



U.S. Citizenship and Immigration Services

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Overview

- This presentation will cover three different types of humanitarian benefits related to Form I-130, Petition for Alien Relative:
 - Conversion of Form I-130 to Form I-360 for Surviving Spouses;
 - Section 204(I) of the Immigration and Nationality Act (INA); and
 - Humanitarian Reinstatement (HR) INA 205 and 8 CFR 205.1(a)(3)(C)(2).



Conversion to I-360 for Surviving Spouses



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I-360 Conversion

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



I-360 Conversion (Cont'd)

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



Who Can Receive I-360 Conversion Benefits?

- The surviving spouse, if:
 - The deceased spouse was a U.S. citizen;
 - The deceased spouse had already filed Form I-130 on behalf of the surviving spouse;
 - The marriage between the U.S. citizen and surviving spouse was bona fide;
 - The surviving spouse and U.S. citizen were not legally separated at the time of death; and
 - The surviving spouse has not remarried.
- The surviving spouse's children are eligible for derivative classification.



How is I-360 Conversion Requested?

- Conversion need not be requested, as it occurs automatically for both pending and approved Forms I-130.
- The beneficiary does, however, need to inform USCIS of the petitioner's death, and provide a death certificate.
- Note that a surviving spouse can file an I-360 within two years of the U.S. citizen spouse's death without the having first filed an I-130.



INA 204(I)



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Who Can Receive Benefits Under INA 204(1)?

- Section 568(d) of the FY 10 DHS Appropriations Act created INA section 204(I) and was enacted on October 28, 2009. It applies to any petition adjudicated on or after that date - even if the case was filed before that date.
- While eligibility for relief under INA 204(I) is not limited to I-130 cases, this presentation will focus on I-130 cases.



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

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



Who Can Receive Benefits Under 204(1)?

(Cont'd)

- Further, to qualify under INA 204(I), the surviving beneficiary must:
 - Have resided in the U.S. when the qualifying relative (petitioner or principal beneficiary) died;
 - Continue residing in the United States on the date of the decision on the pending petition or application; and
 - Meet all other I-130 eligibility requirements.
- If any one derivative beneficiary meets the residence requirements, the petition can be approved/reinstated which means all of the remaining derivative beneficiaries can also benefit from approval/reinstatement under INA 204(I), even if they are not residing in the United States.



How is Consideration Requested Under INA 204(I)?

- For pending petitions:
 - No form or fee is required for consideration under INA 204(I).
 - Send the request for consideration under INA 204(I) together with a copy of the death certificate and evidence of beneficiary's and/or derivative beneficiary's U.S. residence, to the office where the petition is pending.
- For approved petitions where USCIS has not sent a notice of automatic revocation:
 - Send the request for consideration under INA 204(I) to the USCIS office that approved Form I-130 OR to the USCIS office where Form I-485 is pending.



How is Consideration under INA 204(1) Requested? (Cont'd)

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



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

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



Affidavit of Support

- INA 204(I) does not waive the affidavit of support requirements.
- Form I-864 from a substitute sponsor is generally needed to adjust status.
 - The substitute sponsor can be the surviving beneficiary's spouse, parent, mother-in-law, father-in-law, sibling, child 18 or older, son, daughter, sister-in-law, brother-in-law, grandparent, grandchild, or legal guardian.
 - Must be a USC or LPR, be over 18, and be domiciled in the U.S.
 - Must meet income requirements under INA 213A.
- The substitute sponsor is not needed if the surviving beneficiary is not subject to the Form I-864 requirement.



Humanitarian Reinstatement (HR)



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Background

- An approved petition is revoked automatically upon the death of the petitioner.
- The regulations allow USCIS to exercise discretion and reinstate the approval of a family-based immigrant visa petition, for humanitarian reasons.
 - By regulation, only automatically revoked immediate relative and family-based (preference) petitions are eligible for consideration.
 - Only the principal beneficiary can request HR.
- USCIS determines whether to exercise discretion on a case-by-case basis, given the humanitarian considerations of the particular case.



Who Is Eligible?

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



How to Apply?

- The principal beneficiary makes the request for humanitarian reinstatement
 - No form or fee is required; request can be submitted at any time.
 - The letter of request and supporting documentation are sent to the USCIS office that rendered the most recent decision. If the beneficiary has a pending adjustment application, the request should be sent to the USCIS office with jurisdiction over the adjustment application.
- If required, the beneficiary must have a qualifying relative willing to act as the substitute sponsor by submitting Form I-864, Affidavit of Support.
 - The qualifying relative must meet all of the requirements for acting as a substitute sponsor and filing Form I-864.



What to Submit

- The beneficiary must submit a letter requesting humanitarian reinstatement, with an explanation of the reasons for the request and supporting documents.
- Form I-864 signed by the substitute sponsor (original signature required), with:
 - Evidence of the legal relationship between the substitute sponsor and the beneficiary;
 - Evidence that the family member seeking to act as a substitute sponsor meets the legal definition of a sponsor: USC or LPR, over 18, and are domiciled in the U.S.; and
 - Financial documents showing that the income requirements have been met.



What to Submit (Cont'd)

- Petitioner's death certificate;
- Copy of the I-130 approval notice (Form I-797)
- Any correspondence received from the Department of State;
- Examples of the types of documents the beneficiary can submit to support the humanitarian grounds for reinstatement under INA 205 may include, but are not limited to:
 - Evidence of the beneficiary's family members residing in the United States, their legal relationship to the beneficiary, and their lawful status;
 - Medical documentation, if applicable; and
 - Any other documents supporting the humanitarian factors to be considered.



Factors Considered

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



Evaluating the Factors

- All evidence presented by the beneficiary is considered in its totality and on a case-by-case basis.
- The factors considered are not exclusive nor are they specific requirements.
- Hardship, when found in a particular case through the documentation submitted, is a humanitarian consideration.
 - Although hardship is not required, it is a humanitarian consideration that can be weighed favorably in deciding how to exercise discretion.



Processing Requests

- There is no standard processing time.
- Expedite requests are considered under the same expedite criteria applied to any other pending application or petition.
- If a favorable decision is made:
 - The approval is reinstated and reaffirmed and the petition is returned to the NVC or housed in beneficiary's A-file.
 - Notification is sent to the estate of the deceased, in care of the substitute sponsor.
- If an unfavorable decision is rendered:
 - The petition remains revoked.
 - Notification is sent to the estate of the deceased, in care of the substitute sponsor, with an explanation of why the request did not meet the criteria for reinstatement.
 - The decision cannot be appealed.
 - A motion to reconsider may be filed with fee.

