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U.S. Citizenship
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FILE:

Office: MIAMI

Date: SEP 09 2005

IN RE:

APPLICATION:

Application for Adjustment of Status under section 209(B)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1159(b)(3)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment of status was granted by the Acting District Director, Miami (district director), and is now before the Administrative Appeals Office (AAO) on certification. The district director's decision will be withdrawn, and the case remanded to the district director for appropriate follow-up action and coordination with the applicant and Customs and Border Protection (CBP) in order for an investigation into the circumstances surrounding the applicant's admission to the United States and for any necessary corrective actions to be taken.

The applicant is a twenty-year-old native and citizen of Nicaragua who is seeking adjustment of status pursuant to section 209(a)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1159(a)(1). In the applicant's case, he seeks adjustment of status by virtue of having been admitted in the status of an asylee following the approval of a Refugee/Asylee Petition (Form I-730) filed on his behalf by his step-father, [REDACTED] the principal alien, or petitioner. The record further reflects that the applicant's stepfather subsequently adjusted status and ultimately became a naturalized U.S. citizen on September 30, 2000.

The district director found that the applicant was eligible to adjust status due to having been previously granted refugee status.¹ The district director's decision discussed the provisions of the Act relating to the admission of the spouses and children of aliens granted asylum or refugee status, and the requirements for such derivative aliens to adjust status. According to the district director's decision, the provisions of section 209(b)(3) of the Act, which condition the adjustment of asylum derivative aliens on their continuing to be the spouse or child of a refugee, conflicted with the provisions of section 208(b) which provide that a spouse or child of an alien granted asylum shall also be accorded asylum status. *Decision of the Acting District Director*, dated July 11, 2002, at pp. 4-5. The district director resolved the perceived conflict by finding that derivative applicants could adjust status independent of the principal and without regard to the provisions of section 209, in a manner similar to the ability of derivative refugees to adjust status. The district director determined that the applicant, although an asylee, was eligible to adjust status because he should have been granted refugee status, instead of the asylee status accorded to him at the time of his admission. The application was approved accordingly and certified to the AAO.

On certification, the record consists solely of the record that was before the district director. Although the district director's decision notified the applicant that the case was being certified to the AAO and gave him an opportunity to submit a brief or other written statement, no such statement appears in the record. *Id. at p. 1*. The file does contain a letter of inquiry sent by the applicant's representative at the time of the district director's decision.² However, the letter does not address the merits of the case but rather is an inquiry regarding the status of the issuance of the applicant's lawful permanent resident card (Form I-551). The entire record was reviewed and considered in rendering a decision.

¹ The next portion of this decision will address the facts in greater detail, including what the AAO finds to have been an error by the district director in classifying the applicant as a refugee.

² It does not appear that the applicant's current representative, an individual affiliated with the Hispanic Coalition is an accredited representative. The Hispanic Coalition likewise does not appear on the Board of Immigration's list of accredited organizations. As such, the applicant will be treated as unrepresented with respect to the certification of his case.

Factual Background

Before addressing the specific issues raised, the AAO will review the facts of the case as they are critical to an analysis of the unique, and complex issues presented. The applicant's record reflects that he is a twenty-year-old native and citizen of Nicaragua. The applicant's step-father, also a native of Nicaragua, was apparently granted refugee status by the former Immigration and Naturalization Service (INS), and the record contains a copy of a Memorandum of Creation of Record of Lawful Permanent Residence, which indicates that the action was approved on September 16, 1992. The date of the grant of refugee status to the petitioner is reflected as October 1, 1992, on the Refugee-Asylee Relative Petition (Form I-730) filed by the petitioner on the applicant's behalf. A copy of the petitioner's Lawful Permanent Resident Card indicates that the petitioner's adjustment of status date was made effective to August 30, 1992.³

The applicant's stepfather filed the I-730 on behalf of the applicant's mother and the applicant as derivative family members on or about August 9, 1994. The petition was approved on November 1, 1994, and the applicant was subsequently admitted to the United States on December 5, 1996, as an asylee. *See Boarding Letter*, dated November 26, 1996 (containing an admission stamp reflecting the applicant's admission on December 5, 1996, as an asylee). The applicant filed the Application for Adjustment of Status (Form I-485) on March 24, 1998. During the applicant's interview, held on December 13, 2002, it was learned that the petitioner had adjusted his status to that of a lawful permanent resident, and became a naturalized United States citizen on September 30, 2000.⁴

The district director's decision stated that the applicant's admission on December 5, 1996, as an asylee was in error, and determined that the applicant should instead have been admitted as a refugee given the principal's status as a refugee. *Decision of the District Director*, at p. 2. The decision went on to state, "[a]s you should have been admitted as a refugee the Service shall henceforth take the position that you are applying for adjustment of status pursuant to Section 209(a)(1)(C) of the Act as a refugee rather than an asylee." *Id.* Based upon the decision to treat the applicant as a refugee, the district director proceeded to grant the application for adjustment of status, but noted his view that it was unfair that derivative asylees also seeking to adjust status would be ineligible to adjust due to the stepfather's naturalization. The district director certified his decision to the AAO.

The Regulatory and Statutory Framework

It is useful to examine the provisions of sections 207, 208 and 209 of the Act at issue before the district director, to see how they address the treatment of derivative relatives of refugees and asylees and their subsequent ability to adjust status:

³ While resolution of the issue is unnecessary to the AAO decision in this case, the information in the Form I-730 appears somewhat inconsistent with a grant of refugee status. Specifically, the I-730, executed by the petitioner, indicates that he was granted refugee status on October 1, 1992, at Miami, Florida. The fact that refugee processing is conducted outside of the United States suggests that the status granted to the petitioner in Miami may have been asylum status. This issue raises questions about the nature of the status accorded to the petitioner, which in turn affects the applicant's derivative status.

⁴ The 1990 date for the petitioner's adjustment of status coincides with CIS records that reflect that the petitioner's adjustment of status was made retroactive to August 30, 1990.

Section 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, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 101(a)(42), be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act. Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

Section 208(b)(3) Treatment of Spouse and Children.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) [1101]) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

....

Section 209(a) Criteria and Procedures Applicable for Admission as Immigrant; Effect of Adjustment. —(1) Any alien who has been admitted to the United States under section 207—

- (A) whose admission has not been terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe,
- (B) who has been physically present in the United States for at least one year, and
- (C) who has not acquired permanent resident status, shall, at the end of such year period, return or be returned to the custody of the Service for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 235, 240, and 241 [1125, 1229a, and 1231].

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c)) as an immigrant under this Act at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in this Act, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States.

(b) Maximum Number of Adjustments; Record Keeping.—Not more than 10,000 of the refugee admissions authorized under section 207(a) in any fiscal year may be made available by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

- (1) applies for such adjustment,

- (2) has been physically present in the United States for at least a year after being granted asylum,
- (3) continues to be a refugee within the meaning of section 101(a)(42)(A) or a spouse or child of such a refugee,
- (4) is not firmly resettled in any foreign country, and
- (5) is admissible (except as otherwise provided under subsection (c)) as an immigrant under this Act at the time of examination for adjustment of such alien.

....

The statute provides for eligible family members of both refugees and asylees to obtain derivative status if accompanying or following to join the principal alien. In each case, the derivative alien will be accorded the same status as the principal alien.

The regulation describing aliens eligible for treatment as derivative family members of refugees is found at 8 C.F. R. § 207.7, and provides as follows:

- (a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, and/or child(ren), as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Act, shall be granted refugee status if accompanying or following-to-join the principal alien. An accompanying derivative is a spouse or child of a refugee who is in the physical custody of the principal refugee when he or she is admitted to the United States, or a spouse or child of a refugee who is admitted within 4 months following the principal refugee's admission. A following-to-join derivative, on the other hand, is a spouse or child of a refugee who seeks admission more than 4 months after the principal refugee's admission to the United States.

Similarly, the regulation at 8 C.F.R. § 208.21 describes aliens eligible for treatment as derivative family members of asylees and provides as follows:

- (a) *Eligibility.* In accordance with section 208(b)(3) of the Act, a spouse, as defined in section 101(a)(35), or child, as defined in section 101(b)(1) of the Act, also may be granted asylum if accompanying, or following to join, the principal alien who was granted asylum, unless it is determined that the spouse or child is ineligible for asylum

The regulations also describe the process by which the principal alien may seek to have the derivative family members accorded accompanying or following to join status. Principal aliens seeking such status for their qualifying family members are required to file the petition on Form I-730, along with supporting evidence within two years of the date in which the principal alien was granted asylum or refugee status.⁵

⁵ The regulations at 8 C.F.R. § 207.7 and 208.21 were amended by means of a final rule published January 27, 1998, which required refugee and asylee principals to file derivative petitions for qualifying family members within two years of the principal's acquisition of refugee or asylee status, or by January 28, 2000, whichever date was later. *See 63 FR 3792 (January 27, 1998)*. In the instant case, the petitioner, having filed the I-730 prior to the effective date of the regulatory change, was eligible to file the I-730 more than two years beyond the date he acquired asylum or refugee status, so long as the I-730 was filed by January 28, 2000, which the record reflects it was.

Having set forth the statutory and regulatory framework, the AAO will next address the issues presented by the applicant's case, starting with the district director's decision to treat the applicant as a refugee rather than as an asylee.

The District Director's Treatment of the Applicant's Admission and the Effect of the Admission Classification on the Applicant's Ability to Adjust Status

A review of the statutory provisions demonstrates that there are key differences in the pre-requisites for adjustment of status under section 209, depending upon the applicant's classification as a refugee or as an asylee. This is because of the manner in which the adjustment of status provisions differ depending upon the applicant's status as a refugee or asylee, and whether the adjustment applicant is a principal alien or a derivative of such alien.

Section 208 of the INA contains the procedures for granting asylum to aliens in the United States. Subsection (b) sets forth the conditions that must be met before an alien qualifies for a grant of asylum. An individual seeking asylum must be a refugee within the meaning of section 101(a)(42)(A) of the Act. If such alien is determined to be a refugee and satisfies the other conditions contained in section 208, he or she may be granted asylum. In contrast, while section 208 provides an avenue for the spouse and children of an alien granted asylum to be afforded similar status, it is predicated on a very different premise, the premise of affording the status to maintain the family units recognized by statute, as opposed to affording the status individually to an alien who meets the definition of a refugee and has been recognized as such. In fact, section 208(b)(3), which addresses the treatment of the spouse and children of the principal, defines those eligible for derivative status as aliens "not otherwise eligible for asylum under this section" meaning that, but for the relationship to the principal, they would not qualify for asylum on their own. Therefore, while the derivatives may be granted asylum status, and may thereafter be considered to be equivalent for many purposes to the principal, the status is not identical because it is not afforded because the individual is recognized as a refugee. Instead, the status is granted because the spouse or child accompanies or follows to join the principal as part of a family unit.

This distinction between principal and derivatives has consequences for the subsequent application for adjustment of status, and further highlights the fact that although derivatives may be accorded asylum status, it is on different footing from the principal. Section 209(b) sets forth the process by which aliens granted asylum may adjust status. Subsection (b)(3) addresses the conditions for both the principal and the derivatives and makes clear that although both enjoy asylum status, different requirements apply. The principal's ability to adjust status is dependent upon his continued status as a refugee. In contrast, the derivatives, not having been recognized as refugees, do not adjust based upon being refugees, but based upon a showing that they continue to be a spouse or child of "such refugee" in other words, the principal alien.

Therefore, reading sections 208 and 209 together, it is clear that derivative asylees have an asylum status fundamentally different from that of the principal, and which continues to be linked to the principal in terms of the continuing viability of the relationship. It is the existence of that relationship which enables the derivative to adjust status and the absence of the relationship that prevents the adjustment.

The constraints upon the derivative asylee's ability to adjust status if no longer the spouse or child of the principal asylee, are highlighted by the different manner in which refugees are treated under sections 207 and 209 of the INA. Section 207 of the Act is similar to section 208 in its treatment of derivative family members, providing that the spouse or child of any refugee, if not himself entitled to admission as a refugee, acquires the same admission status as the principal. Section 209 of the Act provides for the adjustment of status of persons admitted as refugees but has two significant differences with section 208. First, there is no separate discussion of adjustment of derivatives, and thus no requirement that the relationship with the principal continue to exist. Thus, unlike the case with the requirements for adjustment by asylee derivatives, the refugee derivatives are, in fact, independently able to adjust status under section 209. Second, section 209 requires that one year after the original refugee admission, aliens admitted to the United States under section 207 return or be presented for inspection as an immigrant. It makes no distinction between the presentation of the principal or the derivatives; therefore, the requirement to seek adjustment after a one-year period applies regardless of whether the alien was originally admitted as the principal refugee or as a derivative refugee.

Due to these differences in the ability of derivatives to adjust status, the applicant's status as an asylum or refugee derivative is a key determination. As noted, a refugee derivative does not need to demonstrate the ongoing relationship to the principal, or demonstrate that the principal is a refugee in order to qualify for adjustment. An asylee derivative, on the other hand, must be able to demonstrate that he continues to be the spouse or child of a refugee, which, as will be discussed, can have a significant effect on the applicant's eligibility. Because of the importance of the applicant's classification to the outcome of the case, the AAO must determine whether the district director's decision was properly made, meaning that the district director properly changed the applicant's classification, and, even assuming that the district director appropriately treated the applicant as a refugee the applicant as a refugee, whether the evidence supports the district director's finding regarding the applicant's status. In other words, the AAO must determine whether the district director was authorized to treat the applicant as a refugee, and if so, whether it was a reasonable decision based on the evidence in the record.

The district director found that the applicant had been "admitted erroneously as an asylee" at Miami, Florida, and that because the applicant should have been admitted as a refugee the then INS would thereafter take the position that the applicant was applying for adjustment of status pursuant to Section 209(a)(1)(C) as a refugee rather than an asylee. *See Decision of the District Director*, at p. 2. The first question is whether the district director acted appropriately in treating the applicant as a refugee rather than as an asylee. The district director cited no authority in support of his ability to treat the applicant as a refugee rather than as an asylee. Assuming that the district director was correct, and that an error had been made regarding the applicant's admission classification, the fact remains that the district director was adjudicating the adjustment of status application of an alien admitted in the status of an asylee and not a refugee. The AAO finds that applicant's status needed to be corrected and changed through existing procedures in order for the district director to properly adjudicate the application as a refugee adjustment in which the provisions of section 209 would be applicable.

It is true that the district director had the authority under the regulations to adjudicate those applications or petitions filed with the former Immigration and Naturalization Service (INS), with the exception of those delegated to the asylum officers or to the service center directors. *See 8 C.F.R. § 103.1(g)(2)(B) (2002)*. However, the regulations do not authorize the district director to elect to treat an applicant as possessing a

status that he has not been accorded for purposes of adjudicating an application, nor did the district director cite any authority under which he acted. While it is appropriate to correct the status of an alien whose status was incorrectly recorded at the time of admission, the regulations, and other Service instructions, set forth the process by which errors pertaining to an individual alien are to be corrected. When an individual becomes aware of an error in his classification, the regulations, at 8 C.F.R. § 103.28 set forth the process for such records to be corrected. In this case, had the applicant believed that an error had been made regarding his admission classification, he could, presumably, have availed himself of the procedures set forth in the regulations for the correction of that record. In addition, and more specifically, with respect to the correction of admission information, the Inspector's Field Manual sets forth a detailed process for addressing errors regarding an individual's admission process. That manual states the following:

15.12 Correction of Erroneous Admissions.

a) General. Authority exists in 8 CFR 101.2 to create a record of a previous admission where none exists or to correct an erroneous record, provided the error was not a result of deliberate deception or fraud on the part of the alien. Erroneous records include, but are not limited to:

- Misspelled name
- Incorrect or inverted date-of-birth (DOB)
- Visa classification reflecting the incorrect non-immigrant classification as noted on the non-immigrant visa, as well as, the classification the alien was admitted under.
- The B-2 visitor's stay was limited without signed supervisory approval recording the visa expiration date instead of the petition expiration date as the authorized period of stay.

Jurisdiction for correcting such errors made at the ports-of-entry lies with Customs and Border Protection (CBP). Therefore, CBP locations are responsible for the review and issuance of the appropriate documents to correct the error, to include updating the Non-immigrant Information System (NIIS) as outlined below. Since mail-in procedures are not available, aliens will be allowed to report to the nearest CBP deferred inspection office or port-of-entry, regardless of where the actual document was issued. In many instances, the CBP location of the traveler's final destination where the discrepancy will be resolved may not be the port-of-entry of first arrival.

While the district director's desire to facilitate adjudication under the admission classification that appeared to relate to the applicant is commendable, the AAO finds that it was not appropriate to disregard the process provided to reclassify and readmit the applicant in the appropriate category. It is not a process that puts form over substance, because until the applicant is reclassified, the category which is applicable to him, and which CIS must treat him as possessing, is the category that he was accorded. To ignore an applicant's classification puts into question the integrity of agency records and would encourage actions to be taken with respect to individuals' applications without regard to the individual's classification as reflected in agency records. That in turn, would have the effect of calling into the question the accuracy of the records as a whole. The better practice, which resolves questions regarding an individual's admission status, and enables future agency

action, including adjudication of applications to occur on the basis of accurate information, is to correct errors prior to, or in conjunction with the adjudication of applications and petitions. To do otherwise, would have the effect of further exacerbating inaccuracies within the agency's records, and delaying, if not ignoring the need to correct such records, because such procedures would be rendered irrelevant if adjudications could be made without regard to the applicant's status as reflected in these records. This, in turn, could eventually cause additional problems for applicants, their potential beneficiaries, and for the agency. Consequently, the AAO finds that it was error for the district director to disregard the applicant's admission classification of asylee, and the treatment of the applicant as a refugee. Instead, the district director should have had the applicant's admission classification corrected before adjudicating the adjustment of status application.

The AAO turns next to an examination of whether the evidence in the record supports the district director's conclusion that the applicant was a derivative refugee, and not a derivative asylee. A review of the record leads the AAO to conclude that the evidence was contradictory, and inconclusive, and should have resulted in additional investigation of the status.

The evidence in support of a finding that the applicant should have been admitted as a refugee consists principally of the information contained in the Form I-730, and a copy of the petitioner's Lawful Permanent Resident Card (Form I-551). The I-551 indicated that the applicant had been granted refugee status and was admitted to the United States as a refugee as of August 30, 1990. In addition, in the various versions of the I-730 filed by the petitioner, he indicated that he was either a refugee, or a lawful permanent resident. Therefore, the documents, on their face indicated that the petitioner had obtained his derivative alien status through his relationship to the principal alien, a refugee. However, a boarding letter issued on Department of State letterhead indicates that he had been approved for admission to the United States "under section 208(c) of the Immigration and Nationality Act." Section 208(c) corresponds to asylum status and not refugee status. Thus, it is apparent that the applicant's admission was not due to an error made at the port of entry upon inspection, but was due to the information contained in official records regarding the applicant's status. While it may be that the information contained in the boarding letter was incorrect, it conflicted with other information in the record and should therefore, have been investigated further. Casting additional doubt on whether the applicant should have been admitted in refugee status is the fact that, though not impossible, it is unusual for refugee status to be afforded to Nicaraguans, as such processing is conducted outside of the United States and there has been limited refugee processing in Central America. Thus, there is some question as to how the petitioner obtained refugee status rather than the more common asylum status generally afforded to Nicaraguans. Consequently, the evidence indicates that there is some ambiguity regarding the admission status to which the applicant was actually entitled, and, as a result, the AAO believes that the district director was premature in concluding that the applicant was erroneously admitted as an asylee. While the district director's conclusion may prove to be correct, the AAO finds that at the time that the district director issued his decision, the admission status to which the applicant was entitled was not sufficiently clear to justify the district director's decision.

Due to the applicant's status as a derivative asylee whose status has not been changed, the AAO finds that the applicant's eligibility for adjustment of status must be evaluated according to the provisions of section 208(b)(3) of the Act, and concludes that the applicant is unable to demonstrate that he continues to be the unmarried child of a refugee because the step-father's naturalization, as will be discussed, has extinguished his refugee status, and accordingly altered the applicant's status as the child of a refugee.

The Effect of the Principal Alien's Naturalization Upon the Applicant's Ability to Adjust Status

The remaining issue in the case is whether the principal alien's naturalization adversely affects the applicant's ability to adjust his status under section 209. The reason it becomes an issue is that, as an asylee, the ability of the derivative alien to adjust status arises from the alien's status as an alien granted asylum who "continues to be a refugee...or the spouse or child of such refugee." *See Section 209(b)(3)*. The question is whether the applicant ceases to be a child of a *refugee* in those situations where the principal alien has become a U.S. citizen through naturalization. Although the statutory requirements can be subject to different interpretations, it is the AAO's conclusion that because the principal alien ceases to become a refugee upon becoming a citizen of the United States, a derivative alien seeking adjustment under section 209 can no longer be said to be the child of a refugee.

The applicant's ability to adjust depends upon his continued status as the child of a refugee. This decision has previously concluded that the applicant retains the status of "child." However, it is not sufficient to be the child of a principal alien, as the statute requires that the applicant continue to be the child of a refugee. The principal, having been granted asylum or refugee status, met the definition of "refugee" set forth in section 101(a)(42)(A) of the Act, when the application was granted. The statute provides:

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Whether the principal alien's acquisition of U.S. citizenship through naturalization results in the cessation of his status as a refugee is the real question. If so, the derivative alien, although maintaining the necessary familial relationship with the principal, no longer is considered to be the child of a refugee, and thus loses eligibility for adjustment under section 209.

The argument in favor of the principal continuing to be a refugee is that the statute and the regulations governing the grant of asylum suggest permanence in a grant of asylum status that is only removed in those situations where the defined conditions for termination are met. The regulations at 8 C.F.R. § 208.15(e) provide, in regard to the duration of a grant of asylum, "if an applicant is granted asylum, the grant will be effective for an indefinite period, subject to termination as provided in § 208.24." The statutory provision giving rise to the termination regulations is section 208(c) of the Act which sets out the obligations of the Attorney General [Secretary of Homeland Security] in regard to aliens granted asylum, and also sets out the conditions under which a grant of asylum may be terminated. Assuming termination were applicable, the only ground that would seem applicable to the instant case would be section (E) which specifies that asylum may be terminated in those situations where "the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality." There appears, understandably, to be no practice of pursuing termination of refugee status for aliens who naturalize. In any event, termination is not a mandatory

process but one that is undertaken as a matter of discretion. In the instant case, there is no evidence that the principal's status has been affirmatively terminated. An additional argument in favor of continuing to consider the principal as a refugee is that, as previously discussed, it would be a disincentive for principal aliens seeking the most expeditious means of obtaining citizenship, if seeking a more expeditious process served to disqualify a derivative family member from being able to adjust status.

An interpretation that furthers family unity objectives is understandably appealing, and one might be tempted in an adjudication to conclude that once an individual is granted asylum he or she is always a refugee until the status is taken away. However, a closer examination of the statutory and regulatory provisions at issue reveals that this is not the case in the case of aliens who seek naturalization and become citizens. First, starting with the statutory definition of refugee, the principal alien, having become a citizen of the United States, no longer meets the definition of refugee because upon becoming a citizen, a person acquires that new nationality. While the individual was, at the time he or she obtained asylum, a national of the country from which they came, the naturalization process results in the individual shedding their previous nationality and acquiring United States nationality. Thus, after obtaining citizenship, they cannot be said to be an individual who is unable or unwilling to return to such country of nationality on account of a fear of persecution, or to avail himself of the protection of their country of nationality. Upon acquiring citizenship the country at issue is the United States and not the country from which they sought asylum.

Aside from the issue of whether the principal satisfies the definition of refugee, the statutory and regulatory provisions governing the duration of asylum and its termination are unavailing to a construction that would find that a naturalized citizen remains a refugee. The regulation at 8 C.F.R. § 208.15(e) does indicate that once an applicant is granted asylum, the grant will be effective for an indefinite period subject to termination. However, the termination provisions contained in the statute and regulations describe events where the Secretary determines that "the alien" fits the criteria specified, and thus the Secretary may exercise discretion to terminate the status. Moreover, the ground for termination relating to the acquisition of a new nationality, by its language suggests that it contemplated an individual who is an alien granted asylum status in the United States but who has acquired the nationality of another country, thus no longer requiring the protection of the United States. Such a reading is not inconsistent with a determination that an asylum applicant who acquires lawful permanent resident status reverts back to asylum status if he or she loses LPR status. That is because there is no direct contradiction in being both a lawful permanent resident and an asylee, as in either case the individual is an alien, and having that foreign nationality, is unwilling or unable to return or to avail themselves of its protection. Therefore, given the fact that the principal alien has now naturalized, it does not appear that the applicant is able to demonstrate that he meets the remaining eligibility criteria for adjustment of status under section 209, i.e., that he is the child of a refugee. Consequently, he does not appear to be able to adjust his status pursuant to that provision.

The AAO will now briefly address a second issue that, while not affecting the AAO's decision on applicant's adjustment of status application, is a matter that should be addressed in any subsequent proceedings relating to this case. That issue concerns the approval of the I-730 petition submitted by the petitioner on the applicant's behalf. It is unclear whether the petition should have been approved due to the fact that the petition was filed after the petitioner became a lawful permanent resident, a status that at the present time prevents a petitioner from bringing the applicant into the United States as a derivative alien who is following to join him. The Adjudicator's Field Manual specifies that those individuals eligible to file the I-730 petition

include aliens who are refugees or asylees. The manual provides the following with regard to the status of an individual filing a Form I-730 petition:

- **Petitioner's Status** - A petitioner must be either a refugee or an asylee in the U.S. when the Form I-730 is filed. If, pursuant to section 209(a) or section 209(b) of the Act, he or she adjusts status to that of lawful permanent resident before the petition is approved, the petition may still be approved and the beneficiary may receive derivative status (provided all other requirements are met).

The record reflects that the petitioner was granted adjustment of status on September 16, 1992, and the grant was made effective retroactive to August 30, 1990. The I-730 accepted by the Service Center and subsequently adjudicated, was filed on August 9, 1994, nearly two years after the applicant had adjusted his status to that of a permanent resident.⁶ The AAO notes that the file does contain copies of two previously executed I-730s, the earliest of which appears to have been executed in June of 1992, prior to the applicant's adjustment of status date. However, it is not clear from the record whether that petition was properly filed with the then INS. Consequently, the evidence does not suggest that the petitioner had filed a Form I-730 on the applicant's behalf and had adjusted status while the I-730 was pending. Whether the petitioner was, in fact ineligible to file the I-730, and what, if any, action should be taken by the CIS on that issue, is beyond the scope of this decision, but it is raised here in the event that there are additional proceedings in this case related to the applicant's adjustment of status following the AAO's decision.

The AAO notes, however, that even were it determined that the petitioner's I-730 filed on the applicant's behalf should not have been approved, it is likely that the issue will become moot, because even if the service center were inclined to take action to revoke the approval of the I-730, the petitioner, now having been naturalized, is in a position to file an I-130 petition on his step-son's behalf, thus enabling him to adjust his status as an immediate relative. Until such time as any additional steps are taken, however, the applicant retains the status of an I-730 derivative asylee.

Conclusion

Although the AAO is sympathetic to the applicant's case, until such time as the applicant's status is changed to that of a refugee, CIS lacks the ability to grant him a status which is dependent upon an admission classification that the applicant does not possess. The AAO further notes that it is possible that due to the principal alien's naturalization, the applicant may also be able to obtain an immigrant visa by virtue of being an alien who is an unmarried son of a United States citizen, or a married son of a United States citizen depending upon whether his marital status has changed during the pendency of the proceedings.

Consequently, for the reasons stated, the AAO finds that the decision to treat the applicant as a refugee was not correct as a matter of proper procedure, nor was it clear that the applicant was, in fact, entitled to a

⁶ The limitation, as with the limitation on the filing of the petition within two years imposed through the regulatory changes previously discussed, appears to be intended to encourage the rapid filing of the I-730 petitions by refugees and asylees in order to ensure that those individuals adjusting to their new lives in the United States would be able to have the support of family members. The assumption appears to be that once the individual obtains lawful permanent residence, he has attained a status in the country that no longer requires the immediate assistance of relatives for purposes of his transition, and additionally has the ability to bring in relatives through petitions for alien relatives (Form I-130), filed on their behalf.

different status than that in which he was admitted. The AAO will therefore, remand the case for additional investigation of that issue, and notes that such investigation will likely require a review of the petitioner's records, including the A file or records in the possession of the Department of State.

ORDER: The decision of the acting district director is withdrawn and the matter is remanded to the district director for additional consideration of the effect of the principal's naturalization upon the application for adjustment of status.