asylum or copy of the decision by the **Immigration Judge** granting asylum.
- (Recommended) Petitioner’s state ID or driver license.
- (Recommended) Petitioner’s social security card.

⁹⁷ See [8 CFR § 207.7\(e\)](#) and [8 CFR § 208.21\(f\)](#). See also Section V. Evidentiary Burden of Proof for further discussion of the required burden of proof.

For the Beneficiary:

- (Required) Beneficiary's United Nations High Commissioner for Refugees (UNHCR) refugee card or registration (if the beneficiary is a registered refugee), and/or beneficiary's National ID, passport, or other identification document stating their name and date of birth. If the beneficiary does not have an identity document, sworn affidavit(s) may be submitted.
- (Required) A recently taken, clear photograph of the beneficiary. USCIS advises in the [instructions](#) for the Form I-730 that the photo be a full-frontal picture that meets passport-style photo specifications. If it is not possible to submit the petition with a passport-style photo, practitioners should not delay the Form I-730 filing; however, the style and date of the photo may be addressed in a Request for Evidence (RFE).⁹⁸
- (If applicable) Proof of any name changes or alternate names used by the petitioner or beneficiary.
- (Required For Refugees) Completed Form [I-590](#) *Application for Classification of a Refugee* for each beneficiary. Do not complete Part 8, as these questions are not applicable to follow-to-join refugees. Additionally, Parts 10 or 11 should not be completed unless the legal representative is able to gain the information directly from the beneficiary (as opposed to via the petitioner's testimony).⁹⁹

According to [8 CFR § 207.7\(e\)](#) and [8 CFR 208.21\(f\)](#), evidence to establish the claimed relationship for a Form I-730 will consist of the documents specified in [8 CFR § 204.2](#) for Immigrant Visa Petitions "where possible" meaning that petitioners should submit any and all available evidence from the list(s) below to establish the claimed relationship(s).

For a Spouse:

- Marriage Certificate (if available)
 - > Refer to the [DOS Reciprocity Schedule](#) for a list of evidence available by the country in which the marriage occurred.
 - > In many cases, the required evidence will be a civilly registered marriage certificate issued by the authorizing governmental authority; however, a religious certificate is also acceptable in countries where traditional marriages are lawful.¹⁰⁰

98 Note that USCIS has issued a policy memorandum allowing the agency to deny applications for benefits without issuing an RFE. See USCIS, [PM-602-0163: Issuance of Certain RFEs and NOIDs](#), July 13, 2018; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b), July 13, 2018. The authors have not seen this memo applied to I-730s as of publication, but practitioners should be aware that failure to include required documents with the initial filing could lead to a denial of the case without an RFE.

99 Note: Since February 1, 2018, it has been permissible to file a beneficiary's Form I-590 concurrently with the petitioner's Form I-730 filing. If the Form I-590 is not submitted with the Form I-730 filing, USCIS will send a separate RFE before the case can proceed to Consular Processing. As of this manual's publication, USCIS is currently working on updating the Form I-730 filing instructions to indicate this more clearly. As of June 2018, the Form I-590 can be found under the "Special Instructions" section on the Form I-730 page of [USCIS.gov](#).

100 See [DOS Reciprocity Schedule](#). See also Appendix vi. Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws below for discussion of country conditions and relevant family/adoption laws.

- > If no marriage certificate is available, secondary evidence may be submitted.¹⁰¹
- (If applicable) Proof of **legal termination of all previous marriages** of both the petitioner and the beneficiary.
 - > This evidence can include divorce certificates, death certificates, handwritten notes from the petitioner’s Form I-589 or Form I-590 that the Officer has taken during the petitioner’s Form I-589/ Form I-590 interview (obtained via a FOIA request), and sworn affidavits in the case where no certificates are available. Refer to the [DOS Reciprocity Schedule](#) for a list of evidence available by the country in which the divorce or death occurred.
- Although not required in all cases (especially if the beneficiary was claimed on the Form I-589 or Form I-590), it is best practice to send copies of any documents establishing the *bona fides* of the relationship, such as:
 - > **Photos** from the wedding and throughout the couple’s engagement and marriage;
 - > **Evidence of children** conceived from the marriage;
 - > **Communication records** demonstrating that the petitioner and beneficiary have remained in close contact;
 - > **Joint financial assets and money transfer receipts** showing comingling of financial assets and ongoing financial support; and/or
 - > **Sworn testimony**¹⁰² regarding the couple’s history and circumstances surrounding their separation.

Note: Same-sex marriages, where legally valid in the place of celebration, are recognized for purposes of Form I-730 and other immigration petitions.¹⁰³ If UNHCR is made aware of a same-sex partnership at the time of resettlement, every effort will be made to resettle the couple together, although they will likely be resettled in separate cases if not legally married.

101 This is supported in the regulations by the phrase “where possible” in [8 CFR § 207.7\(e\)](#) and [8 CFR 208.21\(f\)](#). For more information on the applicability of Primary vs. Secondary Evidence *see* Section V. ii.

102 Before drafting a sworn affidavit from the petitioner, see the practice advisory in Section IV. ii. on Freedom of Information Act (FOIA) Requests.

103 *See Matter of Zeleniak*, [26 I&N Dec. 158 \(BIA 2013\)](#).

For a Child:

Parent Petitioning	Category	Evidence Needed
Mother	In Wedlock <i>INA § 101(b)(1)(A);</i> <i>8 CFR § 204.2(d)(2)(i)</i>	Birth Certificate of the child (showing the mother's name), or other evidence of the child's relationship to the mother
Father	In Wedlock <i>INA § 101(b)(1)(A)</i> <i>8 CFR § 204.2(d)(2)(i)</i>	Birth Certificate of the child (showing the father's name), or other evidence of the child's relationship to the father Marriage Certificate (or other evidence proving the marriage between the child's mother and father) Proof of termination of any prior marriages of either parent
Stepfather or Stepmother	Stepchild <i>INA § 101(b)(1)(B)</i> <i>8 CFR § 204.2(d)(2)(iv)</i>	Marriage Certificate (or other evidence proving the marriage between the child's mother and stepfather or father and stepmother) Birth Certificate (or other evidence showing that the child was under age 18 at the time of the marriage of a natural parent to the stepparent) Proof of termination of any prior marriages of parent and/or stepparent
Father	Out of Wedlock and Legitimated <i>INA § 101(b)(1)(C)</i> <i>8 CFR § 204.2(d)(2)(ii)</i>	Marriage Certificate of the biological parents, showing that their marriage occurred when the child was under age 18 Or evidence that the child has been legitimated by the laws of the child's domicile or the father's domicile
Father	Out of Wedlock and not legitimated <i>INA § 101(b)(1)(D)</i> <i>8 CFR § 204.2(d)(2)(iii)</i>	Evidence of the <i>bona fide</i> relationship between the child and petitioning father, such as ongoing financial support, communication, and time spent together
Mother	Out of Wedlock and not legitimated <i>INA § 101(b)(1)(D)</i> <i>8 CFR § 204.2(d)(2)(iii)</i>	Birth Certificate of the child (showing the mother's name), or other evidence of the child's relationship to the mother
Adoptive Father or Adoptive Mother	Adopted Child <i>INA § 101(b)(1)(E)(i)</i> <i>8 CFR § 204.2(d)(2)(vii)</i>	Civil-issued documents that the adoption was lawful and took place before the child reached age 16 and has been in the legal custody of and resided with the adoptive parent at least two years

Tips on Documents:

- *Birth Certificate* (if available)
 - > Refer to the [DOS Reciprocity Schedule](#) for a list of evidence available by the country in which the birth occurred.
 - > In many cases, the required evidence will be a civilly registered birth certificate issued by the authorizing governmental authority; however, in countries where birth registration is not prevalent, no civil issued documentation may be available. In this case, a baptism or religious certificate, hospital

record, or other secondary evidence is acceptable.¹⁰⁴

- > The birth or baptism certificate should include both the child's name and the petitioning parent's name listed on the record.
- Marriage Certificate (if available)
 - > Refer to the [DOS Reciprocity Schedule](#) for a list of evidence available by the country in which the marriage occurred.
 - > Refer to the domestic law of the country in which the marriage was celebrated. Some countries consider a traditional ceremony or religious ceremony to be sufficient for a marriage to be lawful, without having to register or obtain a civil-issued document
- Divorce Decree (if available)
 - > Refer to the [DOS Reciprocity Schedule](#) for a list of evidence available by the country in which the divorce occurred.

For adopted children:

- > Legal document from the court or government authority granting full adoption of the child by the petitioning asylee or refugee before the child's 16th birthday.
- > An "adoption" can be the basis for immigrant benefits only if it:
 - » Terminates the legal parent-child relationship between the child and any prior parent(s) and creates a permanent, legal parent-child relationship between the child and the adoptive parent.
- > Documentary evidence that the adoptive parent(s) had legal custody of, and resided with, the adopted child for two years prior to the PA's refugee admission or asylum grant.¹⁰⁵
 - » 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;
 - Proof of common residence of both adopted child and adopting parent.¹⁰⁶

Any documents written in a language other than English must be accompanied by a certified English translation.

8 CFR § 103.2(b)(3): "*Translations.* Any document containing foreign language submitted to USCIS

104 See USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019. See also Appendix vi. Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws below for discussion of how to approach country conditions research.

105 See [8 CFR § 204.2\(d\)\(2\)\(vii\)\(A\)](#).

106 See [8 CFR § 204.2\(d\)\(2\)\(vii\)\(B\)](#).

shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

For a translation to be considered certified, it must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities. Thus, non-English evidence usually consists of a minimum of three pages: (1) copy of document in original language, (2) document in English as a complete and accurate translation, and (3) a statement (generally on a separate page) from the translator stating that the translator is competent and that the translation is true and accurate. The English translation of the document should never be printed on a company or organization's letterhead because such letterhead was not part of the original document.

Gathering evidence in the present day has become easier with the ubiquity of smartphones. Refugees and asylees in different countries often may use smartphones to send and receive messages, photos, videos, and money. Evidence of communication and transactions can be included with a Form I-730 petition by capturing screenshots, which are then printed by sending them through email or printing at a photo lab. Documents also can be sent by using an app, such as CamScanner, that turns images taken on a smartphone camera into .pdf files.

Practitioners should submit as much evidence as is available to demonstrate the relationship between the petitioner and the beneficiary. If a document or form of evidence exists (for example, if a birth certificate or marriage certificate was issued at the time of birth or marriage, or if it would be possible to obtain a duplicate or late-issued document), the practitioner should make every effort to submit it. However, for some places of origin—such as Eritrea, where the government heavily monitors and regulates the actions of its citizens, especially family members of those who have fled the country as refugees—communication between the petitioner and beneficiary and open exchange of documents and information may not be possible.¹⁰⁷ In circumstances where such documents are unavailable, it is important to fully explain the petitioner's efforts to obtain the documents as well as to explain why they are unavailable.

If a document such as a birth certificate was never issued at the time of the child's birth, it may be impractical or impossible in some cases to obtain a late-issued document or request a duplicate of a document that has been lost or destroyed. For beneficiaries residing in a country where the petitioner's persecution claim was from the government itself, practitioners should be aware that advising the beneficiaries to approach government authorities to request additional civil documentation may put the family at risk of persecution, due to the petitioner having fled the country as a refugee. In such cases, this explanation about why evidence is not available should be supported by evidence of country conditions¹⁰⁸ and sworn testimony from the petitioner. Whenever possible, DO NOT assist the petitioner in drafting a statement or sworn affidavit without first reviewing the information on record through a FOIA request.¹⁰⁹ If a response must be submitted to meet the two-year filing deadline before the practitioner can verify the information on record through a FOIA request, the practitioner must weigh the pros and cons of submitting a sworn statement which could potentially conflict with the information previously disclosed on record.

107 Eritrea country-specific information can be found at [Amnesty International, Eritrea 2017/2018](#).

108 See Appendix vi. Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws below for discussion of how to approach country conditions research.

109 See Section IV. ii. for more information on Freedom of Information Act (FOIA) requests.

Note: It is not necessary (nor recommended) to submit original documents to USCIS; only photocopies of documents should be submitted with the petition's filing. Original documents will be examined at the beneficiary's interview.

IV. FEES

Although it is possible that USCIS may charge filing fees in the future, there is currently no cost to file a Form I-730 Refugee/Asylee Relative Petition.¹¹⁰

There is also no cost to schedule a Form I-730 beneficiary interview. Additionally, refugees/Visa 93 beneficiaries will receive a medical examination at no cost; however, asylees/Visa 92 beneficiaries have to pay a fee for medical examinations, which are generally requested following (and sometimes before) an interview at a Consular Post for beneficiaries outside the United States. Beneficiaries who are living in the United States do not have to complete a medical examination until they file the [Form I-485](#) to adjust status to permanent resident.

Both asylee and refugee petitioners must pay for any DNA testing requested by USCIS in connection with a Request for Evidence or by the Consular Post or USCIS office overseas following the beneficiary interview.

If the Form I-730 is denied, the petitioner may request reconsideration by filing [Form I-290B](#), which does require a fee, (currently \$675) although a fee waiver request may be submitted by filing [Form I-912 with the Form I-290B](#).¹¹¹

V. WHERE TO FILE A FORM I-730

As of this manual's publishing, a Form I-730 Refugee/Asylee Relative Petition must be filed at the locations listed below. However, practitioners should verify the current filing address via the [USCIS website](#) before submitting the petition, as filing addresses may change from time to time. Practitioners should also consult the Eligibility Screening and Evidentiary Burden of Proof sections of this manual before filing, to avoid unnecessary Requests for Evidence or denials.

¹¹⁰ See [USCIS Webpage](#), I-730, Refugee/Asylee Relative Petition, Last Reviewed/Updated: May 23, 2019.

¹¹¹ See the remedies in Section XI. Troubleshooting When Problems Arise for more information.

If you live in:				Then mail your petition to:
Alabama	Louisiana	New Jersey	Oklahoma	Texas Service Center P.O. Box 852824 Mesquite, TX 75185
Arkansas	Maine	New Mexico	Tennessee	
Connecticut	Maryland	New York	Texas	
Delaware	Massachusetts	North Carolina	Vermont	
District of Columbia	Mississippi	Pennsylvania	Virginia	
Florida	New Hampshire	Puerto Rico	U.S. Virgin Islands	
Georgia	New Jersey	Rhode Island	West Virginia	
Kentucky	New Mexico	South Carolina		
Alaska	Indiana	Nevada	Wyoming	
Arizona	Iowa	North Dakota		
California	Kansas	Ohio		
Colorado	Michigan	Oregon	Nebraska Service Center P.O. Box 87730 Lincoln, NE 68501-7730	
Guam	Minnesota	South Dakota		
Hawaii	Missouri	Utah		
Idaho	Montana	Washington		
Illinois	Nebraska	Wisconsin		

Note: If the petitioner is serving in the military, they may file at the location that corresponds to their permanent address.

V. EVIDENTIARY BURDEN OF PROOF

The evidentiary burden of proof in a follow-to-join petition is by a preponderance of the evidence, except in the specific instance of a petitioner’s **misrepresentation** or **willful nondisclosure** of the beneficiary on the Form I-589 or Form I-590.¹¹² In the case of nondisclosure, the burden of proof is raised to the burden of clear and convincing, which is a higher standard.¹¹³

Practitioners should consult the [DOS Reciprocity Schedule](#) to determine what evidence may be available from the petitioner’s country of nationality. However, the regulations also address the likelihood that a refugee or asylee would not be able to obtain such documentation from their country of nationality. In light of the difficulties that refugees and asylees face in obtaining documentary evidence of their family relationships—having often fled in haste from war-torn and conflict-ridden areas, having directly experienced persecution or having lived in fear of persecution—the burden of proof for a Form I-730 Refugee/Asylee relative petition is substantially lower than for a Form I-130 Petition for Alien Relative.

[8 CFR §207.7\(e\)](#) states, in pertinent part:

The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child.

The Service has long interpreted the “preponderance” standard to mean, in terms of probability, that the petitioner’s burden is to show that factors in favor of benefits eligibility are “**more likely than not.**”¹¹⁴ In mathematical probability terms, the petitioner’s burden of proof is to show that the petitionable relationship is at least 51% likely to exist, which is a relatively low threshold. “The ‘preponderance of the evidence’ standard requires that the evidence demonstrate that the applicant’s claim is ‘probably true,’ where the determination of ‘truth’ is made based on the factual circumstances of each individual case” (*Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)).

Additionally, USCIS acknowledges that the documentary evidence available for filing a Form I-730 petition may differ from the documentary evidence available for filing Form I-130 petitions. [8 CFR § 207.7\(e\)](#) states, in pertinent part (**emphasis added**), “**Where possible** this 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.”

While the petitioner should submit all evidence that exists to match the evidence described in [8 CFR § 204.2](#) for a Form I-130 petition, practitioners should argue that the inclusion of the words “where possible,” means that the regulation takes into account that some evidence will often be missing, destroyed, or otherwise impractical for a refugee or asylee petitioner to obtain.

112 See [8 CFR § 207.7\(e\)](#) and [8 CFR § 208.21\(f\)](#).

113 Although the higher “clear and convincing” evidentiary standard is not referenced explicitly in [8 CFR § 207.7\(e\)](#) or [8 CFR § 208.21\(f\)](#), raising the burden of proof in the case of a presumption of fraud is consistent with the Fraudulent Marriage Prohibition outlined in [8 CFR § 204.2\(A\)\(1\)\(ii\)](#), which notes that the presumption of a fraudulent marriage must be rebutted with clear and convincing evidence.

114 See USCIS, [Adjudicator’s Field Manual, Chapter 11.1 Submission of Supporting Documents and Consideration of Evidence](#).

If a petitioner has any questions about available documentation for registered refugees, UNHCR may be contacted at: usawainq@unhcr.org.

I. (NON)DISCLOSURE OF BENEFICIARIES

If an asylee or refugee did not disclose a close family relationship on prior immigration forms or petitions or during UNHCR or USCIS interviews, it is important for the practitioner to determine why not, so that a full explanation can be included in subsequent submissions to the government. Common reasons an asylee or refugee may give for not having disclosed a spouse or child include:

1. I thought they were dead.
2. I did not understand that I was being asked about family members who were not present with me at the time of the interview.
3. I was not asked about missing children.
4. I did not disclose children who were not living with me.
5. I did not disclose these children because they were living with their mother in another country/country of origin.
6. I was ashamed to disclose illegitimate children during the interview.
7. I was not asked specifically about step-children.
8. I was informed by someone associated with International Organization for Migration (IOM) or Resettlement Support Center (RSC) processing my refugee resettlement case that updating a new marriage and/or birth of a new child (after the Form I-590 refugee interview) would slow down the process.
9. Due to misinformation in the refugee camp, I was advised by others who have gone through the resettlement process to say that I was single.
10. Processing of my case took so long that I got married or had a baby after filing but before grant/admission (especially for refugees).
11. My child was *in utero* at the time of the interview or conceived after interview (especially for refugees).
12. I did not know I had a child.¹¹⁵

If a relationship is not listed on the Form I-589 or Form I-590, and is later disclosed for one of the reasons stated above, the burden of proof to prove the relationship will generally be raised to “clear and convincing.”¹¹⁶

¹¹⁵ Note: In this case, it may be more challenging for a petitioning father to demonstrate legitimation for a child that he never cohabitated with and did not know to list on the Form I-589/Form I-590, although practitioners should point to other factors of legitimation, such as the father’s being listed on the child’s birth certificate, ongoing financial support, and involvement in the child’s life. *See* Section V.iv. Common Evidentiary Issues Raised in RFEs, NOIDs, and NOIRs, subsection 7.a. Parent-Child Relationship and Legitimacy of Children Born Out of Wedlock for further discussion of legitimation.

¹¹⁶ Although the higher “clear and convincing” evidentiary standard is not referenced explicitly in [8 CFR § 207.7\(e\)](#) or [8 CFR §](#)

However, the petitioner can meet that higher standard if they can demonstrate that the relationship is petitionable. In instances where the petitioner, previously received ineffective assistance of counsel prompting the non-disclosure, the petitioner should fully explain the incorrect legal advice they received and USCIS may be more forgiving of the nondisclosure. Some of the reasons listed above—such as relatives who were believed to be missing or dead who are found—may also warrant a discretionary extension of the two-year filing deadline.

In certain situations, some nondisclosures by a petitioner may result in a finding of fraud. The UNHCR has vulnerability categories, including “woman at risk,” which are used to identify the one-percent of refugees each year who are referred for resettlement, thus there is a possible incentive for the non-disclosure of the male spouse.¹¹⁷ Examples of potential fraud in a refugee’s original claim may include:

- A married refugee woman divorced her husband because it would then be more likely that UNHCR would identify her as an unmarried “women at risk” and refer her for resettlement. As a single female head of household, her resettlement case is approved. Then, she remarries the same man before resettlement to the United States. After admission to the United States, she wants to file a Form I-730 petition for her husband.
- A married refugee woman divorced her host-country-national husband because her marriage to him would have provided her with a path to citizenship in that country, and therefore firm resettlement in the country of asylum, making her ineligible for refugee resettlement in the United States.¹¹⁸ After divorcing her husband, her resettlement case is approved. Then, she remarries the same man before resettlement to the United States. After admission to the United States, she wants to file a Form I-730 petition for her husband.

In both cases, the divorce and remarriage to the same man will likely be identified as marriage fraud for the purpose of obtaining immigration benefits. Ethical considerations and all the facts must be considered before agreeing to provide legal representation in such cases.

II. PRIMARY VS. SECONDARY EVIDENCE

Petitioners should provide primary evidence, such as civil-issued documents, if the petitioner has them or if such documentation exists and it is reasonable that the petitioner should be able to obtain such documentation, along with the Form I-730 petition. However, in the event that such primary documentation has been destroyed, is missing, or is unobtainable to the petitioner, they may submit “secondary evidence” in support of the petition. When submitting secondary evidence in lieu of primary evidence, petitioners should explain why they are unable to provide the primary evidence.¹¹⁹

[208.21\(f\)](#), raising the burden of proof in the case of a presumption of fraud (in this case, due to non-disclosure) is consistent with the Fraudulent Marriage Prohibition outlined in [8 CFR 204.2\(A\)\(1\)\(ii\)](#), which notes that the presumption of a fraudulent marriage must be rebutted with clear and convincing evidence.

¹¹⁷ See [UNHCR Resettlement Handbook](#).

¹¹⁸ See [8 CFR § 208.15](#).

¹¹⁹ See USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019, and [Adjudicator’s Field Manual, Chapter 11.1\(f\) Submission of Supporting Documents and Consideration of Evidence](#).

Note: Any documents written in a language other than English must be accompanied by a certified English translation, see [8 CFR § 103.2\(b\)\(3\)](#).

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

Some examples of Secondary Evidence Include:¹²⁰

- A Religious Institution’s Record
 - > A Certificate under seal where the baptism, dedication, or comparable rite occurred within 2 months after birth, showing the date and place of the child’s birth, the date and place of the religious ceremony, and the names of the child’s parents.
- School Records
 - > A letter from the authorities of the school attended, showing the date of admission to the school, the child’s date and place of birth, and the names of both parents if shown on the school records.
- Hospital Records
 - > A certificate from the hospital noting the child’s date and place of birth and the names of the parents.
- Pictures of the petitioner with the beneficiary
- UNHCR registration records showing a child was included in the petitioner’s household and/or residing with the petitioner.

When the beneficiary is interviewed overseas, the interviewing officer may ask for additional information, such as photographs and other proof that the relationship with the United States petitioner is genuine.

Note: If no primary or secondary evidence is available to support the relationship, two or more affidavits should be submitted to provide evidence of a relationship with the beneficiary. An affidavit is a written statement sworn to or affirmed by a person who was living at the time and who has personal knowledge of the event you are trying to prove.¹²¹

Affidavits are often the only type of documentation available in support of a claimed spousal and/or parent/child relationship. Affidavits constitute secondary documentation that can be used alone or in concert with other secondary documentation.

¹²⁰ Note: Some, but not all of the suggested documents below are listed in the [USCIS Instructions to Form I-730](#), Last Reviewed/Updated: May 23, 2019. See also 8 CFR § 204.2(d)(2)(v).

¹²¹ See USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019.

If a petitioner has any questions about available documentation for registered refugees, UNHCR may be contacted at: usawainq@unhcr.org.

III. REQUESTS FOR EVIDENCE (RFES)

If all required initial evidence is not submitted with the initial petition, USCIS may deny the Form I-730 for failure to establish eligibility based on lack of required initial evidence.¹²² In 2018, USCIS changed its RFE policy and may issue a denial without first issuing an RFE or a Notice of Intent to Deny (NOID) if required initial evidence is not submitted with USCIS applications/petitions. Following this policy, USCIS included “checklists” for all USCIS form, including the Form I-730.¹²³

If USCIS is not satisfied with the evidence the petitioner has filed with the initial Form I-730, the petitioner may receive a Request for Evidence (RFE).¹²⁴ RFEs can substantially delay processing times. If the petitioner or beneficiary has not received an RFE there is no need to send in any additional evidence to the U.S. government.

RFEs can come from USCIS, either while the petition is still processing in the United States or after a beneficiary’s interview if it was conducted at a USCIS field office (either in the United States or abroad). USCIS should mail RFEs both to the petitioner and their representative, although sometimes RFEs may be mistakenly mailed to the petitioner or to the representative but not both.

Note: For cases being processed by a USCIS Field Office in the United States. or abroad: routine service consists of mailing the notice by ordinary mail addressed to the affected party and their attorney or representative of record at their last known address.¹²⁵

In the first instance, the burden is on USCIS to provide appropriate communication. Any failure to put the attorney or representative of record on notice is an administrative error by the Service. A zealous advocate will be preparing an RFE response (based on the copy provided to the petitioner), while also communicating to USCIS that the legal representative was not served properly. The representative should request a copy of the original RFE and, when warranted, an extension of the original filing deadline, due to administrative error by USCIS. If USCIS does not correct the error to provide a duplicate copy to the attorney or representative of record in a timely fashion, a response should still be submitted within the original filing deadline, whenever possible. If the petitioner encounters difficulty in obtaining the requested evidence and/or fails to contact their legal representative in a timely fashion once the RFE has been issued, the representative may use USCIS’s failure to properly serve the representative with the RFE as a ground to obtain additional time for the petitioner to obtain such evidence. If a Form I-730 petition is ultimately denied due to the petitioner’s failure to respond to an RFE that was never properly sent to the legal representative, the petitioner may file a Form I-290B based on new evidence, arguing that USCIS should reopen the case on its own merit due to its failure to

122 See USCIS, Policy Memorandum, PM 6-2-0163, [Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator’s Field Manual \(AFM\) Chapter 10.5\(a\), Chapter 10.5\(b\)](#), July 13, 2018.

123 See USCIS, [Form 1730, Checklist of Required Initial Evidence](#).

124 *Id.*

125 See 8 CFR § 103.8(a)(1)(i).

adhere to Service regulations.¹²⁶ Of course, it is best to avoid having this situation by timely filing, even if the representative did not receive the RFE directly from USCIS.

Similar to a USCIS international office, a Consular Post may also request that the beneficiary provide additional evidence either at or after the overseas interview; however, in most cases for processing at a Consular Post, this request will be in the form of verbal instructions given to the beneficiary or a simple one-page checklist with instructions. Take caution if the beneficiary is being processed at a Consular Post because the Consular Posts generally communicate with the beneficiary directly and rarely copy the legal representative, even when a Form G-28 is on file.

Most RFEs will request additional documentation. A Request for Evidence may cite to the [DOS Reciprocity Schedule](#) when requesting that a civil-issued document be submitted in support of the Form I-730 petition. If the petitioner or beneficiary does not have any or all of the requested documents, they should provide secondary evidence for the information requested.

Note: If no primary or secondary evidence is available to prove the relationship, two or more affidavits should be submitted to provide evidence of a relationship with the beneficiary. An affidavit is a written statement sworn to or affirmed by a person who was living at the time and who has personal knowledge of the event you are trying to prove.¹²⁷

If a petitioner has any questions about available documentation for registered refugees, UNHCR may be contacted at: usawainq@unhcr.org.

Note: Documents written in a language other than English must be accompanied by a certified English translation.¹²⁸ When the beneficiary is interviewed overseas, the interviewing officer may ask for additional information, such as photographs and other proof that the relationship with the U.S. petitioner is valid and bona fide.

All responses to Requests for Evidence must be submitted within the allotted time given by USCIS or the petition may be denied. In some cases where USCIS determines that an RFE response is insufficient, USCIS may issue a Notice of Intent to Deny (NOID), giving the petitioner one final chance to meet the evidentiary burden. A NOID may be based on evidence of ineligibility or on derogatory information known to USCIS, but the applicant, petitioner, or requestor is either unaware of the information or may be unaware of its impact on

¹²⁶ See Denials and Motions to Reopen/Reconsider under Section XI. Troubleshooting When Problems Arise for further guidance.

¹²⁷ See USCIS, [Form I-730 Refugee/Asylee Relative Petition Instructions](#), Last Reviewed/Updated: May 23, 2019.

¹²⁸ See 8 CFR § 103.2(b)(3).

eligibility.¹²⁹ A NOID must be responded to within 30 days (33 if received by mail).¹³⁰

However, be aware that USCIS can and often does deny the petition after the RFE without issuing a NOID. It remains to be seen whether USCIS will begin denying Form I-730s without issuing RFEs under its recently updated policy authorizing the agency to deny applications without issuing RFEs.¹³¹ USCIS may also issue a NOID without first issuing an RFE, especially if there is evidence of ineligibility or derogatory information known to USCIS, even if the petitioner is unaware of the information or unaware of its impact on eligibility.¹³²

If the petition was initially approved by USCIS and later returned by the Consular Post due to potentially adverse information or any discrepancy regarding the information provided at the time of the overseas interview, USCIS may issue a Notice of Intent to Revoke (NOIR) the original approval, giving the petitioner only 30 days to respond (33 days if the decision was received by mail).¹³³ When receiving an RFE, NOID, or NOIR, practitioners should examine the document carefully to identify each evidentiary issue that USCIS is raising related to the case(s) in question. Legal representatives should first determine whether USCIS has followed applicable regulations and policy memoranda regarding providing notice of the RFE to the petitioner and legal representative of record on the case, as addressed in [8 CFR § 292.5](#). Regardless of whether the RFE, NOID, or NOIR was properly served, the representative should determine whether USCIS is requesting information that is statutorily necessary, and then should work with the petitioner to ascertain what, if any, additional documentation is available and/or respond to erroneous legal conclusions in the document.

IV. COMMON EVIDENTIARY ISSUES RAISED IN RFES, NOIDS, AND NOIRS

Common evidentiary issues addressed in an RFE, NOID or NOIR may include:

1. DNA Testing

A common type of evidence that may be requested is a DNA Test. Voluntary DNA testing can be used to establish the relationship between a parent PA and a child beneficiary.¹³⁴ In general, Consular Posts and USCIS offices will not process DNA tests until USCIS issues a request to the Petitioner for voluntary DNA testing. Do not submit a DNA test until requested by the U.S. government.¹³⁵

When USCIS requests voluntary DNA testing, an information packet will be sent to the petitioner that provides instructions on how to obtain a DNA test. The testing must be conducted by a parentage testing

129 See USCIS, Policy Memorandum, PM 602-0163, [Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual \(AFM\) Chapter 10.5\(a\), Chapter 10.5\(b\)](#), July 13, 2018.

130 See [8 CFR § 103.2\(b\)\(8\)\(iv\)](#) and [8 CFR § 103.8\(a\)\(1\)\(i\)](#).

131 See USCIS, Policy Memorandum, PM 602-0163, [Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual \(AFM\) Chapter 10.5\(a\), Chapter 10.5\(b\)](#), July 13, 2018.

132 *Id.*

133 USCIS Policy Memorandum, PM-602-0163, [Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual \(AFM\) Chapter 10.5\(a\), Chapter 10.5\(b\)](#), July 13, 2018. See also Section XI.iii. on Consular Returns.

134 See [9 FAM 601.11-1\(A\)\(2\)](#) *et seq.*

135 See [9 FAM 601.11-1](#) *et seq.*

laboratory that is accredited by the American Association of Blood Banks (AABB).¹³⁶

Note: USCIS highly recommends that petitioners do not incur unnecessary expense by utilizing any testing facility that is not accredited by the AABB as those test results will be rejected. A current list of the AABB accredited parentage testing laboratories can be viewed on the [AABB website](#).¹³⁷

Beneficiaries who are overseas and who need to be tested will be contacted by the appropriate USCIS office or Consular Post to come in for a DNA swab, following USCIS/State Department guidelines.¹³⁸ Even in the case of an RFE, the DNA testing is voluntary for both the petitioner and beneficiary. The burden, however, is always on the petitioner and beneficiary to establish the required relationship, meaning that if the petitioner or beneficiary refuses DNA testing, the Form I-730 may be denied if there is not enough evidence to meet the petitioner's burden of proof without DNA testing. It would therefore be risky for either the petitioner or the beneficiary to refuse to submit to voluntary DNA testing once requested by USCIS and/or the appropriate Consular Post.

Note: The cost of any DNA test is borne solely by the petitioner and does not guarantee approval of the Form I-730.¹³⁹

2. Secondary Documentation/Lack of Civil-Issued Documentation

Many refugee and asylee petitioners are unable to obtain primary documentation as evidence of their relationship to a beneficiary (i.e. a birth certificate, marriage certificate, etc). If USCIS requests primary documentation and the petitioner is unable to obtain it, the legal representative can argue that secondary documentation is sufficient. A proper response to such a request in cases in which the beneficiary is also a refugee and does not have access to civil-issued documents would be a citation to the language "where possible" in [8 CFR § 207.7\(e\)](#). Practitioners may use this language to argue that, due to risk of persecution, refugees cannot be expected to request civil documents from the government of the country in which they fear persecution, making it impossible for the petitioner or beneficiary to obtain the particular document in the present case.¹⁴⁰ In arguing the sufficiency of secondary documentation, practitioners should also document any attempts that the petitioner or beneficiary have made to obtain primary documentation.

The [DOS Reciprocity Schedule](#) indicates the type of documentation that is required for U.S. visa reciprocity,

¹³⁶ See [9 FAM 601.11-1\(A\)\(2\)\(b\)](#).

¹³⁷ See [AABB Accredited Relationship \(DNA\) Testing Facilities](#) for a complete list.

¹³⁸ See [9 FAM 601.11-1 et seq.](#)

¹³⁹ See [9 FAM 601.11-1\(B\)\(a\)\(3\)](#).

¹⁴⁰ See Section V. ii. Primary vs. Secondary Evidence for discussion of the different types of evidence. See also Appendix vi. Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws for further discussion of country conditions research and the types of documents available in a given country.

and for some countries, it will indicate that civil-issued documentation is unavailable. Where the Reciprocity Schedule states that primary documentation is unavailable, there is a clear mandate for USCIS to accept secondary documentation.¹⁴¹

In some instances, however, the DOS Reciprocity Schedule may indicate that documents are available in a certain country even though the practitioner has not been able to obtain the documents. It may be possible for the practitioner to argue that certain regions in that country are still unable to produce the documents but making this argument will require the practitioner to perform further research.

Beyond the DOS Reciprocity Schedule, practitioners should conduct their own legal research regarding the validity of a given document that is not civil-issued.¹⁴² Practitioners can also use the [DOS Country Offices Directory](#) to call the DOS Desk Officer for the particular country of interest to discuss the types of documentation available in a given country. Practitioners should bear in mind, however, that documents that are generally available for citizens may not be available for refugees or those seeking asylum, as many refugees or asylum seekers are among classes of people in their countries who were not afforded full rights in the countries they have fled.

Even in cases where the Reciprocity Schedule states that primary documentation is available in the petitioner's country of origin, practitioners have a strong argument for the sufficiency of secondary documentation.¹⁴³ [8 CFR §207.7\(e\)](#) states that evidence to prove a petitionable Form I-730 relationship will be the same type of documentation listed for Form I-130 petitioners, **where possible**. This qualifying statement, "where possible" opens the door for arguing the sufficiency of secondary documentation any time that it is not possible for a petitioner or beneficiary to obtain primary documentation for a Form I-730 Refugee/Asylee Relative Petition. Practitioners should document efforts to obtain both primary and secondary evidence and submit evidence of such attempts. But the burden remains on the petitioner to explain why it is not "possible" to obtain the evidence.

Pertinent Regulations:

- i. [8 CFR § 204.1\(f\)\(1\)](#): "When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM)." [Note: The reference to the FAM here indicates the DOS Reciprocity Schedule.]
- ii. [8 CFR § 204.1\(g\)\(2\)](#): "*Secondary evidence*. If primary evidence is unavailable, the petitioner must present secondary evidence. Any evidence submitted as secondary evidence will be evaluated for authenticity and credibility. Secondary evidence may include, but is not limited to, one or more of the following documents: (i) A **baptismal certificate** with the seal of the church, showing the date and place of birth in the United States and the date of baptism; (ii) **Affidavits** sworn to by persons who were living at the time and who have personal knowledge of the event to which they attest. The affidavits must contain the affiant's full name and address, date and place of birth, relationship to the parties, if any, and complete details concerning how the affiant acquired knowledge of the event; (iii) **Early school records** (preferably

¹⁴¹ See [8 CFR § 204.1\(f\)-\(g\)](#).

¹⁴² See Appendix vi. Tips and Resources for Researching Foreign Marriages, Birth Registration, and Family Laws.

¹⁴³ See also Section V. ii. Primary vs. Secondary Evidence.

from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s); (iv) Census records showing the name, place of birth, and date of birth or age of the petitioner..." [Emphasis added.]

- iii. **8 CFR § 103.2(b)(2)(ii)**: "*Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. **However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist.** An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement." [Emphasis added.]
- iv. **8 CFR §207.7(e)**: "*Evidence.* Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for accompanying or following-to-join benefits. Where possible this 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."
- v. **8 CFR §103.2(b)(3)**: "*Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."
- vi. 9 FAM Appendix C: Visa Reciprocity by Country.¹⁴⁴

3. Late-Issued Civil Documentation

USCIS often questions the reliability of so-called "late-issued documentation," which is documentation that is issued long after the occurrence of the event that the document intends to prove.¹⁴⁵ USCIS will often issue an RFE requesting additional primary documentation, contending that late-issued documentation is less persuasive than documentation issued contemporaneously with the event (i.e. a birth, marriage, or death certificate issued and executed at the time of the event itself). Practitioners are advised to respond to this type of RFE similarly to one requesting primary documentation that is unavailable to the petitioner or beneficiary as discussed above.

¹⁴⁴ See 9 FAM Appendix C: [Visa Reciprocity by Country](#).

¹⁴⁵ See 9 FAM 203.6-3 c.(1)(b).

4. Requests for Information That Is Not Required by Law

Practitioners should be aware that USCIS may issue an RFE requesting documentation or information that is not statutorily required for the Form I-730 petition to be approved. This may be due to a particular adjudicating officer's greater familiarity with the Form I-130 process than the Form I-730 Petition process; Form I-730 Petitions are adjudicated using a lower evidentiary standard than Form I-130 Petitions. For example, an RFE may request a spousal beneficiary's birth certificate, although this is not statutorily required for a Form I-730 approval. An RFE may also erroneously raise the burden of proof to "clear and convincing" instead of the lower "preponderance of the evidence" standard. Before endeavoring to obtain the type of documentation requested by USCIS in an RFE, first determine whether that information or documentation is related to proving an eligibility requirement under the controlling statute and meets the burden of proof outlined in [8 CFR § 207.7\(e\)](#).

Controlling Statutes:

- i. [INA § 207\(c\)\(2\)\(A\)](#): "a spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of any refugee who qualifies for admission under paragraph (1) shall...be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee..."
- ii. [INA § 101\(b\)\(1\)\(B\)](#): "a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred."
- iii. [INA § 101\(b\)\(1\)\(C\)](#): "a child legitimated 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, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation."
- iv. [INA § 101\(b\)\(1\)\(D\)](#): "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."

Pertinent Regulations:

- i. [8 CFR § 204.2\(d\)\(2\)\(iii\)](#): "*Primary evidence for an illegitimate child or son or daughter.* If a petition is submitted by the mother, the child's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted by the purported father of a child or son or daughter born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child relationship was established when the child or son or daughter was unmarried and under twenty-one years of age."
- ii. [8 CFR § 207.7\(e\)](#): "*Evidence.* Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for accompanying or following-to-join benefits. Where possible this will consist of the documents specified in Sec. 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter."

5. Non-Disclosure of Relative on Prior Benefits Application(s)

If a petitioner files a Form I-730 for a spouse or child who was not disclosed in previous immigration matters—such as on the Form I-589 or I-590 or during the refugee resettlement or asylum interview/removal hearing—USCIS will likely issue an RFE. An RFE of this type usually involves at least two evidentiary consequences. First, USCIS will require that the individual provide a statement explaining why the petitioner failed to list the beneficiary in the previous immigration matter. Second, USCIS will often raise the petitioner’s burden of proof from the “preponderance of the evidence” standard to the higher burden of “clear and convincing evidence.” Depending on the circumstances of the case, there are many reasons why an individual may have failed to disclose the beneficiary in a prior application.¹⁴⁶

Although it is **best to deal with non-disclosure affirmatively** by addressing it with an affidavit filed **contemporaneously with the Form I-730**, a practitioner may first become aware of the alleged non-disclosure when USCIS issues an RFE. For this reason, it is best practice to ask every Form I-730 petitioner whether they listed their spouse, fiancé(e), and all children on their Form I-589 or Form I-590, and/or whether the petitioner disclosed them during the asylum or refugee interview. Wherever possible, practitioners should file a FOIA request to obtain the Form I-589 or Form I-590 and all other documents submitted by the Principal Applicant in the past.¹⁴⁷ Addressing the issue of non-disclosure affirmatively at the time of the Form I-730 filing may avoid a future RFE.

Often, USCIS will allege that a beneficiary was not previously disclosed when the beneficiary may have actually been disclosed. Under [8 CFR 103.2\(b\)\(16\)\(i\)](#), if the decision will be adverse and is based on derogatory information considered by USCIS of which the petitioner is unaware, USCIS has an obligation to advise the petitioner of this fact and give the petitioner an opportunity to rebut the information and present information on their own behalf before the decision is rendered. In many cases however, USCIS will not affirmatively provide the representative with a copy of the allegedly deficient Form I-589 or Form I-590 at the same time as the RFE or NOID.¹⁴⁸ In these cases, the practitioner may want to invoke [8 CFR §103.2](#) (below) and argue that the Service has failed to comply with its legal obligation to give the applicant sufficient information to respond to the RFE, and/or to permit the applicant to inspect the record of proceeding which constitutes the basis for the proposed denial of their case.

Pertinent Regulations:

- i. [8 CFR §103.2 \(b\)\(8\)\(iv\)](#): “*Process*. A request for evidence or notice of intent to deny will be in writing and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and **sufficient information to respond.**” [Emphasis added.]
- ii. [8 CFR §103.2 \(b\)\(16\)](#): “*Inspection of Evidence*. An applicant or petitioner **shall be permitted to inspect the record of proceeding** which constitutes the basis for the decision, except as provided in the following

¹⁴⁶ See Section V .i. (Non)Disclosure of Beneficiaries for further discussion.

¹⁴⁷ See Section IV. ii. on Freedom of Information Act (FOIA) Requests.

¹⁴⁸ Keep in mind that USCIS has issued an RFE policy which allows officers to deny petitions and applications if the required information is not originally filed. See USCIS, Policy Memorandum, PM 6-2-0163, [Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator’s Field Manual \(AFM\) Chapter 10.5\(a\), Chapter 10.5\(b\)](#), July 13, 2018.

paragraphs.” [Emphasis added.]

- iii. **8 CFR § 103.2(b)(16)(ii):** “*Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she **shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered**, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.” [Emphasis added.]

6. Spouses

a. Cultural and Traditional Marriages

The INA does not include a specific definition of marriage, but rather, states what does not qualify as a marriage: a proxy marriage that has not been consummated.¹⁴⁹ For marriages contracted overseas, the principle of international comity applies, meaning that the United States will recognize a marriage that is legally valid in the country in which it was celebrated. Thus, a marriage is valid in the United States if it was valid in the country where it was contracted or celebrated, with a few public policy exceptions such as polygamy and incest.¹⁵⁰

USCIS is likely to send an RFE in cases where a couple claims to be married under a cultural or traditional marriage but does not have a civil marriage document issued by the government in the country where the marriage was celebrated. In such circumstances, the practitioner can argue that it is not possible to obtain a civil-issued document and support this finding through country-specific research.¹⁵¹

There is no controlling law that requires or prevents USCIS from recognizing a traditional or cultural marriage. In *Matter of H-*,¹⁵² the Board of Immigration Appeals established that, unless there is a clear public policy reason for rejecting a marriage, the “validity of a marriage is determined by the law of the place where it is contracted or celebrated and if it is valid there, it is valid everywhere.” Thus, practitioners can argue that if a cultural or traditional marriage is valid in the country it was entered into, it should be considered valid for immigration purposes. *Matter of H-*, which addressed the validity of a polygamous marriage, found an exception to the general rule granting comity to foreign-recognized marriages because polygamy violates strong public policy considerations.¹⁵³ Practitioners can argue that cultural marriages are not contrary to U.S. policy so if they are recognized in the country where entered into, they should be recognized for U.S. immigration purposes.

b. Proxy Marriage and Consummation

Under [INA § 101\(a\)\(35\)](#), “the term ‘spouse,’ ‘wife,’ or ‘husband’ does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence

¹⁴⁹ See [INA § 101\(a\)\(35\)](#).

¹⁵⁰ See *Matter of Zeleniak*, 26 I&N Dec. 158, 160 (BIA 2013).

¹⁵¹ See Appendix vi. Tips and Resources for Research Foreign Marriages, Birth Registration, and Family Laws.

¹⁵² See *Matter of H-*, 9 I&N Dec. 640 (BIA 1962).

¹⁵³ *Id.*

of each other, unless the marriage shall have been consummated.”

This means that if a practitioner meets with a petitioner who was not physically present in the same place as their spouse for the marriage ceremony, the only way that USCIS will recognize the marriage is if the marriage was later consummated. In this situation, the practitioner may need to have an uncomfortable conversation with the petitioner about intimate details of their marriage to ensure that the marriage was later consummated.

Whenever a petitioner’s case involves proxy marriage, the practitioner should provide evidence of consummation. This can include evidence that the petitioner traveled outside the United States to visit the beneficiary following the “proxy” marriage, documentation of cohabitation during this time, such as hotel receipts, property ownership/rental and/or photos of the couple together. In cases where a child is conceived following a proxy marriage, this is the best “proof” of consummation/legitimation of a “proxy” marriage; however, the child in such a situation would likely be conceived after the PA’s initial grant of asylum or refugee status, and thus not eligible for Form I-730 benefits.¹⁵⁴

7. Children

a. Parent-Child Relationship and Legitimacy of Children Born out of Wedlock

A mother or father of a child born in wedlock, filing a Form I-730 on behalf of a child does not have to prove that they have an ongoing relationship with the child through any documentary evidence. Likewise, the mother of a child, even if born out of wedlock, need not prove an ongoing parent-child relationship.¹⁵⁵

However, if the petitioner is the father and the child was born out of wedlock, the father will have to prove that the child has been legitimated or he has an ongoing parent-child relationship with the child.¹⁵⁶ In such cases if the father can prove that he legitimated his out-of-wedlock child under the laws of the country where the child was born or where the father resided, then the Form I-730 should be approved without further evidence of the parental relationship from the father.¹⁵⁷

In any case where the petitioner receives an RFE requesting proof of a parent-child relationship, the practitioner should scrutinize the basis of the request to ensure that it is statutorily appropriate. If proof of the parent-child relationship is warranted for a father petitioning for a child born out-of-wedlock where the father has not legally legitimated the child, practitioners should submit as much primary and/or secondary documentation as possible. Evidence may include: a father’s subsequent marriage to the child’s mother; the child’s birth or baptism certificate (indicating the petitioner as the father of a child born out of wedlock); evidence of the father’s cohabitation with the child and/or documentation that the child is currently residing in the care of extended family members; evidence of the father’s ongoing financial support of the child and involvement in the child’s upbringing, documented through correspondence and family photos or the child’s school or medical records; and/or sworn affidavits from friends and family members attesting to the child’s legitimation.

154 See Section XII. Additional Family Reunification Options Beyond the Form I-730.

155 See INA § 101(b)(1)(D).

156 *Id.*

157 See INA § 101(b)(1)(C)

In practice, USCIS may not always require specific proof of the parent-child relationship in cases where a father is filing for a child born out of wedlock (especially if the child is listed on the father's Form I-589/ Form I-590), but if the petitioner gets an RFE requesting proof of the parent-child relationship, there are several important considerations for the practitioner.¹⁵⁸

First, practitioners can use secondary documentation to prove the parent-child relationship (*see* above). Second, even if the child was born out of wedlock, the father may have already legitimated the child. Many countries have legitimation statutes, which provide that an out-of-wedlock child is automatically legitimated when the father acknowledges paternity. This can happen through a simple act such as the father acknowledging paternity on the child's birth certificate. Practitioners should always research the laws of the country where the child was born, since this may provide the simplest rebuttal that proof of the parent-child relationship is unnecessary in cases where the child has already been legitimated. If the child has been legitimated, then there is no need to provide evidence of an ongoing parent-child relationship.

Controlling Statutes:

- i. [INA § 101\(b\)\(1\)](#): “the term ‘child’ means an unmarried person under twenty-one years of age who is –
...”

(C) “a child legitimated 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, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;”

(D) “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;”

Pertinent Regulations:

- i. [8 CFR § 204.2\(d\)\(2\)\(ii\)](#): “*Primary evidence for a legitimated child or son or daughter.* A child can be legitimated through the marriage of their natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the beneficiary's birth certificate and the parent's marriage certificate or other evidence of legitimation issued by civil authorities.”

¹⁵⁸ *See* USCIS, [Adjudicator's Field Manual, Chapter 21.4](#).

b. Cultural Adoption

Practitioners should scrutinize the petitioner's facts extensively before agreeing to represent a petitioner with a Form I-730 that is based on a cultural adoption, as most instances in which the family claims a child is "adopted" culturally are not legally petitionable relationships.¹⁵⁹ Individuals who refer to their nieces and nephews as "adopted" often do so based on custom in their country, but, unfortunately, such relationships are generally not recognized as legal adoptions under the INA, unless the customary adoption terminates the legal parent-child relationship with the prior parents and creates a legal parent-child relationship with the adoptive parent under local law.¹⁶⁰

If such a child is present with the family during their UNHCR refugee registration, UNHCR will conduct a Best Interest of the Child determination and may refer the child for resettlement to the United States with the rest of the family. However, a child whom a petitioner claims was adopted but was not resettled with the family creates questions about the legitimacy of the adoption, especially if that child was living with the petitioner in refugee status before resettlement. Practitioners must analyze the family law of the jurisdiction in which the adoption allegedly took place to determine if it was a legal adoption that satisfies the requirements under [INA § 101\(b\)\(1\)\(E\)](#). Generally, case law supports the conclusion that the adoption must be a legal adoption, not merely a cultural adoption in order for the child to be eligible for family reunification as an adopted child.

Controlling Statute:

- i. [INA § 101\(b\)](#): "As used in titles I and II- (1) The term "child" means an unmarried person under twenty-one years of age who is... (E) (i) a **child adopted** while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household : Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or (ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;" [Emphasis added.]

Relevant Case Law:

- i. *Matter of Kwok*, 14 I&N, Dec. 127, 130 (BIA 1972): "we also reaffirm our long-standing rule that the validity of an adoption for immigration purposes is governed by the law of the place where the adoption occurred."
- ii. *Kaho v. Ilchert*, 765 F.2d 877 (9th Cir. 1985). In this case, the 9th Circuit recognized a "customary adoption" in Tonga, finding that "the BIA has expressly held that it is not necessary for an adoption to be recognized by a juridical act before it can be recognized as valid for immigration purposes." "[F]or an adoption to be valid under section 101(b)(1)(E), an adoption need not conform to the BIA's or Anglo-

159 See USCIS, [Adjudicator's Field Manual, Chapter 21.16](#),

160 See *Matter of Lee*, 16 I&N Dec. 511 (BIA 1978).

American notions of adoption; the adoption need only be recognized under the law of the country where the adoption occurred.”

In addition to the common evidentiary issues outlined above, CLINIC has sample legal briefs available to affiliates in our toolkit or by request for non-affiliates by emailing Victoria Neilson at the Catholic Legal Immigration Network, Inc. at vneilson@cliniclegal.org.

VI. TIMELINE AND OPPORTUNITIES FOR INQUIRY DURING FORM I-730 PROCESSING

The length of time needed to complete a refugee/asylee relative petition case varies widely according to the circumstances of each case and cannot be predicted with any accuracy. There is no queue so Form I-730 cases for two separate petitioners filed on the same day may result in beneficiaries arriving in the United States months or years apart. The total processing for a Form I-730 generally takes a minimum of **one year** for **beneficiaries in the United States** and a minimum of **two years** for **beneficiaries abroad**, although processing can take **longer in many cases**. At the time of publication, most Form I-730 practitioners report having several cases that have remained at the Consular Processing stage for over four years. Due to the reasons described below, legal representatives should explain the realities of these timelines to their clients, as this may be the first time that they are hearing such information. Unfortunately, with the recently announced plans for USCIS to close all international field offices, it is likely that processing times will only increase.

Note: The Trump administration recently announced plans to close all USCIS offices abroad.¹⁶¹ Several months following this announcement, USCIS clarified that all but seven of its 23 international offices will be closed by August 2020. This change will dramatically alter Form I-730 processing and is likely to take effect in Fiscal Year 2020.¹⁶² This change will dramatically alter Form I-730 processing and is likely to take effect in Fiscal Year 2020. This manual references instances where the closure of USCIS international offices is likely to affect future Form I-730 processing; however, as of the time of publication, neither the exact timeline for implementation nor the extent to which the announced closings will affect Form I-730 adjudication is known.

Practitioners should know that refugee *Form I-730* petitioners were likely advised during their own refugee processing by UNHCR or the overseas Resettlement Support Centers that the follow-to-join process would be quick and easy. The process is neither of those things, putting the legal representatives in the United States in the unfortunate position of explaining to a Form I-730 petitioner just how lengthy and cumbersome this process may be.

Additionally, Visa 93/Refugee Follow-to-Join beneficiaries have been affected by the new security measures put in place as of February 1, 2018,¹⁶³ which have caused across-the-board delays for all cases, especially for refugees who lack access to government-issued identity documents necessary to swiftly complete security and

¹⁶¹ See Miriam Jordan, *Trump Administration Plans to Close Key Immigration Operations Abroad*, N.Y. TIMES, March 12, 2019.

¹⁶² Please be advised to check the USCIS website for an update of USCIS office closures, <https://www.uscis.gov/about-us/uscis-office-closings>.

¹⁶³ See *USCIS Is Strengthening Screening for Family Members Abroad Seeking to Join Refugees in the United States*, Last Reviewed/Updated Feb. 6, 2018.

background checks. The new security measures include: full baseline interagency checks that other refugees receive; submission of Form I-590 Registration for Classification as a Refugee in support of the principal refugee's Form I-730 petition earlier in the adjudication process; and vetting against classified databases.¹⁶⁴ Beneficiaries over the age of 14 must also submit a completed Form G-646, Sworn Statement of Refugee Applying for Admission into the United States at the interview.¹⁶⁵

As of this manual's publication, the additional security measures first referenced in the President's March 6, 2017 Executive Order¹⁶⁶ apply only to refugee processing. However, in accordance with these additional security measures, all Visa 92 and 93 beneficiaries must be interviewed before the adjudication of their Form I-730 petitions, whereas beneficiaries in the United States were generally not interviewed in the past, but now they will be.¹⁶⁷

Once the petition and supporting documentation are mailed to USCIS,¹⁶⁸ these materials are reviewed by both the USCIS Service Center (located in either Texas or Nebraska, depending on the filing location), and the USCIS International Adjudication Support Branch (IASB), if the Form I-730 petition is filed by a refugee. The recently created IASB serves as a clearinghouse to consolidate and standardize Form I-730 processing for refugees; however, with the recently announced plans to close most USCIS offices abroad, it is unclear what role, if any, the IASB will continue to provide in ongoing Form I-730 processing and it is likely that the IASB will close along with the USCIS International Offices.¹⁶⁹ If the Form I-730 petition is filed by an asylee, the Service Center will retain jurisdiction over the petition.

Under current practice, in cases of refugee petitioners, the Service Center will send a Notice of Case Transfer to the petitioner and representative of record once the case is transferred to IASB. If additional information is required, the USCIS Service Center or IASB may issue a Request for Evidence.¹⁷⁰ Current processing times for Form I-730s can be found on the [USCIS website](#); however these timeframes only include the time that it takes to process the petition domestically—both the Service Center and/or IASB; for overseas beneficiaries, Consular Processing of a Form I-730 beneficiary can be a much lengthier process and there is no website to check processing times for this part of the adjudication.

Once the Service Center and/or IASB has completed its review of the petition, beneficiaries currently in the United States will be interviewed at their local USCIS office. If the beneficiary lives overseas, the petitioner will receive notification from IASB that the petition is being forwarded to the National Visa Center (NVC) in New Hampshire for ongoing processing. As of this manual's publication, USCIS has advised that Refugee Form I-730 cases may no longer receive an approval notice before the case is transferred to the NVC, as adjudication of the Form I-730 is extending through Consular Processing for beneficiaries overseas; however, if a petitioner does receive a Form I-797(C) Transfer Notice from IASB, this notice is an indication that the case is proceeding

164 *Id.*

165 See 9 FAM 203.6-5(3)(d)(ii).

166 See Exec. Order No. 13780, (2017), *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States*, Mar. 6, 2017.

167 See USCIS, *USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants*, Aug. 28, 2017.

168 See section IV. v. for Where to File a Form I-730.

169 See Miriam Jordan, *Trump Administration Plans to Close Key Immigration Operations Abroad*, N.Y. TIMES, Mar. 12, 2019.

170 See Requests for Evidence in Section V. iii.

normally.¹⁷¹

overseas beneficiaries will be interviewed by a Consular or USCIS officer to verify the claimed relationship and the beneficiary's identity. Once an overseas case has been transferred to the NVC, the NVC will then forward the case to the appropriate USCIS office or Consular Post for processing, mailing notification of the case forwarding to the petitioner and legal representative.

If the case is transferred from NVC to the Consular Post, it becomes the responsibility of the DOS, and USCIS will not respond to further inquiries. The representative can contact the Consular Post six to eight weeks after the NVC sends the case transfer notice to be sure that the case has arrived but may need to attach an updated Form G-28 for the petitioner and/or beneficiary to demonstrate to the Consular Post that the petitioner and/or beneficiary is represented. If the case is transferred to a USCIS International Office, USCIS will retain jurisdiction.¹⁷²

Note: The Trump administration recently announced plans to close all USCIS offices abroad.¹⁷³ Several months following this announcement, USCIS clarified that all but seven of its 23 international offices will be closed by August 2020.¹⁷⁴ This change will **dramatically alter Form I-730 processing and is likely to take effect in Fiscal Year 2020**. This manual references instances where the closure of USCIS international offices is likely to affect future Form I-730 processing; however, as of the time of publication, neither the exact timeline for implementation nor the extent to which the announced closings will affect Form I-730 adjudication is known.¹⁷⁵

Around the time of the beneficiary's interview by a USCIS officer or DOS consular officer, the USCIS office or Consular Post will request a medical examination. While most locations require the medical exam to be completed after the interview, some posts request an exam prior to scheduling the beneficiary's interview.¹⁷⁶ In either case, the requesting office will give appropriate instructions to the beneficiary on how to complete the medical examination.

After the interview, the case goes through an "administrative processing" stage—in which additional security checks and other clearances may be required—for any number of weeks, months, or years, depending on the circumstances. Once a case is in administrative processing, a USCIS Field Office or Consular Post is unable to provide a timeline for the case or any details as to the reason for the delay. When a case requires additional

171 More information can be found at USCIS, *USCIS Is Strengthening Screening for Family Members Abroad Seeking to Join Refugees in the United States*, Last Reviewed/Updated Feb. 6, 2018.

172 See Section VIII. ii. USCIS International Offices and DOS Consular Posts.

173 See Miriam Jordan, *Trump Administration Plans to Close Key Immigration Operations Abroad*, N.Y. TIMES, March 12, 2019.

174 See USCIS, *USCIS Will Adjust International Footprint to Seven Locations*, August 9, 2019. USCIS plans to maintain operations at its international field offices in Beijing and Guangzhou, China; Nairobi, Kenya; and New Delhi, India. USCIS had previously announced the continuation of operations in Guatemala City, Guatemala; Mexico City, Mexico; and San Salvador, El Salvador, as part of a whole-of-government approach to address the crisis at the southern border.

175 Please be advised to check the USCIS website for an update of USCIS office closures, <https://www.uscis.gov/about-us/uscis-office-closings>.

176 See 9 FAM 203.6-4. See also Section VIII. v. for more information on the Medical Examination and Vaccination Requirements.

administrative processing beyond the usual 60 days required for standard background checks and security clearances, the timing of completion will vary based on individual circumstances of each case.¹⁷⁷

Note: Refugee Form I-730 / Visa 93 beneficiaries count toward the allocated number of refugees to be admitted to the United States, as per the presidential determination on refugee admissions for the fiscal year in which they arrive.¹⁷⁸ Therefore, a lower number of proposed refugee admissions may affect the timeline for processing Form I-730 beneficiaries.¹⁷⁹ Asylee Form I-730 beneficiaries, on the other hand, are not counted towards the overall refugee admission numbers so are not affected by the lower refugee admissions, although they may be affected by additional delays in implementing required security and background checks.

I. INQUIRIES

CASE STATUS

To check the most recent USCIS action on a case, enter the Receipt number on the USCIS website at <https://egov.uscis.gov/casestatus>.

Remember that a refugee relative petition will be transferred to IASB after the Service Center and before being sent to the NVC. An RFE will be issued by the IASB if a V93 beneficiary's [Form I-590](#) was not submitted with the initial Form I-730 petition.

To determine the current processing time for Form I-730 petitions, check online at <https://egov.uscis.gov/processing-times/>. The representative will need to know at which Service Center the case is processing and have the receipt date. This page lists the “receipt date for a case inquiry.” If the receipt date listed here is prior to the Petitioner’s receipt date, the representative cannot make an inquiry yet.¹⁸⁰ Inquiries with USCIS can only be made when the Petitioner’s receipt date is prior to the “receipt date for case inquiry.”

EXAMPLE:

Receipt date for case inquiry	Petitioner’s receipt date	Can I make an inquiry?
February 24, 2019	March 8, 2019	No
February 24, 2019	January 18, 2019	Yes

CASE INQUIRY (e-Request)

A case inquiry can be made by the Petitioner or attorney/accredited representative of record online at <https://egov.uscis.gov/e-Request>. Click “case outside normal processing time.” A confirmation email will be sent to the representative listing the estimated time it will take to respond to the inquiry.

¹⁷⁸ See DOS, *Proposed Refugee Admissions for Fiscal Year 2019*, Sep. 24, 2018.

The following information is required to submit the inquiry:

¹⁸⁰ Note: if the form I-730 petitioner has received an RFE, that means that USCIS is working on the case so it would not be necessary to make a case inquiries.

- Receipt number
- Date filed (Receipt date)
- Full name of Petitioner
- Petitioner's date of birth
- Petitioner's A number
- Mailing address (of Petitioner or legal counsel)
- Last action taken on case (can copy/paste from USCIS online case status inquiry)

CALL USCIS CUSTOMER SERVICE

It is appropriate to call the USCIS customer service line at 1-800-375-5283 when an inquiry falls outside of the options listed on the online platform, and/or when responses to previous inquiries have been incomplete. The representative must have the Petitioner's name, Petitioner's A number, Petitioner's date of birth, and Form I-730 receipt number. USCIS requires that either the Petitioner be present on the call or that a Form G-28 be on file for the attorney or accredited representative making the inquiry.

INFOPASS APPOINTMENT

For cases being processed at a USCIS office in the United States, a petitioner may request an INFOPASS appointment by calling the USCIS Customer Service number listed above. However, USCIS is eliminating INFOPASS appointments in many locations and reducing the type of INFOPASS appointments available.¹⁸¹ Any request should first be attempted through an online CASE INQUIRY or through a USCIS Customer Service representative if possible. Unless there is a specific need to see a USCIS officer in person, such as to provide a stamp in a passport, it is unlikely that an in-person INFOPASS appointment will be scheduled.

ADDITIONAL INQUIRIES FOR USCIS PROCESSING

For practitioners who have followed the proper steps sequentially for inquiring about a case and still have not received a comprehensive response, the following email address may be used to contact USCIS IASB for a **refugee Form I-730**:

- USCIS International Adjudications Support Branch: uscis.iasb@uscis.dhs.gov

Note: With the introduction of the USCIS International Adjudications Support Branch (IASB) in 2018, the time that a Visa 93 petition remains with each Service Center is considerably shorter than in the past. In most cases for refugee/Visa 93 petitions, an inquiry for a pending Form I-730 should be submitted directly to USCIS IASB.

¹⁸¹ See CLINIC, *Changes in Access to USCIS Field Offices and Service Centers*, Jan. 24, 2019.

Note: As of January 21, 2019, USCIS has discontinued use of Service Center email boxes for case-specific questions for both the Nebraska and Texas Service Centers. For asylee/Visa 92 petitions, an inquiry for a pending Form I-730 should be submitted via the USCIS CUSTOMER SERVICE number and/or through a USCIS CASE INQUIRY (e-request).

As discussed above, it is unclear what role, if any IASB will continue to play in adjudicating Form I-730 petitions if USCIS closes its overseas offices.

INQUIRIES FOR OVERSEAS PROCESSING

- USCIS Field Offices: Aside from Nairobi (which has a separate mailbox dedicated to Form I-730 inquiries - Nairobi.I-730@uscis.dhs.gov) contact information for USCIS International Offices can be found on the USCIS website.
 - If such contact is not successful, petitioners and legal representatives can also direct inquiries by email to USCIS IASB at uscis.iasb@uscis.dhs.gov.
- U.S. Consular Posts: A list of posts processing immigrant visas can be found on travel.state.gov. Links to specific Embassy and Consulate websites may be found at usembassy.gov. Contact information for each Embassy or Consulate can be found on the specific Embassy or Consulate's website.
 - Posts that process a high volume of refugee/asylee cases may have a separate Visa 92/Visa 93 email address. At Consular Posts, petitioners and representatives should contact the general immigrant visa email listed under "Contact Us" on the website.
 - If such contact is not successful, attorneys of record or accredited representatives can direct inquiries by email to legalnet@state.gov.¹⁸² LegalNet may be contacted about a specific case when an applicant or legal representative has tried to contact the relevant Embassy or Consular post at least twice regarding the specific issue without receiving a final response, and where 30 days have passed since the last inquiry. LegalNet may also be contacted regarding a specific case in which an applicant or attorney has received a final response from the post but believes it to be wrong as a matter of law.
 - Petitioners and their representatives may call Visa Services, Public Inquiries Division at (202) 663-1225.
- National Visa Center: 1-603-334-0700, nvcinquiry@state.gov (for petitioners) or nvcattorney@state.gov (for legal representatives with a Form G-28 on file).
 - NVC inquiries can be helpful to establish the location for Consular Processing and/or the date that the case was transferred overseas to the Consular Post. However, once the NVC has transferred the case to the appropriate Consular Post, the specific Embassy or Consulate should be contacted directly. Only contact the NVC if a consular post has not confirmed receipt of the case after 60 days from transfer from the NVC.

¹⁸² Note: LegalNet is available only for case-specific questions on the interpretation or application of immigration law. More information can be found in [9 FAM 103.4](#).

- > Each time that a representative contacts the NVC, they should refer to only one case per email, using the case number or receipt number as the subject line. Include the petitioner's name, beneficiary's name and date of birth, the name and office of the representative of record, and the requestor's name (if not the attorney or DOJ Accredited Representative). Representatives should allow six to eight weeks after receipt of a Form I-797C Notice of Case Transfer from USCIS before making the inquiry to ensure that USCIS has had enough time to mail the petition to the NVC and that the NVC can enter the case into their database.

At any stage of processing, petitioners and representatives should carefully review materials available on the USCIS website and/or the Embassy-specific website for processing guidance. Due to the volume of inquiries received, USCIS and DOS cannot promise an immediate reply to all inquiries, especially those requesting information that is publicly available.

Note: If a case is not progressing according to the steps outlined above, see the additional remedies in Section IX. Troubleshooting When Problems Arise for discussion of USCIS Ombudsman and Congressional inquiries.

VII. FIELD OFFICE PROCESSING FOR FORM I-730 BENEFICIARIES IN THE UNITED STATES

Once the Form I-730 has been reviewed by the USCIS Service Center (and IASB if the petitioner is a refugee), the petitioner and legal representative will receive notification that the case is being transferred to the local USCIS office. The USCIS field office with jurisdiction will then interview the beneficiary to verify the claimed relationship and the beneficiary's identity. With the exception of medical examinations not being required for beneficiaries in the United States, most other components of interview preparation and documents needed for field office interviews for beneficiaries in the United States are the same as Consular Processing for overseas beneficiaries.¹⁸³

¹⁸³ See Sections VIII. Iii. and VIII. Iv. on Interview Preparation for the Form I-730 Beneficiary and Documents Needed for the Beneficiary Interview.

VIII. CONSULAR PROCESSING FOR FORM I-730 BENEFICIARIES OUTSIDE THE UNITED STATES

Once the Form I-730 petition has been reviewed by the USCIS Service Center and IASB, the petitioner and legal representative will receive notification that the case is being transferred to the NVC. From there, the NVC transfers the case to the appropriate Consular Post or USCIS office with jurisdiction, which will then interview the beneficiary to verify the claimed relationship and the beneficiary's identity. Consular Processing is often the lengthiest part of Form I-730 adjudication, necessitating regular and consistent follow-up from legal practitioners.¹⁸⁴ Some Embassies have a wait of over two years just to be scheduled for an initial interview, as there is no expedited queue for V92/V93 processing.

I. NATIONAL VISA CENTER (NVC) PROCESSING

Once a case is transferred to the National Visa Center (NVC), the NVC will transfer the case to the appropriate USCIS office or Consular Post overseas to conduct the beneficiary interview. The NVC is not involved in the adjudication of the Form I-730 and simply serves as an intermediary between USCIS and the DOS. It is critical that the NVC and the overseas office conducting the beneficiary interview has current contact information—including physical and mailing addresses, telephone numbers, and email addresses—for the petitioner, beneficiary, and, if applicable, the representative of record on the case.

In the case of any changes, updated contact information should be provided directly to the USCIS office or Consular Post with jurisdiction. If possible, it is best to ensure that at least one email for the petitioner or beneficiary is provided with the petition's original filing, so that the NVC, Consular Posts may communicate time-sensitive information regarding the case via email.

At this stage, legal representatives should ensure that the beneficiary has or is preparing to obtain the documents required for the interview.¹⁸⁵ When the case transfer is complete, the NVC will send the petitioner and legal representative a letter with instructions for the beneficiary interview. The letter also will identify the USCIS office or Consular Post where the interview will take place. In some cases, the interview will be scheduled for the beneficiary; however, in other cases, the beneficiary must take specific actions to request an interview appointment. Procedures for scheduling beneficiary interviews vary depending on the policies of the specific USCIS office or Consular Post. Further information can be found on the website of the USCIS office or Consular Post indicated on the NVC notice.

II. USCIS INTERNATIONAL OFFICES AND DEPARTMENT OF STATE CONSULAR POSTS (U.S. EMBASSIES & CONSULATES)

¹⁸⁴ See Section IX. ii. on Continued Follow-up for an Overseas Form I-730 for details.

¹⁸⁵ See Section VII. iv. for further discussion of the Documents Needed for the Beneficiary Interview.

Note: The Trump administration recently announced plans to close all USCIS offices abroad.¹⁸⁶ Several months following this announcement, USCIS clarified that all but seven of its 23 international offices will be closed by August 2020.¹⁸⁷ This change will **dramatically alter Form I-730 processing and is likely to take effect in Fiscal Year 2020**. This manual references instances where the closure of USCIS international offices is likely to affect future Form I-730 processing; however, as of the time of publication, neither the exact timeline for implementation nor the extent to which the announced closings will affect Form I-730 adjudication is known.¹⁸⁸

In locations where a USCIS International Office is present, USCIS will retain jurisdiction over the petition. In other locations, jurisdiction will be transferred to DOS and the petition will be forwarded to a U.S. Embassy or Consulate. Below are the seven USCIS International Field Offices that have been announced will remain open:

Latin America, Canada and the Caribbean (LACC) District

- El Salvador - San Salvador Field Office
- Guatemala - Guatemala City Field Office
- Mexico - Mexico City Field Office

Asia/Pacific (APAC) District

- China - Beijing Field Office
- China - Guangzhou Field Office
- India - New Delhi Field Office

Europe, Middle East and Africa (EMEA) District

- Kenya - Nairobi Field Office

Consular Posts

In locations without a USCIS office, jurisdiction over the Form I-730 petition will be transferred to the nearest **U.S. Embassy or Consulate** designated to process Visa 92/Visa 93 cases. Overseas locations for immigrant visa processing are subject to change, depending on resources, staffing, security issues, etc. A list of current visa issuing posts is published on the [State Department website](#). If a location provides “All” visa services, then both Visa 92 and Visa 93 cases may be processed there, unless there is a USCIS international field office in that

186 See Miriam Jordan, *Trump Administration Plans to Close Key Immigration Operations Abroad*, N.Y. TIMES, March 12, 2019.

187 See USCIS, *USCIS Will Adjust International Footprint to Seven Locations*, August 9, 2019. USCIS plans to maintain operations at its international field offices in Beijing and Guangzhou, China; Nairobi, Kenya; and New Delhi, India. USCIS had previously announced the continuation of operations in Guatemala City, Guatemala; Mexico City, Mexico; and San Salvador, El Salvador, as part of a whole-of-government approach to address the crisis at the southern border.

188 Please be advised to check the USCIS website for an update of USCIS office closures, <https://www.uscis.gov/about-us/uscis-office-closings>.

country. Locations marked as “NIV” or nonimmigrant visa, will no longer process Visa 93/follow-to-join refugee cases, as described below, although these posts will still process Visa 92/follow-to-join asylee cases.

As of 2018, processing for follow-to-join refugees is being centralized, with Visa 93 cases now being processed only at Consular Posts offering immigration visa (IV) services. Consular Posts that only offer nonimmigrant visas (NIV) services will note the designated processing post for immigration visas (and follow-to-join refugees) on their [websites](#).

Cases that were previously pending at posts that only adjudicate NIV applications will be transferred and follow-to-join refugee beneficiaries may need to travel to another country to be interviewed. If a beneficiary’s case is being transferred, they will be notified by DOS. However, beneficiaries should NOT travel unless specifically instructed to do so, as USCIS may conduct circuit rides to travel to some of the locations within these new jurisdictions to interview potential Form I-730 beneficiaries.

The following list on the [DOS website](#) reflects some of the processing locations that will no longer process follow-to-join refugee cases, along with the newly designated Consular Post or USCIS international field office to which the cases will be transferred. Please note that these designations are subject to change and practitioners should check the USCIS website before advising the petitioner or beneficiary of the processing location, particularly since the Johannesburg, South Africa USCIS Field Office will be closing soon.

Previous Location	IV Designated Processing Location
Bamako, Mali	Dakar, Senegal
Banjul, The Gambia	Dakar, Senegal
Conakry, Guinea	Dakar, Senegal
Dushanbe, Tajikistan	Almaty, Kazakhstan
Gaborone, Botswana	Johannesburg, South Africa (USCIS)
Jeddah, Saudi Arabia	Riyadh, Saudi Arabia
Maputo, Mozambique	Johannesburg, South Africa (USCIS)
Mbabane, Swaziland	Johannesburg, South Africa (USCIS)
Nouakchott, Mauritania	Dakar, Senegal
Bandar Seri Begawan, Brunei	Singapore, Singapore
Bujumbura, Burundi	Nairobi, Kenya (USCIS)
N’Djamena, Chad	Yaoundé, Cameroon
Copenhagen, Denmark	Stockholm Sweden
Malabo, Equatorial Guinea	Yaoundé, Cameroon
Maseru, Lesotho	Johannesburg, South Africa (USCIS)
Oslo, Norway	Stockholm, Sweden
Lisbon, Portugal	Paris, France
Kampala, Uganda	Nairobi, Kenya (USCIS)

The Form I-730 petition requires the petitioner to designate the USCIS office or Consular Post overseas where the beneficiary will apply for travel authorization. This is especially important in the case where a refugee beneficiary resides in a location that is not currently processing immigration visas. If not otherwise indicated on the Form I-730, the National Visa Center will transfer the case to the designated visa-issuing post indicated on the State Department website above. However, follow-to-join refugee beneficiaries may request to process their cases at another immigrant visa processing Consular Post that is different from the one designated. In some

cases, family members of refugees and asylees may fear persecution in their home countries and will need to seek protection in a neighboring country. The petitioner/beneficiary must provide justification for the case transfer and show that they can legally be present in the country—through a valid visa or refugee registration with UNHCR—while the case is being processed. A request may be submitted online to the National Visa Center through the [Ask NVC](#) online submission form.¹⁸⁹ If the case is not transferred automatically to the location requested on the Form I-730, the legal representative should follow the above procedure to formally request the transfer.

Note: Due to the potential danger involved in a refugee’s travel and freedom of movement, legal representatives should be cautious NOT to explicitly advise a beneficiary to travel to a given country for Consular Processing. If USCIS will not be conducting a circuit ride to the beneficiary’s location, practitioners should explain to petitioners that Consular Processing of the Form I-730 cannot continue until a refugee beneficiary is able to travel to an immigrant visa issuing post for the visa interview. If a beneficiary resides in a location that is not currently issuing immigrant visas, this should not prevent the petitioner from filing the Form I-730. However, if the beneficiary lives in an area where USCIS will not be conducting a circuit ride and the beneficiary is unable to travel to a visa-issuing location within one to two years of transfer to the National Visa Center, the case may be administratively closed. Petitioners should continue to update the NVC regarding the beneficiary’s location if travel to a visa issuing post is restricted. For example, family members of refugees wishing to leave Eritrea, often have limited freedom of movement.¹⁹⁰

III. INTERVIEW PREPARATION FOR THE FORM I-730 BENEFICIARY

Whether the Form I-730 beneficiary will be interviewed at a USCIS office in the United States or abroad, or at a Consular Post overseas, the following steps should be taken to ensure adequate preparation of the beneficiary:

- **Carefully review** the information sent by the USCIS office or Consular Post, noting the date, time, and location of the immigrant visa interview, as well as any instructions for pre-interview preparation.
 - Ensure that **all requested forms in the pre-interview packet** are completed per the USCIS office or Consular Post’s instructions.
 - Ensure that **all required documents will be available** at the time of the interview. The Officer will examine the originals for all copies of all documents that were with the petition’s original filing and in any subsequent responses to a Request for Evidence.
-

Note: As with all other filings, any documents not in English should be accompanied by a certified English Translation.

¹⁸⁹ See additional information on the [DOS website](#).

¹⁹⁰ Eritrea country-specific information can be found in [Amnesty International, Eritrea 2017/2018](#).

- If the beneficiary resides in a country that requires “exit permission”¹⁹¹ they may be required to be **registered as a refugee** in that country to travel to another country for the interview. Note that the time to conduct refugee registration varies widely and should be initiated as soon as possible to avoid delays. Refugees should seek the assistance of UNHCR in the country of asylum for any questions.
- Refugees may also need to seek the assistance of UNHCR to travel within a country of asylum if their movement is restricted. Legal representatives should contact UNHCR at usawainq@unhcr.org for assistance if the beneficiary is not able to resolve this issue locally.

IV. DOCUMENTS NEEDED FOR THE BENEFICIARY INTERVIEW

Currently, the specific steps for interview preparation vary from post to post. Consular Posts often have inconsistent protocols for what beneficiaries need to bring to the interview and which forms to complete. With the addition of the USCIS IASB in 2018 to the adjudication process, this lack of uniformity appears to be something that USCIS is attempting to change. It is hoped that this process may be more streamlined in the future, although it is also possible that the administration will end IASB’s involvement in the adjudication process if and when it closes overseas USCIS offices. For now, beneficiaries are advised to carefully review the pre-interview packets and instructions given to them by the specific USCIS office or Consular Post.

Until updated guidance is released, beneficiaries should generally prepare to **bring the following documents** to their overseas or domestic Form I-730 interviews:

- **Appointment letter** or notification indicating the USCIS or NVC case number.
- **Originals of all documents** submitted with the petition’s original filing and with any responses to subsequent Requests for Evidence.
- Certified English **translations** of documents not in English (if applicable).
- **One or more identity document(s) for the beneficiary**, such as a passport, with a validity date at least six months beyond the beneficiary’s intended date of entry into the United States and/or picture identity card.

Note: If the refugee does not have access to a passport, a Refugee Identification Card or UNHCR registration or refugee status document may be used as an identity document. A beneficiary who does not have a passport and is also refugees residing in another country should NOT avail themselves of the protection of their country of claimed persecution by requesting a passport if doing so would put them at risk of persecution. Although the Consular Post will frequently request a passport in these situations, it is possible to issue a Visa 92 or 93 without a passport.

- **Evidence of relationship** between the beneficiary and petitioner, such as photographs, available school records, family correspondence, phone bills, documentation demonstrating financial support, and other proof that the relationship is genuine.

191 See Section X. v. on Travel Authorization and Exit Visa Permission for more information.

- **Completed forms** requested by the USCIS office or Consular Post in the pre-interview packet. These may include some or all of the following:
 - > [Form DS-230](#) – Application for Immigration Visa and Alien Registration
 - > [Form DS-234](#) – Special Immigrant Visa Biodata Form
 - > [Form DS-237](#) – Statement of Marriage Age Applicant
 - > [Form DS-1810](#) – Notice of Duty to Register with U.S. Selective Service System
 - > [Form DS-5535](#) – Supplemental Questions for Visa Applicants
 - > [Form G-325C](#) – Biographic Information
 - > [Form I-765](#) – Application for Employment Authorization
- As of 2017, USCIS began collecting **social media handles**, aliases, associated identifiable information, and search results of immigrants, including Visa 92/Visa 93 applicants.¹⁹² (If requested in the pre-interview packet these must be disclosed).
- **Completed medical examination.**¹⁹³
- **Passport photographs** of the beneficiary.¹⁹⁴

V. MEDICAL EXAMINATION AND VACCINATION REQUIREMENTS

Before the issuance of a follow-to-join refugee or asylee boarding foil or travel letter,¹⁹⁵ every beneficiary, regardless of age, must have undergone a medical examination, which must be performed by a U.S. authorized panel physician. The USCIS Office or Consular Post will advise the beneficiary on the process to obtain an authorized medical examination.¹⁹⁶

Overseas follow-to-join asylee/Visa 92 beneficiaries must complete their medical exam **before** their travel packet will be issued by a DOS consular officer, and they are responsible for paying the cost of the medical examination.¹⁹⁷ Overseas follow-to-join refugee/Visa 93 beneficiaries are typically instructed to complete their medical exams **after** their interviews (although some posts may request the medical examination as part of the pre-interview packet), and the U.S. Government pays all costs associated with the medical examination.¹⁹⁸ Follow-to-join refugee and asylee beneficiaries in the United States do not need to complete a medical examination in support of Form I-693, until filing the Form I-485 Application to Adjust Status to Permanent Resident.

¹⁹² See Appendix iv. for a copy of the form currently being requested for refugee follow-to-join/Visa 93 cases. More information about this policy change can be found in the DHS [Federal Register Notice](#), September 18, 2017.

¹⁹³ See Section VIII. v. for additional information on the Medical Examination and Vaccination Requirements.

¹⁹⁴ More information on DOS requirements for passport photos can be found on the [DOS website](#).

¹⁹⁵ See [9 FAM 203.6-8](#).

¹⁹⁶ See DOS, *Medical Examination FAQs*.

¹⁹⁷ See [9 FAM 203.6-4 \(U\) \(b\)\(1\)](#).

¹⁹⁸ See [9 FAM 203.6-4 \(U\) \(b\)\(2\)](#).

For overseas processing, the legal representative should be in frequent contact with the Consular Post or USCIS office, in order to be notified once administrative processing is complete. The most advantageous situation for any beneficiary is to proceed with the medical exam as soon as administrative processing is completed, thus ensuring that medical checks and security checks will be valid during the same time period so that the travel letter and/or visa foil may be issued.

Note: The medical examination is not a complete physical examination. Its purpose is to screen for certain medical conditions relevant to U.S. immigration law. The panel physician is not required to examine for any conditions except those the U.S. Public Health Service specifies for U.S. immigration purposes, nor is the physician required to provide the beneficiary with diagnosis or treatment even though other matters related to their health might be discovered. This examination is not a substitute for a full physical examination, consultation, diagnosis, or treatment by a primary health care provider.¹⁹⁹

Additionally, follow-to-join refugee and asylee beneficiaries are encouraged to obtain certain vaccinations at the time of medical examination.²⁰⁰ Although these vaccinations are not required prior to travel to the United States,²⁰¹ they will be required when adjusting status to that of lawful permanent resident in the future.²⁰²

VI. WHAT TO EXPECT AT THE INTERVIEW

For beneficiaries who are abroad, only the beneficiary listed on the Form I-730 should appear at the appointment; the petitioner is not required to be interviewed. However, for beneficiaries in the United States, it is best practice for the petitioner and beneficiary to appear together, although USCIS may interview the beneficiary without the petitioner present. In rare cases, a petitioner may serve as the interpreter at an interview at a domestic USCIS Field Office, but only with a showing of good cause and supervisory approval, which is discretionary.²⁰³

Therefore, an unbiased interpreter who meets the core qualifications as outlined in [Chapter 15.7](#) of the Adjudicator's Field Manual should appear at the interview to interpret for a beneficiary who is not proficient in English or the language(s) in the country where the Form I-730 will be consular processed, if overseas.²⁰⁴ Asylee beneficiaries are **required** to provide their own interpreter (if needed) at no expense to USCIS; refugee beneficiaries are **strongly encouraged** to provide an interpreter (if needed) and should be prepared to bring an interpreter if one is available. If an interpreter is not available to accompany the beneficiary to the appointment and the beneficiary does not speak English or the language of the country where the Form I-730 will be processed, it is recommended that the legal representative notify the appropriate USCIS Field Office

199 See DOS, *Medical Examination FAQs*.

200 Additional information regarding vaccinations can be found on the [USCIS website](#).

201 See DOS, *Follow-to-Join Refugees and Asylees*.

202 See USCIS, *Vaccination Requirements*, Last Reviewed/Updated Mar. 8, 2018.

203 See USCIS, [Adjudicator's Field Manual, Chapter 15.7](#).

204 See USCIS Policy Memo PM 602-0125.1, [The Role and Use of Interpreters in Domestic Field Offices](#), January 17, 2017 for more information.

or Consular Post in advance of the interview, especially if the beneficiary's native language is not commonly available through a language line service.

If the beneficiary is a child under the age of 18, a parent or legal guardian should be present for the interview. Consistent with the [Hague Convention on the Civil Aspects of International Child Abduction](#), both parents must give parental consent for a child to travel internationally. The Consular Post will advise the family on the documentation necessary for an underage beneficiary, and what (if any) additional document may be required if it is not possible for both parents to sign a document relinquishing custody. It is especially important to ensure parental consent for Visa 92 beneficiaries before the family purchases a plane ticket for the child's travel, as this money will be lost, and the minor child will not be eligible to travel without parental authorization.

The interviewing officer will determine 1) the identity of the beneficiary; 2) whether the required relationship with the person granted asylum or refugee status exists; 3) whether the applicant (beneficiary) before them is ineligible for reasons specified in statutes and regulations (e.g., certain criminal and terrorist-related grounds, etc.);²⁰⁵ and 4) for asylum follow-to-join petitions, whether discretion should be exercised favorably.

Beneficiaries should be familiar with all the information on record in the petition and supporting documents to ensure the information given during the interview is consistent with the information provided with the initial filing and in any subsequent requests for evidence. For example, if the beneficiary is unable to confirm the petitioner's current address or provide any other details regarding their life in the United States, the officer may question the bona fide nature of the relationship. USCIS field offices may also have access to a petitioner's A file containing the petitioner's original Form I-589 or Form I-590, although Consular Posts generally do not.

Note: The beneficiary's knowledge of the petitioner's underlying refugee or asylum claim is neither required, nor should it be discussed with the beneficiary due to it being confidential information in the petitioner's immigration record. Any line of questioning that mentions the petitioner's claim should be objected to by the attorney or accredited representative immediately (if present for the interview), and a supervising officer should be notified. However, officers may ask other questions to determine whether the relationship is bona fide, when required by the statute or regulations. Thus, attorneys and accredited representatives should prepare the beneficiary before the interview about what questions they are not required to answer in order for the Form I-730 petition to be approved.

During the interview process, a photograph of the beneficiary will be taken, along with an ink-free, digital fingerprint scan for beneficiaries 14 years of age and older.

²⁰⁵ These reasons include certain serious crimes, terrorism and security grounds, and persecution of others. See [INA § 208\(a\)\(2\)\(B\)](#).

IX. POST-INTERVIEW INFORMATION

In some cases, the beneficiary will be notified by the interviewing officer if they have been found eligible for admission to the United States. In most cases, they will be called back to the Consular Post or USCIS office and informed of eligibility at a later date.

I. REQUESTS FOR ADDITIONAL INFORMATION FOLLOWING THE INTERVIEW

In many cases, the Consular or USCIS Officer interviewing the beneficiary or beneficiaries may request additional evidence beyond the documentation that was submitted with the petitioner's original filing. These requests are most often related to the bone fide nature of a spousal relationship and/or requests for DNA tests to prove a biological parent-child relationship. The Officer may also request additional family photos, communication records demonstrating that the family has remained in close contact, joint financial assets and money transfer receipts showing comingling of financial assets, and/or sworn testimony regarding the family's history and circumstances surrounding their separation.

There is an important distinction between cases processed at consular posts and cases processed at international USCIS Field Offices. For cases in which the beneficiary was interviewed at an international USCIS Field Office, all USCIS policies apply to the case processing.²⁰⁶ A vital policy that must be followed is that the legal representative be served in writing with any additional Requests for Evidence following the beneficiary's interview.²⁰⁷ For cases pending at consular posts, most Consular Officers do not inform U.S. legal representatives of these requests—which are generally made verbally to the beneficiary at the time of the interview—necessitating ongoing advocacy and follow-up, as described below. Although USCIS must serve RFEs on the legal representative with a Form G-28 on file, Consular Posts may only inform the beneficiary, making it important to urge the petitioner to stay in contact with legal counsel whenever the beneficiary has communication with a Consular Post. If a USCIS office neglects to serve the petitioner and/or legal representative with a Request for Evidence, the legal representative may fight the RFE deadline until such a copy is provided; however, Consular Posts are not bound by the same legal requirements.

Additionally, any discrepancies regarding the beneficiary's sworn testimony, relationship evidence, or facts surrounding the family's separation may pose additional risks for Consular Returns, when the Consular Post returns the file to USCIS jurisdiction with a recommendation that the Form I-730 be denied.²⁰⁸ To ensure consistency and accuracy of information throughout the case's Consular Processing, the beneficiary should be advised not to respond to any request for additional information without consulting with the petitioner's legal counsel.

²⁰⁶ See Section V. iii. Requests for Evidence.

²⁰⁷ See 8 CFR §103.8(a)(1)(i).

²⁰⁸ See generally USCIS, *Immigrant Visa Petitions Returned by the State Department Consular Offices*, Last Reviewed/Updated July 15, 2011. See also Section XI. iii. on legal remedies for Consular Returns.

II. CONTINUED FOLLOW-UP FOR AN OVERSEAS FORM I-730

Unfortunately, timely and accurate Consular Processing of Visa 92 and Visa 93 cases does not happen as seamlessly or as automatically as it should. Although most Consular Posts process a high volume of Form I-130 Petitions for Alien Relatives, depending on their caseload, these Consular Officers may not be familiar with Refugee or Asylee beneficiary processes. Consular Officers are on rotation for two or three years, and Visa 92 / Visa 93 processing is often a very small portion of their portfolio. U.S.-based legal practitioners often know more about the process than the consular officers do.

Do NOT rely on the Consular Post or USCIS office to process the Form I-730 and issue the Visa 92/93 without additional advocacy. Best practices for overseas processing of Form I-730 Refugee and Asylee Relative Petitions requires **regular and consistent follow-up** from legal practitioners to ensure that these cases are transferred to the appropriate Consular Post or USCIS office; that beneficiaries are interviewed in a timely manner; and that appropriate steps are taken to ensure the case's successful adjudication and completion. Additionally, overseas beneficiaries should be advised to inform their petitioning relatives of any and all contacts with the Consular Post or USCIS office so that legal representatives may stay abreast of relevant case developments in order to advocate on their behalf.

Some cases may be delayed anywhere from several months to several years following the initial overseas interview, due to requests for evidence, administrative processing, consular returns, and other administrative delays, necessitating ongoing follow-up and advocacy beyond the Form I-730 filing until the beneficiary/ies actually arrive in the United States.

III. ADMINISTRATIVE PROCESSING WITH DOS

Administrative processing involves both regular and additional security checks or further internal consultation within the mission (i.e. Consular Post) or other departments within DOS before a beneficiary's admission into the United States. Due to national security reasons, USCIS and DOS are unable to update applicants as to the timeline for processing or reason for delay. Beneficiaries of certain nationalities, such as those subject to enhanced vetting (described below) or refugees who lack access to civil-issued identity documents necessary to swiftly complete security and background checks, may experience lengthy delays due to administrative processing.

A previous version of the of 9 FAM 601.7-4 provided the following brief definition of "administrative processing:" "The phrase 'necessary administrative processing' should be used to refer to clearance procedures or the submission of a case to the Department."²⁰⁹ This prior version of the FAM also counseled consular officers not to reveal to visa applicants the specific reason for administrative processing in a given case, stating, "Posts should not inform interested persons, including attorneys, that a case has been referred to the Department for a name-check or an advisory opinion." As of this manual's publication, DOS has redacted many relevant sections of the FAM. The only information [publicly available](#) from DOS regarding administrative processing includes the following:

Some refused visa applications require further administrative processing. When administrative

²⁰⁹ See AILA, *Practice Pointer: Administrative Processing*, Nov. 29, 2017, InfoNet Doc. 12091850.

processing is required, the consular officer will inform the applicant at the end of the interview. The duration of the administrative processing will vary based on the individual circumstances of each case. At the conclusion of the administrative processing period, the consular officer might conclude that an applicant is now qualified for the visa for which they applied. The officer may also conclude that the applicant remains ineligible for a visa. Visa applicants are reminded to apply early for their visa, well in advance of the anticipated travel date.²¹⁰

DOS had previously advised that most administrative processing was resolved within 60 days of the visa interview; however, DOS now advises that applicants should wait at least 180 days from the date of interview or submission of supplemental documents before making inquiries about status of administrative processing.²¹¹ After waiting 180 days from the date of interview, legal representatives should contact the consular post where the beneficiary was interviewed. If no timely response is received from the consular post after 30 days, representatives should follow up with the post for a status inquiry once a month following that. Beneficiaries of certain nationalities may experience well over six months of administrative processing time, in large part due to the “Enhanced Vetting” Executive Order.²¹² For long-pending administrative processing cases, legal representatives may want to consider seeking congressional assistance.²¹³

It should be noted that cases will generally not be sent for administrative processing unless they are otherwise approvable. According to a practice advisory issued by the American Immigration Lawyers Association, in most cases, administrative processing:

“... signifies that the applicant has satisfied the statutory requirements for the visa... It also usually means that there is no pre-existing ground of inadmissibility against the applicant... Clients should be assured that while administrative processing delays are disruptive and worrisome, the number of visa applicants who are denied visas following administrative processing is very small. This may go some way toward minimizing their frustration—and your own—over your inability to determine the basis for the administrative processing request in the first place.”²¹⁴

Because medical examination results expire, beneficiaries outside the U.S. are usually not requested to complete medical examinations until after they have cleared administrative processing.²¹⁵

IV. VISA 93 ASSURANCE TO U.S. REFUGEE RESETTLEMENT AGENCIES

Once the overseas interview is complete, Refugee Form I-730 / Visa 93 cases will receive an assurance from a refugee resettlement agency in the United States located in the city or town near to the petitioner’s residence. An “assurance” means that a refugee resettlement agency site has agreed to provide Reception and Placement services to the derivative refugee, just as the PA/petitioner received upon first arrival. Thus the petitioner should continue to update their legal representative of any changes in address throughout the Form I-730 process so

210 See DOS, *Administrative Processing Information*.

211 *Id.*

212 See Executive Order, *Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats*, September 24, 2017.

213 See Section XI. ii. Troubleshooting When Problems Arise for more information on Congressional Assistance.

214 See AILA, [Practice Pointer: Administrative Processing](#), (Nov..29, 2017), AILA Doc. No. 12091850.

215 See [9 FAM 302.2-3\(C\)](#) . See also Section XI. ii. When Problems Arise for additional troubleshooting.

that an [AR-11 Change of Address](#) Form may be filed (if required) and the appropriate Consular Post or USCIS office may be notified via email, attaching a copy of the AR-11.

Upon assurance, the U.S. refugee resettlement agency receiving the case will contact the petitioner at the last known phone number or email to confirm this contact information and notify the petitioner that it will be the agency to provide assistance to the beneficiary upon arrival. A list of all resettlement agencies can be found on wrapsnet.org.

If a Form I-730 is filed by a legal office that is co-housed with a refugee resettlement agency, it is ideal for this organization to be the agency that receives the case for assurance, provided that the petitioner agrees. However, it is generally the responsibility of the legal representative to inform their agency's headquarters when a new Form I-730 is filed so that the case may be specifically requested when it comes up for allocation.

Legal practitioners who work independently of refugee resettlement sites are encouraged to coordinate with local refugee resettlement agencies, with the petitioner's consent. The practitioner should provide the agency with an informed consent for release of information signed by the petitioner. Likewise, the agency may request a release form signed by the petitioner before communicating with an independent legal office regarding the beneficiary's case. When requesting the release form, the resettlement agency may refer to the petitioner as "the U.S. tie."

Asylee/Visa 92 cases are not assured from overseas to U.S. refugee resettlement agencies, as asylees are not eligible for Reception and Placement services. However, asylee derivatives are eligible for all Office of Refugee Resettlement (ORR) assistance and services provided by refugee resettlement offices and other agencies upon arrival.²¹⁶

²¹⁶ See [USCIS Welcomes Refugees and Asylees](#), April 2019; ORR, [Who We Serve – Asylees](#), Last Reviewed: May 16, 2019; and ORR Fact Sheet, [Eligibility for ORR Benefits and Services - Asylees](#). See also Section X.vi. on Services and Legal Status Following Arrival into United States for more information.

X. BENEFICIARY TRAVEL AND ARRIVAL IN THE UNITED STATES

Processing travel to the United States is different depending on whether the beneficiary is traveling on a Visa 92 or Visa 93.

I. VISA 92 & VISA 93 ISSUANCE

Once approved, an officer will place a travel letter inside a sealed envelope for the airline representatives or place a boarding foil in the approved beneficiary's passport (or other travel document). A boarding foil looks very similar to a visa and includes a digitized photograph of the beneficiary as well as other security features. The beneficiary also will receive a sealed envelope called a "travel packet"—generally given to the beneficiary in a white zippered bag from the International Organization for Migration—containing the documents for review by a DHS immigration official when the beneficiary enters the United States.

Note: It is possible for the visa to not be placed in a passport. 22 CFR § 41.113(b) states, "In the following cases the visa shall be placed on the prescribed Form DS-232. In issuing such a visa, a notation shall be made on the Form DS-232 on which the visa is placed specifying the pertinent subparagraph of this paragraph under which the action is taken," and allows for the passport requirement to be waived. If the Consular Post does not do this *sua sponte* then the legal representative may request a passport waiver under 22 CFR § 41.113(b).

II. TRAVEL TO THE UNITED STATES

The beneficiary must enter the United States before the expiration date printed on the boarding foil or travel letter.²¹⁷ The officer who conducted the interview will advise the beneficiary about the expiration date of the travel document. If a beneficiary is unable to travel before the expiration date, a new travel document will be issued; however, this may cause considerable delays, as security checks and medical clearances also expire and may have to be redone if the beneficiary is not able to travel during the dates specified in the initial travel authorization.

III. TRAVEL FOR REFUGEE DERIVATIVE/VISA 93 BENEFICIARIES

Travel arrangements for follow-to-join refugee (V93) beneficiaries are required to be arranged and managed by IOM.²¹⁸ Follow-to-join refugee beneficiaries who arrive in the United States without IOM coordination will be

²¹⁷ See DOS, *Follow-to-Join Refugees and Asylees*.

²¹⁸ *Id.*

admitted as refugees, per the category on their I-94 Arrival Forms; however, they will NOT be eligible to receive reception and placement benefits, to which refugees who travel through IOM are entitled.²¹⁹

IOM issues interest-free loans to cover the cost of airfare to refugees migrating to the United States through the U.S. Refugee Resettlement Program. After resettlement, refugees must repay these loans.

For more information on the IOM travel loans, please contact IOM at 1-866-466-5660 or via email at: iomloans@iom.int. The first statement will be sent six months after the refugee's arrival in the United States. If a refugee moves within this time frame, they should contact the U.S. Refugee Resettlement agency and/or IOM to inform them of the move so that the address may be updated for billing purposes.

IV. TRAVEL FOR ASYLEE DERIVATIVE/VISA 92 BENEFICIARIES

Follow-to-join asylee (V92) beneficiaries are instructed to make their own travel arrangements, as they are ineligible for an IOM Travel Loan.²²⁰ Travel arrangements should only be made after an actual Visa 92 is issued.

The boarding foil or travel letter issued to the beneficiary allows them to travel to the U.S. port of entry to request permission to enter the United States. A boarding foil or travel document is required to travel; however it does not guarantee admission to the United States upon arrival, as the beneficiary must still be inspected by a Customs and Border Protection Officer before admission is granted.²²¹

DHS Customs and Border Protection (CBP) officials at the U.S. port of entry have the authority to permit or deny admission to the United States. Upon arrival at the port of entry, the beneficiary must present to the CBP officer their passport (or other travel document) with the boarding foil and/or the unopened/sealed travel packet envelope.²²² It is not uncommon for CBP to place arriving refugee and asylee derivatives to be briefly placed in secondary inspection at the arrival airport.

V. TRAVEL AUTHORIZATION AND EXIT VISA PERMISSION

Once a Visa 92 or Visa 93 case has been approved and the beneficiary possesses the appropriate travel documentation, the Consular Post or USCIS office must secure exit visa permission for the beneficiary to leave the country. In some cases, countries may charge a fee to issue exit visa permission or may require that the person have met certain requirements, such as registration as an asylum seeker or having been granted refugee status. Some countries may refuse to recognize new refugee registrations or issue exit visa permission, due to a fear that facilitating resettlement could stimulate an influx of additional refugee populations.²²³

In rare instances where an exit visa permission is withheld, beneficiaries may consider whether traveling to another country for ongoing Form I-730 processing is a viable, safe alternative. However, legal practitioners

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.* See also [9 FAM 203.6-8](#).

²²³ For example, practitioners have reported instances for Rohingya refugees in Bangladesh where cases for approved Form I-730 beneficiaries have been on hold for several years awaiting exit visa permission.

should be careful not to advise beneficiaries to travel to a specific country for processing, as the family must make their own evaluation regarding the safety of such travel.

VI. SERVICES AND LEGAL STATUS FOLLOWING ARRIVAL INTO THE UNITED STATES

Upon arrival in the United States, all Form I-730 (V92/93) beneficiaries are considered either asylees or refugees and are entitled to all of the benefits that attach to their respective statuses. Follow-to-join refugee beneficiaries are eligible for refugee Reception and Placement (R&P) services under DOS and other programmatic benefits under the Office of Refugee Resettlement (ORR).²²⁴ Follow-to-join asylees are not eligible for the Reception and Placement program, but are eligible for all ORR assistance and services, including Matching Grant programs²²⁵ and all ORR-funded social services programs, depending on agency availability. **Asylees should contact a nearby resettlement agency as soon as possible for benefit eligibility**, as some programs have time-sensitive enrollment dates. A list of all resettlement agencies can be found on wrapsnet.org. A guide for new arrivals to the United States is available to download from Lutheran Immigration and Refugee Service.²²⁶

VII. WORK AUTHORIZATION

Refugees and asylees who enter the United States through the Form I-730 process have authorization to work incident to their status, meaning that the employment authorization document (EAD) is proof that they are authorized to work, but they are legally permitted to work even without a valid EAD. USCIS will grant the EAD based on the individual's refugee or asylee documentation alone. Resettlement agencies often have employment specialists who help refugees/asylees with their job search and initial job placements. Many states have designated agencies that receive state funds to help refugees and asylees find work. While refugees and Visa 93 beneficiaries generally receive a Form I-765 Employment Authorization Documents (EAD) automatically, as the Form I-765 is completed overseas through the refugee resettlement process, asylees and Visa 92 beneficiaries must file a *Form I-765 Application for Employment Authorization* in order to receive an EAD. The EAD is not a required document to prove employment authorization for either refugees or asylees, however, refugees/asylees must still provide [Form I-9 compliant documentation](#). It is best practice to maintain a valid EAD until the individual has successfully applied for and received lawful permanent residence, also known as a green card.

VIII. ADDITIONAL DOCUMENTS

In addition to an EAD, refugees and asylees are eligible to receive state-issued identification cards and/or driver licenses and a federal Social Security card without employment restrictions. Although refugees and asylees may experience a delay in receiving a Social Security number (SSN), they may begin work before the SSN is issued.²²⁷

²²⁴ See [USCIS Welcomes Refugees and Asylees](#), Apr. 2019.

²²⁵ See ORR, *Matching Grant Program*.

²²⁶ See, LIRS, Angela Edman, *First Steps: An LIRS Guide for Refugees, Asylum Seekers and Migrants Released from Detention*, 2019 Edition.

²²⁷ See U.S. DOJ *Information for Refugees and Asylees About the Form I-9*, December 2018.

IX. GAINING LAWFUL PERMANENT RESIDENT (LPR) STATUS

Refugees are required to apply for Lawful Permanent Resident (LPR) status, commonly known as a “green card,” after they have been physically present in the United States for one year.²²⁸ Asylees may apply for permanent residence after one year of physical presence in the United States.²²⁹ Although asylees are not statutorily required to apply to adjust status to LPR, it is highly advised that asylees contact a legal practitioner to determine eligibility to adjust status to LPR as soon as possible, as asylees must continue to meet the definition of an asylee in order to be eligible for permanent residence.

Additionally, because asylees are not subject to all of the admissibility grounds at the time of asylum or Visa 92 grant, the application for adjustment of status may be the first instance that all inadmissibility grounds are considered.²³⁰ A [Form I-602](#) waiver is available for some grounds of inadmissibility. Still, DHS may commence removal proceedings against asylees who are removable and not eligible for a waiver. While an asylee may be able to present humanitarian defenses in removal proceedings, it is best practice for asylees and refugees to undergo a full screening with a legal practitioner before applying to adjust status, especially in regards to criminal grounds of removability or other conduct after admission into the United States.²³¹

Lastly, the biggest difference between refugee and asylee adjustment of status is that asylees must continue to meet the definition of a refugee in order to be eligible for LPR status.²³² Circumstances that may cause an asylee to no longer meet the refugee definition include: a change in country conditions; traveling to the home country/country of claimed persecution; firm resettlement in another country; and naturalization of the PA.²³³ Additionally, derivative asylees must continue to maintain the same relationship with the petitioner in order to be eligible to adjust status (whether or not the petitioner has LPR status). Circumstances that may cause a derivative asylee to no longer maintain the same relationship include: divorce of a derivative spouse and PA asylee; marriage of a derivative child; and death of the PA asylee.²³⁴ In any of these instances where an asylee no longer meets the definition of a refugee and/or no longer maintains the same relationship to the PA as a derivative, the derivative may be required to file a *nunc pro tunc* (meaning “now for then”) asylum application with a USCIS asylum office before the derivative asylee may file a Form I-485 to adjust status to permanent resident.²³⁵

228 See [INA § 209\(a\)\(1\)\(B\)](#) and [8 CFR § 209.1\(a\)](#). See also USCIS, *Green Card for Refugees*, Last Reviewed/Updated June 26, 2017.

229 See [INA § 209\(b\)\(2\)](#) and [8 CFR § 209.2\(a\)\(ii\)](#). See also USCIS, *Green Card for Asylees*, Last Reviewed/Updated: July 10, 2017.

230 Additional information on Admissibility for Asylee Adjustment of Status can be found in the [USCIS Policy Manual Volume 7, Part M, Chapter 3](#).

231 See Penn State Law, et al, *Refugee and Asylee Adjustment Toolkit a Comprehensive Resource for Refugees and Asylees*, 2016.

232 See [INA § 209\(b\)\(3\)](#) and (b)(4).

233 Note: Derivative asylees need not prove their own independent claim to refugee status, just their relationship to the PA. However, if a PA asylee loses status because they have not adjusted status to LPR and no longer meet the definition of a refugee, the PA's spouse and child(ren) would also lose derivative asylee status. See [USCIS Policy Manual, Part M, Chapter 2](#). Note further, if the PA naturalizes, the derivative will have to seek asylum *nunc pro tunc* to be eligible to adjust status.

234 *Id.* Note: pursuant to [INA § 204\(l\)\(2\)\(D\)](#) if the PA dies and the beneficiary is in the United States, the beneficiary should be able to continue with their adjustment application. However, the USCIS, [Affirmative Asylum Procedures Manual \(AAPM\)](#), at 51-52, May 2016, indicates that if the PA dies before the beneficiary adjusts status, the beneficiary would have to file a *nunc pro tunc* asylum application. It is possible that this section of the AAPM was never updated to reflect amendments to the INA.

235 See USCIS, [Affirmative Asylum Procedures Manual \(AAPM\)](#), May 2016.

Note: Thanks to the CSPA, the “aging out” (i.e. turning 21) of a derivative child is no longer grounds for a derivative asylee to lose their parent-child relationship to the PA, as long as the derivative was under 21 when the original asylum or refugee application was filed.²³⁶

X. BECOMING A CITIZEN

Refugees and asylees who have obtained lawful permanent resident (LPR) status will be considered under the same eligibility grounds for U.S. citizenship as are applicable to nearly all permanent residents.²³⁷ For refugees, the five years of permanent residence are counted from the date of admission into the United States, as the date of permanent residence is backdated to a refugee’s date of arrival once the green card is approved. For asylees, the five years of permanent residence are counted from the date of permanent residence on the green card, which is backdated one year from the actual date of adjustment of status at the time when the green card is created.²³⁸ Many resettlement organizations have comprehensive and affordable citizenship programs that assist, guide, and encourage refugees through the naturalization process. With USCIS’s new NTA guidance, anyone applying for naturalization should have a full consultation with a qualified immigration attorney or accredited representative before applying.²³⁹

XI. TRAVEL FOR REFUGEES & ASYLEES AFTER ARRIVAL TO THE UNITED STATES

U.S. law stipulates that refugees and asylees (and Visa 92/93 beneficiaries) must obtain a Refugee Travel Document to return to the United States if they travel abroad after having been granted refugee or asylee status, whether as a Permanent Resident or with refugee or asylee status (or derivative refugee or asylee status).²⁴⁰ A Refugee Travel Document is required even if a refugee or asylee has a passport from their home country, as traveling on a passport from the home country may be considered to be availing oneself of the protections of that country and may jeopardize the grant of asylee or refugee status. A travel document is required even for visits to neighboring countries such as Canada or Mexico.

To apply for a Refugee Travel Document the applicant must submit a *Form I-131 Application for Travel Document* with USCIS. Some countries will not allow entry on a Refugee Travel Document (RTD), so individuals who wish to travel should ensure that they will be able to do so before purchasing a plane ticket. There is no fee waiver available for a Refugee Travel Document or Reentry Permit.²⁴¹ Also, RTDs are only valid for one year²⁴² and some countries will only allow individuals to enter the country if the travel document is valid for a specific period of time (generally three to six months) beyond the entry date.

236 See [ILRC](#), *Application of the Child Status Protection Act to Asylees and Refugees*, May 2018.

237 See USCIS *Citizenship Through Naturalization*, Last Updated/Reviewed Apr. 11, 2018.

238 See USCIS, [Policy Manual, Part M, Chapter 5](#).

239 See USCIS, *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, June 28, 2018.

240 See USCIS, *Travel Documents*, Last Reviewed/Updated: June 26, 2017.

241 See USCIS, [Form I-912, Request for Fee Waiver](#), Last Updated/Reviewed Aug. 13, 2018.

242 See USCIS, *I Am a Refugee or Asylee, How Do I Get a Refugee Travel Document?*, Oct. 2013.

Note: If a Refugee Travel Document or Reentry Permit is not obtained in advance of departure, the refugee or asylee may be unable to re-enter the United States. A green card alone will not guarantee entry.²⁴³

When travelling outside of the United States, if the refugee or asylee returns to the country from which they fled (i.e. the country of claimed persecution), this may jeopardize their refugee or asylee status.²⁴⁴ At naturalization or upon reentry, the refugee or asylee may have to explain how they were able to return safely, and their initial refugee or asylee status may be subject to review. Returning to the country of claimed persecution is particularly dangerous for asylees who have not yet adjusted status to LPR, as an asylee must continue to meet the definition of a refugee in order to be eligible for adjustment of status.²⁴⁵ Although derivative refugees and asylees are not required to have an independent fear of return to their country of origin and/or claimed persecution, since their status in the United States is also asylee or refugee, they should be advised that traveling back to their country of origin and/or claimed persecution of the principal asylee or refugee could put their status at risk.

It is therefore highly advised that refugees and asylees consult with a legal practitioner before traveling outside the United States.

Note: Due to the length of time that it can take for a beneficiary to arrive in the United States, petitioners may wish to travel to visit their spouse and/or child/ren while their Form I-730 petitions are in process. In addition to warning petitioners about the risks they may face in returning to their country of nationality/claimed persecution, representatives should make their client aware of the unintended family reunification complications of such visits. A common result of a male Form I-730 petitioner visiting a female spouse is that a new child is conceived. While this is certainly a joyous occasion for the family, a new baby provides additional complexity for the family's ultimate reunification. As a child who was conceived and born after the petitioner's refugee admission or asylum grant, this child is not Form I-730 petitionable. A Form I-130 will likely need to be filed, and a request for humanitarian parole for the child may be warranted. Either way, it is almost certain that the follow-to-join case of that child's mother (i.e. the beneficiary spouse of the PA) will be delayed while the child's immigration processes are initiated and adjudicated.²⁴⁶

243 See USCIS, *Fact Sheet: Traveling Outside the United States as an Asylum Applicant, an Asylee, or a Lawful*

Permanent Resident Who Obtained Such Status Based on Asylum Status, Dec. 27, 2006.

244 *Id.*

245 See USCIS, *Fact Sheet: Traveling Outside the United States as an Asylum Applicant, an Asylee, or a Lawful Permanent Resident Who Obtained Such Status Based on Asylum Status*, Dec. 27, 2006.

246 See Section XII. for Additional Family Reunification Options Beyond the Form I-730.

XI. TROUBLESHOOTING WHEN PROBLEMS ARISE

If a case is not progressing according to the steps outlined in the Timeline for Processing a Form I-730 above, a number of alternatives are available. These steps for regular case processing inquiries are referenced in the above Section VI. Timeline and Opportunities for Inquiry. Practitioners should go through all regular case inquiry steps before seeking additional remedies, such as seeking case assistance from the USCIS Ombudsman and submitting a Congressional Inquiry.

I. WHEN PROBLEMS ARISE UNDER USCIS JURISDICTION

See Section VI. Timeline and Opportunities for Inquiry above for discussion of case status, case inquiries (e-requests), calls to USCIS customer service, and InfoPass appointments before considering the below remedies.

USCIS OMBUDSMAN INQUIRY

A request for case assistance from the USCIS Ombudsman can be made **only after the steps discussed in Timeline and Opportunities for Inquiry²⁴⁷ have been taken** and provided that a case is more than 60 days outside of normal processing time.²⁴⁸ Again, this is an option only when a case is in USCIS jurisdiction. A Form I-730 petition will be in USCIS jurisdiction before it is transferred through the NVC to a Consular Post or if the case is being processed at a USCIS Field Office located in the United States or another country. A request for case assistance cannot be made to the USCIS Ombudsman if the case is under the jurisdiction of DOS, including the NVC or a Consular Post abroad.

There are tips and checklists available on the [DHS website](#) to help prepare a request for case assistance to the USCIS Ombudsman. When you have the information ready, access the Form DHS 7001 and other relevant information at <https://www.dhs.gov/case-assistance>. The Ombudsman strives to provide a resolution within 90 days. If you have problems submitting a request, you can contact cisombudsman@hq.dhs.gov.

SUBMITTING A CONGRESSIONAL INQUIRY WITH USCIS

Another strategy to try to get movement on a stalled case is by making a congressional inquiry. The petitioner can do this by reaching out to their Member of Congress or to one of the two Senators that represents the petitioner. A congressional inquiry may be an appropriate step **if an Ombudsman's inquiry did not resolve the issue or if the case is with the State Department and not under the Ombudsman's jurisdiction.**

Start at the elected official's website to determine the best way to contact their staff for "help with a federal agency." Each office may have a specific form, email address, or other method for making an inquiry. In every

²⁴⁷ See Section VI. Timeline and Opportunities for Inquiry.

²⁴⁸ See DHS, *Ombudsman - Case Assistance*.

case, the Petitioner must sign a privacy act release form under Public Law 93-579 (Privacy Act of 1974). This form should provide a space to list other individuals who may be updated about the case status—this is the place to include the attorney or accredited representative if the Petitioner consents. Speak to someone in that office to request the appropriate forms and confirm how frequently they will provide updates on the case.

Note: A request for case assistance should not be made to the USCIS Ombudsman if there is also a pending congressional inquiry.

WRIT OF MANDAMUS

USCIS has an obligation to act within a reasonable period of time pursuant to 5 U.S.C. § 555(b). If USCIS fails to timely adjudicate a Form I-730 petition, the practitioner may choose to file a writ of mandamus in federal district court—i.e. by bringing a lawsuit against the federal government. The complaint must be filed in federal district court by an attorney admitted to practice before that court; DOJ accredited representatives cannot appear in federal court.

What is “timely?” Since new procedures were implemented on February 1, 2018 to ensure that all individuals admitted as refugees receive similar, thorough vetting—whether they are principal refugees, accompanying family members, or following-to-join refugees—Form I-730 petitions for derivative refugees (V93) no longer receive an approval notice before being transferred through NVC to a USCIS Field Office or Consular Post.²⁴⁹ Usually, these cases are under the jurisdiction of DOS during overseas processing at a Consular Post.²⁵⁰ USCIS must have jurisdiction of the petition in order to file a *writ of mandamus*.

A successful *writ of mandamus* only results in an order forcing USCIS to act; it does not require USCIS to grant the Form I-730 and, in fact, focuses only on the process and not the substance of the underlying petition. It should also be noted that there are certain reasons for legitimate delays—such as a fraud investigation related to the petitioner or beneficiary’s claims on the Form I-730 – which may cause USCIS *not* to issue a decision on the underlying Form I-730 until the investigation is concluded.²⁵¹ Before pressing for an adjudication, practitioners should be sure to explain the consequences of fraud to the petitioner and make sure that there is no possible fraud allegation in the underlying asylum/refugee grant or subsequent Form I-730 before filing a *writ of mandamus*. Also, practitioners should bear in mind, that a mandamus is only helpful when the delay is caused at the USCIS processing stage. There is not a similar mechanism to force DOS to act, although a congressional inquiry may be helpful.

249 More information can be found at USCIS, *USCIS Is Strengthening Screening for Family Members Abroad Seeking to Join Refugees in the United States*, Last Reviewed/Updated Feb. 6, 2018.

250 See Section VIII. on Consular Processing For Form I-730 Beneficiaries Outside the United States.

251 See *Kai Gong v. Duke*, 282 F. Supp. 3d 566 (E.D.N.Y. Oct. 18, 2017).

II. WHEN PROBLEMS ARISE UNDER DEPARTMENT OF STATE JURISDICTION DURING CONSULAR PROCESSING

NVC COMMUNICATION

Legal representatives may call 1-603-344-0700 or send email inquiries to nvcattorney@state.gov if they are listed as the representative of record on the case. NVC inquiries can be helpful to establish the location for Consular Processing and/or the date that the case was transferred overseas to the Consular Post. However, once the NVC has transferred the case to the appropriate Consular Post, the specific Embassy or Consulate should be contacted directly. Only contact the NVC if a Consular Post has not confirmed receipt of the case after 60 days from transfer from the NVC.

Each time that a practitioner contacts the NVC, they should refer to only one case per email, using the case number or receipt number as the subject line. The email should include the petitioner's name, beneficiary's name and date of birth, the name and office of the representative of record, and the requestor's name (if not the attorney or DOJ Accredited Representative). Representatives should allow six to eight weeks after receipt of a Form I-797C Notice of Case Transfer from USCIS to ensure that USCIS has had enough time to mail the petition to the NVC and that the NVC can enter the case into its database.

SUBMITTING A CONGRESSIONAL INQUIRY WITH DOS

A congressional inquiry may be an appropriate step **when a beneficiary has been interviewed at a Consular Post and has not travelled** after six months following the interview. Continue to follow up with that Consular Post by email if they are responsive. However, if that Consular Post is not responsive or the case has been in administrative processing for more than six months, it may be helpful to involve the U.S. Representative or Senator for the petitioner's district or state.

Start at the elected official's website to determine the best way to contact their staff for "help with a federal agency." Each office may have a specific form, email address, or other method for making an inquiry. In every case, the Petitioner must sign a privacy act release form under Public Law 93-579 (Privacy Act of 1974). This form should provide a space to list other individuals whom may be updated about the case status— this is the place to include the attorney or accredited representative if the Petitioner consents. Speak to someone in that office to request the appropriate forms and confirm how frequently they will provide updates on the case.

Note: A Congressional Inquiry should not be made when there is a pending request for case assistance with the USCIS Ombudsman. However, once a case has been transferred from USCIS to DOS, it is no longer possible to seek case assistance from the USCIS Ombudsman, so a congressional inquiry may be the best way to seek intervention on the case.

III. CONSULAR RETURNS AND NOTICES OF INTENT TO DENY/REVOKE

A Consular Return occurs when the Consular Post sends the case back to USCIS jurisdiction recommending

denial of the Form I-730.²⁵² Reasons prompting a Consular Post to return a Form I-730 to USCIS jurisdiction may be because the interviewing officer has doubts about the underlying age or identity of the beneficiary, or the *bona fide* nature of the relationship between the petitioner and beneficiary.

In the unfortunate case of a Consular Return, the Consular Post may simply return the case to USCIS without informing the petitioner or beneficiary of the case status. The case will be transferred back to the NVC, and will then be forwarded to the original USCIS Service Center or to IASB, in the case of a refugee Form I-730. USCIS may take several months to one year, or more, to investigate the return. Generally, no notification is provided to the petitioner or legal representative until the USCIS investigation is complete, at which point USCIS may issue notification reaffirming the Form I-730's approval or issue a Notice of Intent to Revoke (NOIR) the original approval. However, if USCIS has not yet made a decision on the Form I-730, it may send a Notice of Intent to Deny (NOID) the Form I-730 to the petitioner and legal representative. For a Notice of Intent to Deny/Revoke, a petitioner is given only 30 days to respond (33 days if the decision was received by mail).²⁵³

If a legal representative has reason to believe that a Form I-730 may have been returned to USCIS by a Consular Post, the representative should advise the petitioner to begin gathering additional evidence *as soon as possible* to prepare for a potential adverse notice. The legal representative should also request from the beneficiary a detailed account of the overseas interview and any specific questions or instructions given by the consular officer.

Provided that all required initial evidence has been properly submitted, USCIS is required by regulation to give the petitioner adequate opportunity to respond before denying a Form I-730.

8 CFR 103.2 states:

- i. **Initial evidence.** If all required initial evidence is not submitted with the *benefit request* or does not demonstrate eligibility, *USCIS* in its discretion may deny the *benefit request* for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by *USCIS*.
- ii. **Other evidence.** If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, *USCIS* may: deny the *benefit request* for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by *USCIS*; or notify the applicant or petitioner of its intent to deny the request and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by *USCIS*.
- iii. **Process.** A request for evidence or notice of intent to deny will be communicated by regular or electronic mail and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and sufficient information to respond. The request for evidence or notice of intent to deny will indicate the deadline for response, but in no case shall the maximum response period provided in a

²⁵² See generally USCIS, *Immigrant Visa Petitions Returned by the State Department Consular Offices*, Last Reviewed/Updated Jul. 15, 2011. See also Section XI. iii. on legal remedies for Consular Returns.

²⁵³ USCIS Policy Memorandum, PM-602-0163, [Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual \(AFM\) Chapter 10.5\(a\), Chapter 10.5\(b\)](#), July 13, 2018.

request for evidence exceed twelve weeks, nor shall the maximum response time provided in a notice of intent to deny exceed thirty days. Additional time to respond to a request for evidence or notice of intent to deny may not be granted. USCIS may issue a NOID if the petitioner does not meet the required burden of proof, if there is reason to believe that the relationship is not legally valid and/or *bona fide*, if the petitioner or beneficiary abandons the petition by failing to attend an interview or respond to a request for evidence, and/or if there is evidence that the petitioner or beneficiary provided false testimony in the process of attempting to obtain the benefit, among other reasons. Once a case is transferred to the appropriate Consular Post, the U.S. Embassy or Consulate may send the case back to USCIS for re-adjudication (i.e. Consular Return) for any of the above reasons.²⁵⁴

The same types of documentary evidence and legal arguments may be used in responding to a Notice of Intent to Deny/Revoke as for a Request for Evidence response.²⁵⁵ The petitioner can still prevail on the Form I-730 even after receiving one of these notices if the representative and petitioner are prepared to respond quickly once the notice is received.

IV. DENIALS AND MOTIONS TO REOPEN/RECONSIDER

If a Form I-730 Refugee/Asylee Relative Petition is denied, petitioners may file a [Form I-290B Motion to Reopen/Reconsider](#) for the case. The following information is from the USCIS website.

Note: Following a Form I-730 denial, petitioners may file a new Form I-730 (with additional evidence), provided that the new filing is within the two-year filing deadline and/or the case qualifies for a humanitarian extension to the two-year filing deadline. Generally, as of this manual's publishing, a Motion to Reopen/Reconsider for a Form I-290B is adjudicated by the same officer who denied the original Form I-730. Thus, if the petitioner is eligible to submit a new Form I-730, this may be advantageous in some cases, especially given that there is no fee associated with the Form I-730 filing, whereas there is a filing fee for Form I-290B.

What is Form I-290B? Persons who wish to appeal a decision made by USCIS have the option of filing Form I-290B to appeal and/or motion to reopen/reconsider this decision.

Which Form I-290B Remedies Apply? Denials of Form I-730 may *not* be appealed. Only a motion to reopen and/or reconsider may be filed following a Form I-730 denial.

Reason for Motion or Appeal: A relevant reason for the motion to reopen and/or reconsider must be listed on Part 7 of the Form I-290B form or on a separate sheet of paper. According to the Form I-290B Instructions this can include:

Motion to Reopen - A motion to reopen must state new facts and must be supported by documentary evidence

²⁵⁴ See also [8 CFR § 103.8](#) regarding service of decisions and other notices.

²⁵⁵ See Section V. iii. for discussion of Requests for Evidence.

demonstrating eligibility for the required immigration benefit at the time you filed the application or petition.²⁵⁶

Motion to Reconsider - A motion to reconsider must demonstrate that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence in the case record at the time of the decision. The motion must be supported by citations to appropriate statutes, regulations, precedent decisions, or statements of USCIS policy.

Combined Motion to Reopen and Reconsider - You may file a motion combining a motion to reopen and a motion to reconsider. They will be separately assessed and may be both denied, both granted, or one granted and one denied.

Who Can file? Only the petitioner, not the beneficiary, can file a Form I-290B.

Deadline: This must be filed within 30 days of the adverse decision (33 if decision was mailed).

Where to File: Filing addresses for Form I-290B motions are listed on the [USCIS website](#).

Fee: The filing fee is currently \$675 for a Form I-290B,²⁵⁷ although the petitioner may file a Form [I-912 Request for Fee Waiver](#). Note, however, that proposed changes to the fee waiver standards may make fee waivers more difficult to obtain.²⁵⁸

Evidence: Evidence must be filed at the time of submission. All documents must be legible photocopies unless the denial was based on failure to submit original documents. It may be helpful to write a brief describing the new evidence and its bearing on the motion but a brief is not required.

Expected Response Time: The expected response time for this motion is within 180 days.

What to file with a Motion to Reopen:

- Form G-28
- Form I-912 fee waiver request and supporting documents, or filing fee
- Form I-290B
- Documentary evidence establishing that the petition was approvable on the date of the application
- Copy of Form I-730 denial/revocation notice
- Brief with the following sections (*recommended*)
 - > Introduction with reference to the appropriate subsection of [8 CFR § 103.5](#)
 - > Timely Filing Requirement Met under [8 CFR § 103.8](#)

²⁵⁶ See USCIS, [Form I-290B Instructions](#), May 17, 2018.

²⁵⁷ See USCIS, [Form I-290B](#).

²⁵⁸ See CLINIC, *Be a Fee Waiver Warrior: Don't Let USCIS Make it So Only Wealthy Immigrants Can Pursue the American Dream*.

- > Procedural History
- > Describe the new evidence, explain why it was not included with the initial application, and state why that evidence makes the initial petition approvable
- > Conclusion requesting appropriate relief, i.e. the motion be granted and the I-730 petition approved

What to file with a Motion to Reconsider:

- Form G-28
- Form I-912 fee waiver request and supporting documents, or filing fee
- Form I-290B
- Copy of Form I-730 denial/revocation notice
- Brief with the following sections (*recommended*)
 - > Introduction with reference to the appropriate subsection of [8 CFR § 103.5](#)
 - > Timely Filing Requirement Met under [8 CFR § 103.8](#)
 - > Procedural History
 - > Argument citing statutes, regulations, precedential decisions, and/or USCIS policy to show that USCIS erred in issuing the I-730 denial or revocation because of a misapplication of law or policy.
 - > Brief should also cite to evidence included with the initial application **or** include new evidence **and** a motion to reopen
 - > Conclusion requesting appropriate relief, i.e. the motion be granted and the I-730 petition approved

Processing:

- Upon receiving the Form I-290B, USCIS will make an initial review for completeness. If it is not filled out completely, USCIS may reject, dismiss, or deny the motion.
- Upon review, USCIS may request that more information be submitted.

XII. ADDITIONAL FAMILY REUNIFICATION OPTIONS BEYOND THE FORM I-730

A refugee or asylee who is unable to file Form I-730²⁵⁹ may be eligible to file for other family reunification benefits with USCIS or DOS. The following is a list of additional family reunification options beyond the Form I-730 that may be available to refugees and asylees, along with a summary of the most common scenarios in which these family reunification benefits may apply.

Note: This section is intended as a starting point to guide practitioners toward appropriate remedies. It is neither exhaustive, nor comprehensive.

- **Form I-130 Petition for Alien Relative (USCIS)**
 - > *Can be filed alongside a pending Form I-730 by an LPR; however, the Form I-130 process does not grant refugee benefits, is held to a higher “clear and convincing” burden of proof, and is much more expensive, requiring the PA to secure financial sponsorship for the relative.*
 - > For relationships created *after* refugee arrival or date of asylum.
 - > For *after* the two-year deadline when a humanitarian extension is not warranted.
 - > For a petitioner *after* having naturalized to become a U.S. citizen.
 - > For a petitioner’s child who was over 21 on the date that the parent’s asylum was granted/date that the refugee’s Form I-590 was approved.
 - > For a petitioner’s child who was under 21 on the date that the parent’s asylum was granted/date that the refugee’s Form I-590 was approved, but the child was not claimed on the Form I-589/Form I-590.
 - > For a petitioner’s child who is married and therefore no longer eligible to be an asylee or refugee derivative. If the petitioner becomes a U.S. citizen they may file a Form I-130 petition for an adult, married son or daughter. Note, however, that there is no adult, married son or daughter eligibility category if the petitioner is an LPR.
 - > For a petitioner’s child from a “proxy” marriage that was consummated after the date of PA’s grant of asylum/date of refugee entry (although the date of celebration of the “proxy” marriage may have occurred earlier).
 - > For a PA’s child who wants to apply for their own child (see note below).

259 See Section III. i. for Who Can File a Form I-730 and Section III. iii. for Who Can Benefit From a Form I-730.

- > There is no fee waiver for a Form I-130 and family members of LPRs are subject to the family preference system which can entail considerable waits.
- > If the petitioner is an LPR, the beneficiary will be in a preference category and could have a lengthy wait until the priority date for the visa petition becomes current. If the petitioner is a U.S. Citizen, then the visa is immediately available as the beneficiary will be an immediate relative.

Note that for a petitioner to sponsor a relative through Form I-130 family reunification rather than as an asylee/refugee derivative, the petitioner will have to file a *Form I-864 Affidavit of Support* before visa issuance. New public charge regulations are scheduled to go into effect on October 15, 2019 making the standard to demonstrate that a beneficiary is not likely to become a public charge much higher than in the past.²⁶⁰ In fact, DOS has already begun using an elevated standard which focuses on the beneficiary's ability to work rather than on the sponsor's affidavit of support.²⁶¹

Note If the derivative refugee or asylee child is married, further screening is necessary to determine the legality and timeline of the marriage. If the marriage occurred BEFORE the derivative refugee's arrival in the United States or the asylee's grant of derivative asylum, this information was likely withheld from USCIS, as only unmarried children are eligible for derivative asylee/refugee benefits. In this case, the individual should NOT submit any further applications for benefits to USCIS, as doing so would cause the individual to be at risk of denial if the marriage is not disclosed and/or rescission of the initial status due to ineligibility for the benefit received. If the marriage ended and the derivative refugee or asylee child was unmarried at the time of the refugee's arrival or asylee's grant of derivative asylum, the prior marriage would not jeopardize derivative status.

- **P-3/Affidavit of Relationship (AOR) Family Reunification (DOS)²⁶²**

Note: Can only be filed by a [refugee resettlement agency](#).

Principal Applicant asylees and Principal Applicant refugees of certain nationalities are eligible to file both P-3 AORs and Form I-730s for derivatives in certain locations.²⁶³ Additionally, derivative asylees and refugees are also eligible to file P-3-AORs, as the program grants access for eligible family members to the U.S. Resettlement & Placement (R&P) program. In addition to proving the family relationship through DNA testing, the beneficiary/ies must be registered refugees living outside of their country of origin and must also demonstrate their own claim to refugee status in order to be eligible for P-3/AOR processing. In addition to spouses and children beneficiaries, the P-3/AOR program also allows refugees

²⁶⁰ For more information see CLINIC, *Changes to Public Charge*.

²⁶¹ See Charles Wheeler, CLINIC, *State Department Redefines Public Charge Standard*.

²⁶² See DOS, *Proposed Refugee Admissions for Fiscal Year 2019*, Sep. 24, 2018.

²⁶³ The nationalities of refugees and asylees who are eligible to file P-3/AOR applications and the beneficiary locations from which a P-3/AOR can be filed are subject to change from year to year, per the Presidential Determination. Practitioners should consult with a local refugee resettlement agency for eligibility. A list of all resettlement agencies can be found on wrapsnet.org. [The current countries eligible for P-3/AOR processing can be found at DOS, Proposed Refugee Admissions for Fiscal Year 2019 Report to Congress.](#)

and asylees to apply for their parents, allowing for additional family reunification options beyond the Form I-730.

- > **When eligible for both programs** both a P-3 AOR and a Form I-730 can be filed to secure the greatest likelihood of reunification, especially in cases where there is limited evidentiary support. Both programs provide access to resettlement to the United States as a refugee; however, the beneficiary of a P-3/AOR must prove their own refugee claim.²⁶⁴
- > For filing *after* the two-year deadline when a humanitarian extension is not warranted.
- > For an unmarried derivative refugee or asylee child of a PA who wants to apply for their own child.
- > Note: The P-3/Affidavit of Relationship Program is only available for certain nationalities in certain locations, which can change from year to year. Because the eligibility requirements are subject to change annually, it is best for the petitioner to contact their local refugee resettlement agency directly. P-3 petitioners may be asylees or refugees; however, the beneficiary/ies must be designated refugees registered with UNHCR in their country of residence.²⁶⁵
- > There is no filing fee for a P-3/AOR, as these forms are submitted by the local refugee resettlement agency to their national or affiliate headquarters.
- **Form I-131 Application for Humanitarian Parole (USCIS)**
 - > For a petitioner's derivative children conceived *in utero* and born *after* a refugee's arrival or asylee's grant of asylum.
 - > For derivative children of a petitioner's unmarried child beneficiary (i.e. a "derivative of a derivative").
 - > Requires a *Form I-134 Affidavit of Support* submitted concurrently with filing.
 - > There is no fee waiver for humanitarian parole.

Note: Humanitarian Parole is a temporary, discretionary status allowing the recipient to travel to the United States for humanitarian purposes. Humanitarian Parole is NOT intended to facilitate permanent immigration and/or circumvent the regular immigrant visa processes of the United States. Beneficiaries who are granted humanitarian parole would not have permanent status unless they are eligible to file a Form I-485 Application to Register Permanent Resident, apply for asylum, or qualify for other immigration benefits. Humanitarian Parole may be an option to consider in the types of circumstances indicated above, however, only after all other family reunification remedies are exhausted. Beneficiaries who are granted Humanitarian Parole without a means of applying for lawful permanent resident status would accrue unlawful presence once their Humanitarian Parole expires. Such beneficiaries should continue to renew their Humanitarian Parole until they are eligible for adjustment of status.

²⁶⁴ See Congressional Research Service, [Refugee Admissions and Resettlement Policy](#), December 18, 2018.

²⁶⁵ The current countries eligible for P-3/AOR processing can be found at DOS, *Proposed Refugee Admissions for Fiscal Year 2019 Report to Congress*.

XIII. CONCLUSION

This practice manual has attempted to advise on best practices for filing Form I-730 petitions and potential issues to be aware of during Form I-730 adjudication and consular processing, where applicable. Please note that this is not an exhaustive guide, particularly because policies and procedures have been undergoing frequent changes since 2017. Attorneys and DOJ accredited representatives are advised to check current policies on the USCIS website and practice advisories, such as those posted on the CLINIC website. Again, this resource is not intended to assist *pro se* petitioners or anyone engaged in the unauthorized practice of immigration law. Family reunification and humanitarian concerns have been integral to immigration law for decades, and this practice manual seeks to assist advocates who continue to promote these values in U.S. immigration.

XIV. APPENDICES

I. ABBREVIATIONS

A-file – Alien file that USCIS maintains

AABB – American Association of Blood Banks – Accredits laboratories to perform DNA tests that meet USCIS standard

AFM – Adjudicator’s Field Manual (USCIS)

AOR – P-3/Affidavit of Relationship, filed with DOS by refugee resettlement agencies

BIA – Board of Immigration Appeals

CFR – Code of Federal Regulations

Consular Posts – may be Embassies, Consulates, or Diplomatic Missions

CSPA – Child Status Protection Act

DOJ Accredited Representative – a practitioner without a law license who can lawfully practice immigration law by being Accredited by the U.S. Department of Justice and working for a DOJ Recognized agency

DHS – U.S. Department of Homeland Security

DOS – U.S. Department of State

EAD – Employment Authorization Document, issued by USCIS

EOIR – Executive Office of Immigration Review (immigration court and Board of Immigration Appeals)

FAM – U.S. Department of State Foreign Affairs Manual

Follow-to-Join – A synonym for the Form I-730 process of derivatives gaining refugee or asylee status based on their relationship to the Principal Applicant on a refugee or asylum claim already approved by USCIS; location of the beneficiaries is irrelevant to the term “follow to join.” Beneficiaries can be in the U.S. or in another country.

FOIA – Freedom of Information Act request, filed with USCIS using Form G-639

I-94 – Arrival/departure record issued by U.S. Customs and Border Protection upon admission to inspected aliens. Note: These are now issued electronically rather than as a paper document and the non-citizen must access the form on the CBP website.

IASB – International Adjudications Support Branch (of USCIS)

INA – Immigration and Nationality Act

IOM – International Organization for Migration

IV – Immigrant Visa

LPR – Lawful Permanent Resident (i.e. Green Card holder)

NIV – Non-Immigrant Visa

NOID – Notice of Intent to Deny

NOIR – Notice of Intent to Revoke

NVC – National Visa Center (of Department of State)

NTA – Notice to Appear before an Immigration Judge

ORR – Office of Refugee Resettlement

PA – Principal Applicant

PRM – U.S. Department of State, Bureau of Population, Refugees, and Migration

RFE – Request for Evidence

R&P – Reception and Placement, provided for resettled refugees

RSC – Resettlement Support Center

TSA – Transportation Security Administration (of the U.S. government)

UNHCR – United Nations High Commissioner for Refugees

Visa92/V92 – Follow-to-join asylee (I-730 beneficiary)

Visa93/V93 – Follow-to-join refugee (I-730 beneficiary)

USCIS – United States Citizen and Immigration Services

II. SUMMARY CHART FOR FORM I-730 PROCESSING

Refugee Form I-730s (Visa 93 or V93)	Asylee Form I-730s (Visa 92 or V92)
For Whom? <p>Persons admitted to the United States as refugees who were the principal applicant for their individual case or family may apply. Beneficiaries are follow-to-join refugees.</p>	Persons granted asylee status in the United States who were the principal applicant for their individual case or family may apply. Beneficiaries are follow-to-join asylees.
Eligibility for Spouses <p>Marriage must have existed prior to the refugee's date of admission (also known as the date of entry). The marriage must also continue to exist at the time of filing the Form I-730, and through the Visa 93 grant.</p> <p>The marriage must be legally valid under the laws of the country in which it was entered into.</p> <p>It must be a <i>bona fide</i> marriage (i.e. not entered into solely for immigration purposes).</p> <p>It cannot include a "proxy marriage" unless the marriage has been consummated.</p> <p>The marriage cannot be polygamous—only the first marriage is considered valid for immigration purposes.</p>	Marriage must have existed prior to the asylee's date of asylum grant. The marriage must also continue to exist at the time of filing the Form I-730 and through the Visa 92 grant. <p>The marriage must be legally valid under the laws of the country in which it was entered into.</p> <p>It must be a <i>bona fide</i> marriage (i.e. not entered into solely for immigration purposes).</p> <p>It cannot include a "proxy marriage" unless the marriage has been consummated.</p> <p>The marriage cannot be polygamous—only the first marriage is considered valid for immigration purposes.</p>
Eligibility of Children <p>Any child who was under 21 on the date the petitioner was first interviewed by USCIS will continue to be classified as a child (as long as the child was listed on the Form I-590).</p> <p>A child born or "acquired" through marriage or adoption would be Form I-730 eligible, as long as the relationship existed prior to the date of refugee entry.</p> <p>If the parent failed to list the child on Form I-590, then the child's age is frozen as of the date that the Form I-730 is filed.</p> <p>Biological children, adopted children, and step-children are eligible. Children conceived but not yet born on the date of admission as a refugee are also eligible.</p>	Any child who was under 21 on the date the Form I-589 is received by USCIS or the immigration court will continue to be classified as a child (as long as the child was listed on the Form I-589). <p>A child born or "acquired" through marriage or adoption would be Form I-730 eligible, as long as the relationship existed prior to the date of asylum grant.</p> <p>If the parent failed to list the child on Form I-589, then the child's age is frozen as of the date that the Form I-730 is filed.</p> <p>Biological children, adopted children, and step-children are eligible. Children conceived but not yet born on the date asylum was granted are also eligible.</p>
Eligibility Restrictions <p>A beneficiary "must not have ordered, incited, assisted, or otherwise participated in the persecution of another (<i>see</i> INA § 207(c)(2)(A)) and must be otherwise admissible as an immigrant."</p>	A beneficiary "must not be subject to the mandatory bars of 8 CFR § 208.21." Discretion by USCIS may be influenced by a beneficiary's inadmissibility as an immigrant.
When must they be filed? <p>Within two years of admission (entry) as a refugee into the United States—unless a humanitarian extension is warranted.</p>	Within two years of the date granted asylum from USCIS or an immigration judge—unless a humanitarian extension is warranted.

Proof of Status Required

Copy of Form I-94 indicating RE (refugee) class of admission or copy of passport containing an admission stamp indicating status.

Copy of USCIS asylum office approval letter or copy of the decision by the Immigration Judge granting asylum.

Medical Exams

Overseas beneficiaries are usually instructed to complete after interviews, although some posts request as pre-interview preparation. The U.S. government covers the costs.

Beneficiaries in the United States are not required to complete their medical examination until adjustment of Status to Permanent Resident.

Overseas beneficiaries must complete before their interview with USCIS or Dept. of State consular officer. Beneficiaries themselves must cover the costs.

Beneficiaries in the United States are not required to complete their medical examination until adjustment of Status to Permanent Resident.

Interpreters

Beneficiaries not fluent in English are strongly encouraged to bring an interpreter to their interviews (in the United States).

Overseas beneficiaries not fluent in English or the language(s) of the country in which the Form I-730 will be consular processed are strongly encouraged to bring an interpreter to the interviews.

Beneficiaries not fluent in English are required to bring interpreters to their interviews (in the United States).

Overseas beneficiaries not fluent in English or the language(s) of the country in which the Form I-730 will be consular processed are required to bring interpreters to their interviews.

Additional Security Measures Implemented since 2017

As of February 1, 2018, new security measures were put in place including:

- Full baseline interagency checks that other refugees (going through Priority-1, P-2, or P-3 processing) receive.
- Submission of Form I-590 Registration for Classification as a Refugee in support of the principal refugee's Form I-730 petition earlier in the adjudication process.
- Vetting against classified databases

As of this manual's publishing, the additional security measures first referenced in the President's March 6, 2017 Executive Order apply only to refugee processing. However, in accordance with these additional security measures, all Visa 92 and Visa 93 beneficiaries must be interviewed before the adjudication of their Form I-730 petitions, whereas beneficiaries in the United States were generally not interviewed in the past.

Beneficiaries over the age of 14 must also submit a completed Form G-646, Sworn Statement of Refugee Applying for Admission into the United States at the interview.

Special Instructions – Beneficiaries in the United States

In cases of unlawful presence, the Form I-730 will be adjudicated without a waiver. The decision to approve the petition remains at the discretion of USCIS, taking into account all relevant factors in the beneficiary's case. If the beneficiary is in the United States without lawful status, USCIS may initiate removal proceedings if it denies the Form I-730 petition.

Special Instructions – Beneficiaries Overseas

As of January 12, 2018, the International Adjudications Support Branch (IASB) in the Refugee, Asylum, and International Operations (RAIO) Directorate of USCIS will process certain petitions of beneficiaries overseas. IASB will send instructions once the petitions are received. The case will be sent abroad to a USCIS international field office (or U.S. Embassy or Consulate, in cases where no USCIS office is present) for interviews and further processing once the petition has been processed domestically. Interviews may require international travel, as not all State Department posts process immigrant visa petitions.

No changes have been made to this component of the process for Visa 92/asylee beneficiaries; their petitions will continue to be processed through USCIS Service Centers. After approval, the Service Centers will then forward the case on to the National Visa Center for processing at the appropriate USCIS office, U.S. Embassy, or Consulate.

Arriving in the United States

Once approved, beneficiaries are referred to the International Organization for Migration (IOM). They must travel through IOM-arranged flights which are paid through travel loans.

Once approved, beneficiaries receive travel packets and must arrange/pay for their own travel to the United States.

Services in the United States

Eligible for Reception and Placement services under DOS and other programmatic benefits under the Office of Refugee Resettlement (ORR).

Not eligible for the Reception and Placement program but are eligible for all ORR assistance and services, including Match Grant programs and all social services programs.

Asylees should contact a nearby resettlement agency for possible benefits.

Adjustment of Status to Permanent Resident

Refugees are required to apply for Lawful Permanent Resident (LPR) status after they have been physically present in the United States for one year.

Asylees may apply for Lawful Permanent resident (LPR) status after one year of physical presence in the United States. However, asylees must continue to meet the definition of an asylee to be eligible for permanent residence. Additionally, because most inadmissibility grounds in INA § 212(a) do not apply to a grant of asylum or Visa 92 status, an asylee's adjustment of status may also be the first time that grounds of inadmissibility are applied.

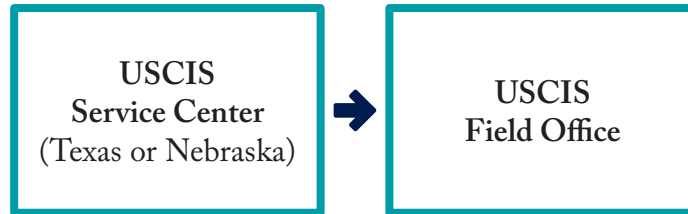
Becoming a Citizen

The five years of residency are counted from the Lawful Permanent Resident (LPR) refugee's date of admission into the United States.

The five years of residency are counted from the date of adjustment of status on the Lawful Permanent Resident (LPR) asylee's green card which is backdated one year from the actual date of adjustment of status.

III. FLOW CHARTS FOR CURRENT I-730 PROCESSING

Asylee Form I-730 *(Beneficiary in the United States)*



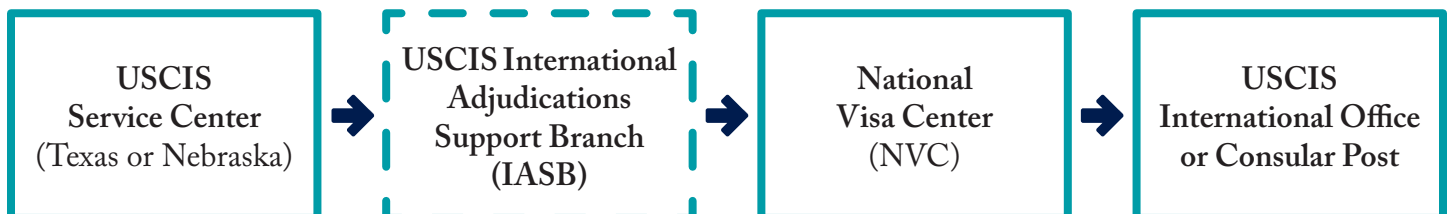
Asylee Form I-730 *(Beneficiary overseas)*



Refugee Form I-730 *(Beneficiary in the United States)*



Refugee Form I-730 *(Overseas Beneficiary)*



IV. PRE-INTERVIEW INFORMATION FOR REFUGEE/ASYLEE VISA 92/93 CASES

As of 2017, USCIS began collecting social media handles, aliases, associated identifiable information, and search results of immigrants, including Visa 92/Visa 93 applicants.²⁶⁶ Below is an example of the information requested, which is generally included as an additional form in the Consular Post's pre-interview packet. The beneficiary is requested to provide the following:

NAME (Surname, First Name, Middle Name)

TELEPHONE NUMBERS

PHONE_NUMBER:

PHONE_NUMBER:

APPLICANT EMAIL ADDRESSES

EMAIL_ADDRESS:

EMAIL_ADDRESS:

SOCIAL MEDIA

FACEBOOK:

Facebook URL

TWITTER:

@USERNAME

INSTAGRAM:

@USERNAME

YOUTUBE:

USERNAME/HANDLE/ACCOUNT

WECHAT:

USERNAME/HANDLE/ACCOUNT

QQ:

USERNAME/HANDLE/ACCOUNT

QZONE:

²⁶⁶ More information about this policy change can be found in the DHS [Federal Register Notice](#), September 18, 2017.

USERNAME/HANDLE/ACCOUNT

TUMBLR:

USERNAME/HANDLE/ACCOUNT

LINKEDIN:

USERNAME/HANDLE/ACCOUNT

WEIBO:

USERNAME/HANDLE/ACCOUNT

VKONTAKTE:

USERNAME/HANDLE/ACCOUNT

EMPLOYMENT HISTORY

EMPLOYER_NAME:

ADDRESS OF EMPLOYER:

OCCUPATION:

DATE RANGE: mm/dd/YYYY-mm/dd/YYYY

ADDRESSES

STREET_ADDRESS: CITY:

STATE/PROVINCE/COUNTY:

POSTAL CODE:

COUNTRY:

DATE RANGE: mm/dd/YYYY-mm/dd/YYYY

ALIAS INFORMATION

ALIAS_SURNAME:

ALIAS_GIVEN_NAME:

ALIAS_SOURCE:

ALIAS_DATE_OF BIRTH: mm/dd/YYYY

ALIAS_SOURCE:

NATIONALITIES

APPLICANT_NATIONALITY: APPLICANT_NATIONALITY:

PASSPORTS

PASSPORT_NUMBER:

COUNTRY OF ISSUANCE:

ISSUE DATE: mm/dd/YYYY

MARRIAGES

TOTAL_NUMBER_OF_MARRIAGES:

SPOUSE_FAMILY_NAME:

SPOUSE GIVEN NAME:

OTHER NAMES USED BY SPOUSE:

DATE OF BIRTH:

PLACE OF BIRTH:

ADDRESS:

EMAIL ADDRESS:

PHONE NUMBER:

PHONE NUMBER:

DECEASED: Y/N

DATE OF DEATH: mm/dd/YYYY

MARRIAGE DATE: mm/dd/YYYY

PLACE OF MARRIAGE:

DIVORCE DATE: mm/dd/YYYY

PLACE OF DIVORCE:

SPOUSE_FAMILY_NAME:

SPOUSE GIVEN NAME:

OTHER NAMES USED BY SPOUSE:

DATE OF BIRTH:

PLACE OF BIRTH: ADDRESS:

EMAIL ADDRESS:

PHONE NUMBER:

PHONE NUMBER:

DECEASED: Y/N

DATE OF DEATH: mm/dd/YYYY

MARRIAGE DATE: mm/dd/YYYY

PLACE OF MARRIAGE:

DIVORCE DATE: mm/dd/YYYY

PLACE OF DIVORCE:

EDUCATION

HIGHEST_EDUCATION_LEVEL:

NAME OF SCHOOL:

LOCATION OF SCHOOL:

TYPE OF SCHOOL OR COURSE OF STUDY:

TITLE OF DEGREE:

DATE RANGE: mm/dd/YYYY-mm/dd/YYYY

LANGUAGES SPOKEN

LANGUAGE_SPOKEN:

LANGUAGE_SPOKEN:

MILITARY SERVICE

MILITARY_SERVICE:

COUNTRY OF MILITARY SERVICE:

UNIT:

DUTY LOCATION:

SPECIALITY:

HIGHEST RANK:

SERIAL NUMBER:

DATES OF SERVICE: mm/dd/YYYY-mm/dd/YYYY

PARENT INFORMATION

PARENT_FAMILY_NAME:

PARENT GIVEN NAME:

DATE OF BIRTH:

COUNTRY OF BIRTH:

ADDRESS:

EMAIL ADDRESS:

PHONE NUMBER:

PHONE NUMBER:

PARENT RELATIONSHIP:

DECEASED: Y/N

DATE OF DEATH: mm/dd/YYYY

CHILDREN INFORMATION

CHILD_FAMILY_NAME:

CHILD GIVEN NAME:

ADDRESS:

EMAIL ADDRESS:

PHONE NUMBER:

PHONE NUMBER:

DATE OF BIRTH:

PLACE OF BIRTH (COUNTRY):

PLACE OF BIRTH (CITY):

DECEASED: Y/N

DATE OF DEATH: mm/dd/YYYY

SIBLING INFORMATION

SIBLING_FAMILY_NAME:

SIBLING GIVEN NAME:

ADDRESS:

EMAIL ADDRESS:

PHONE NUMBER:

PHONE NUMBER:

DATE OF BIRTH:

PLACE OF BIRTH (COUNTRY):

PLACE OF BIRTH (CITY):

DECEASED: Y/N

DATE OF DEATH: mm/dd/YYYY

OTHER INFORMATION

MEDICAL_INFORMATION:

ADDITIONAL_NOTES: Notes

V. SOURCES OF LAW FOR I-730 REFUGEE/ASYLEE RELATIVE PETITIONS

- **Immigration and Nationality Act (INA)** (Last updated Feb. 2013): The [Immigration and Nationality Act](#) is the statutory authority for U.S. immigration law. Since it was first enacted in 1952, the INA has been amended many times over the years and contains most immigration law provisions. The INA is contained in the United States Code (U.S.C), which is a collection of all the laws of the United States. Each section of the INA has a corresponding reference to USC, with Title 8 of the U.S. Code covering “Aliens and Nationality.” A table on the [USCIS website](#) shows each INA section and its corresponding U.S. Code section.
 - > [INA § 101](#) outlines general provisions, including definitions and terminology used through U.S. immigration law.
 - > [INA § 207](#) concerns the annual admission of refugees, and delineates the authority to apply for refugee status, conditions for granting refugee status, and the requirements for refugee status and refugee status granting procedure.
 - > [INA § 208](#) concerns asylum, and delineates the authority to apply for asylum, conditions for granting asylum, and the requirements for asylum status and asylum procedure.
- **Code of Federal Regulations (CFR): Title 8** of the CFR, Aliens and Nationality, contains the principal rules and regulations on immigration and nationality enforced by the U.S. Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) at the U.S. Department of Justice (DOJ).
 - > [8 CFR § 207.7](#) governs Derivatives of Refugees.
 - > [8 CFR § 208.21](#) governs Admission of the Asylee’s Spouse and Children.

Note: While the procedures in 8 CFR § 207.7 for refugee derivatives are generally more explicit than those in 8 CFR § 208.21 for asylee derivatives, we can see through practice experience and through the USCIS [Form I-730 Refugee/Asylee Relative Petition Instructions](#) that USCIS is interpreting its policy for asylee Form I-730 processing to mirror the regulations outlined more explicitly for refugee Form I-730 processing.

- **State Department Foreign Affairs Manual (FAM):** The State Department’s [Foreign Affairs Manual \(FAM\)](#) is the centralized, authoritative source for the DOS’s structures, policies, and procedures. Specifically, 9 FAM Section 203 outlines the Department’s policies on refugees and asylees, with information in sections [203.5](#) and [203.6](#) on eligibility for following-to-join refugee and asylee status and the I-730 process. Additional information on refugees and asylees can be found in other sections of 9 FAM Section 203 via the permalink above. In recent years, DOS has unfortunately removed several relevant sections of the FAM, with those sections currently listed as “unavailable.” As of the time of this manual’s publication, the authors are not aware of any plans to update this information and/or make it publicly available.
- **U.S. Citizenship and Immigration Services (USCIS) Policy Manual:** The [USCIS Policy Manual](#) is the agency’s centralized online repository for USCIS’ immigration policies. The USCIS Policy Manual will ultimately replace the [USCIS Adjudicator’s Field Manual \(AFM\)](#), the [USCIS Immigration Policy](#)

[Memoranda](#) site, and other policy repositories. However, until the Policy Manual is finalized, it is still relevant to cite sections of the AFM and/or relevant Policy Memoranda. As of this manual's publishing Sections 4 and 5 of the Policy Manual (related to Refugees and Asylees, respectively) have yet to be released.

- **U.S. Citizenship and Immigration Services (USCIS) Adjudicator's Field Manual:** The [USCIS Adjudicator's Field Manual](#) (AFM) precedes the [USCIS Policy Manual](#) and continues to outline USCIS policies and procedures for administering immigration benefits for the sections not yet replaced by the Policy Manual. Chapter 11.1 of the AFM covering Refugee/Asylee Relative Petitions has yet to be superseded and is therefore a useful resource to understand USCIS processing of these applications.
- **U.S. Citizenship and Immigration Services (USCIS) Policy Memoranda:** USCIS periodically releases [Policy Memoranda](#) to advise its officers and the public of recent changes and clarifications to USCIS policy. Policy memos that have been partially or fully superseded by the [USCIS Policy Manual](#) have been stamped and republished.
- **Relevant Case Law:** Case law is often used to interpret law and set legal precedent in areas where the statutes, regulations and/or policy may be unclear. Researching and citing to relevant case law is often useful when responding to a Request for Evidence, Notice of Intent to Deny, or Notice of Intent to Revoke. The Board of Immigration Appeals (BIA), the Administrative Office of Appeals (AAO), and federal courts provide insight into how Form I-730 petitions will be adjudicated. Precedent decisions by the Board of Immigration Appeals are published in the [Virtual Law Library](#) on the Department of Justice website. Below are several cases which may be helpful to cite in legal briefs responding to RFEs, NOIDs, or NOIRs:
 - > *Matter of Zeleniak*, 26 I&N Dec. 158, 160 (BIA 2013) (“The issue of the validity of a marriage under State law is generally governed by the law of the place of celebration of the marriage.”).
 - > *Matter of V-X*, 26 I&N Dec. 147 (BIA 2013) (grant of asylum is not an admission).
 - > *Deshields v. Johnson*, 2016 U.S. Dist. LEXIS 28561 (M.D. Fla. Mar. 7, 2016) (unpublished) (When an asylee did not include their child on the Form I-589 asylum application, the CSPA does not protect the child from aging out during the pendency of the Form I-589 adjudication. Thus, a child who was not listed on their parent's Form I-589 and reached age 21 after the *filing* date of the Form I-589 will not be protected from aging out under the CSPA, and may not qualify as a “child” for a Form I-730 petition).
 - > *Matter of Moraga*, 23 I&N Dec. 195 (BIA 2001) (Legitimation means “placing a child born out of wedlock in the same legal position as a child born in wedlock.”)
 - > *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989) (“Truth is to be determined not by the quantity of evidence alone but by its quality.”).
 - > *Matter of Charwathe*, 25 I&N Dec. 369, at 375 (AAO 2010) (“Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.”)
 - > *Matter of H-*, 9 I&N Dec. 640 (BIA 1962) (“validity of a marriage is determined by the law of the place where it is contracted or celebrated and if it is valid there, it is valid everywhere”).
 - > *Matter of Lee*, 16 I&N Dec. 511 (BIA 1978) (when customary adoption terminates an existing, legal parent-child relationship).

- > *Matter of Kwok*, 14 I&N, Dec. 127, 130 (BIA 1972) (validity of an adoption for immigration purposes is governed by the law of the place where the adoption occurred).
- > *Kabo v. Ilchert*, 765 F.2d 877 (9th Cir. 1985) (adoption need only be recognized under the law of the country where the adoption occurred).
- > *Kai Gong v. Duke*, 282 F. Supp. 3d 566 (E.D.N.Y. Oct. 18, 2017) (delay in Form I-730 process may be due to fraud investigation).

VI. TIPS AND RESOURCES FOR RESEARCHING FOREIGN MARRIAGES, BIRTH REGISTRATION, AND FAMILY LAWS

Generally, whether a marriage, divorce, or adoption is legally valid is determined by the law of the place in which it occurred. In many cases (but certainly not all) countries will issue a civil document—such as a marriage certificate, divorce certificate, or adoption decree issued by the appropriate governmental authority—as the only legal documentation to recognize the event.

For marriages, divorces, births, and deaths occurring in a country of asylum, refugees and asylum-seekers may or may not be given access to civil documentation. If they are not able to obtain these documents, refugees and asylum seekers can contact UNHCR at: usawainq@unhcr.org to request assistance.

In evaluating whether a marriage, divorce, adoption, or birth document is legally valid, USCIS will refer to the State Department's [Reciprocity Schedule](#), which provides a general list of civil-issued documents available by country. Practitioners should consult the Reciprocity Schedule before submitting a Form I-730 Refugee/Asylee Relative Petition; however, the reciprocity schedule is not the only source to verify applicable foreign laws. There may be instances in which the reciprocity schedule is outdated or incomplete.

Practitioners may encounter times when the State Department Reciprocity Schedule indicates that only civil documents are available for the country in question, but the petitioner does not have a civil-issued document. Instead, they may have a traditional marriage or divorce document, such as one issued by a church or other religious organization, a tribal authority, or a village chief. These traditional, non-civil documents may be recognized as valid under the laws of the client's country. However, the validity of traditional marriage and family laws and appropriate documentation thereof may not be explicitly indicated in the Reciprocity Schedule.

For example, Sudan recognizes both civil and traditional marriages, and marriage documents are issued by both civil and religious institutions. For this reason, it can be extremely helpful to conduct further research beyond the State Department's reciprocity schedule into the specific marriage and family laws of the country in question to determine if the petitioner or beneficiary's non-civil documentation demonstrates the legal validity of their marriage, divorce, or adoption.

For birth documentation, the State Department's reciprocity schedule indicates the *current* availability of civil-issued birth documents. However, the beneficiary may have been born in a location such as a rural area or remote village where birth registration was not commonplace, or at a time before a country-wide birth registration program was implemented. In such cases, legal representatives should examine whether it may be possible to obtain a late-issued civil document, provided that the beneficiary or family member is able to present himself or herself in front of the appropriate governmental authority and that doing so would not put the person at risk of persecution, due to the petitioner's refugee or asylee status. A late-issued document is a duplicate document or one that was not issued contemporaneously with the original event. If the birth was not registered with the appropriate civil authorities, practitioners should consult secondary sources—such as the United Nations International Children's Emergency Fund (UNICEF), International Committee of the Red Cross, or other international organizations and non-governmental organizations to document the frequency of birth registration at the time and place of the beneficiary's birth.

For additional country conditions research, there are numerous resources readily available to legal practitioners who seek to research family law in their clients' home countries. Although paid databases provide the easiest access to the widest breadth of family law case law, secondary sources, and treatises are also available on the web and at law libraries all over the country.

- A great place to start such research is the [Foreign Law Guide](#), a database of foreign law with legal subject sections for all countries. Each section contains detailed and comprehensive subsections on a wide array of legal subject areas, including family law. For instance, the Guide’s family law section for China contains primary resources, like statutes, and secondary sources, and law review articles and treatises, on subjects ranging from adoption law, to domestic violence law, to marriage law. The Guide’s resources are extremely rich, but they are not free of charge. As of November 2018, access to the full Guide costs \$13.95 for one day, \$24.95 for seven days, and \$69.95 for 30 days.
- The [International Encyclopedia of Laws \(IEL\)](#) is another reputable source of information on foreign family law, compiled by Wolters Kluwer. The IEL contains 25 distinct reference works, created by lawyers, legal scholars, and legal practitioners from all over the world. One IEL reference focuses specifically on [family and succession law](#). Within IEL’s family law resources are national monographs outlining family law in individual countries. The list of countries is not comprehensive, but [about 40 countries](#) are represented from a wide array of legal systems, including common, civil, and sharia (Islamic) law.
- The [World Legal Information Institute \(WLII\)](#) serves as a database for thousands of judicial opinions, statutes, and other sources of legal information from all over the world. For example, by selecting “All Countries” from the left hand sidebar, then selecting “Pakistan” from the alphabetical list of countries, and then selecting “Family Law” from the list of subject areas, one can access [Pakistan’s Child Marriage Restraint Act of 1929, Dissolution of Muslim Marriages Act of 1939, and the Muslim Family Law Ordinance of 1969](#). These are just examples of WLII’s diverse resources for practitioners researching family law in common law jurisdictions, in particular.
- The International Comparative Law Guides’ [Family Law Guide](#) is another resource on family and marriage laws in different jurisdictions. The list of guides currently available is not comprehensive, and generally does not include refugee and asylee-origin countries. Nevertheless, the guides are thorough and detailed.
- [RefWorld](#) is a database hosted by UNHCR, including current country conditions information.
- The Library of Congress is also helpful in finding foreign law. An inquiry can be submitted through this [online form](#).
- Many law school libraries host information on their websites that is publicly accessible. Additionally, some law schools allow public access, and reference librarians may be able to help with complex inquiries.
- Practitioners can also use the [DOS Country Offices Directory](#) to call the DOS Desk Officer for the particular country of interest to discuss the types of documentation available in a given country (although this would be referencing the types of documents generally available for citizens, not refugees or those seeking asylum, who are often afforded significantly few legal rights than (other) citizens of the country).

VII. RESOURCES BY REGIONAL FOCUS:

- Harvard University provides a [helpful list](#) of free, foreign and international law resources, organized by region of the world, for researchers. The list contains resources spanning Africa, Asia, the Americas, and Europe. Many of the resources are at a regional or continental level, but the list also contains several country-specific resources, like the [Kenya Law Reports](#).
- For Latin American family law, the Organization of American States has a comprehensive [Family and Child Law](#) database, with links to primary sources, like statutes and multilateral agreements, for each member country. Note: many resources are Spanish-language only.
- Emory University's scholarly blog on [Islamic Family Law](#) has detailed, and family law-specific, [legal profiles](#) for a number of Muslim-majority countries, including Iraq, Somalia, and Syria, although the information has not been updated since 2015.

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This manual has been prepared to assist authorized immigration practitioners (licensed attorneys and DOJ accredited representatives) in their understanding of the United States Citizenship and Immigration Services (USCIS) Form I-730 Refugee/Asylee Relative Petition and its processing with USCIS and the U.S. Department of State (DOS).

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ABOUT THE CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

The Catholic Legal Immigration Network, Inc., is the largest nationwide network of nonprofit immigration programs, with 380 affiliates in 49 states and the District of Columbia. Programs include training and supporting immigration legal agencies, advocating for humane immigration policies, litigation on behalf of vulnerable populations, integration support and legal representation for immigrant religious workers. CLINIC also is a partner in providing pro bono representation to detained families, and offers public education materials on immigrants' rights and Catholic teaching on migration. CLINIC's work draws from Catholic social teaching to promote the dignity and protect the rights of immigrants in partnership with our network.



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