

**INTERIM MEMO FOR COMMENT**

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Comment period ends: 01-18-2013

This memo is in effect until further notice.



**U.S. Citizenship  
and Immigration  
Services**

**December 23, 2012**

**PM-602-0078**

## Policy Memorandum

**Subject:** Revised Guidance Concerning Adjudication of Certain I-751 Petitions

### Purpose

This policy memorandum (PM) revises and clarifies guidance issued on October 9, 2009 relating to late filing of a joint Form I-751, Petition to Remove the Conditions of Residence, and authorizes officers to issue Requests for Evidence (RFEs) for untimely filed joint I-751s. This PM revises Adjudicator's Field Manual (AFM) Chapter 25.1 and inserts a new appendix, Appendix 25-5, (AFM Update AD11-43). The guidance in this PM supersedes existing guidance for the processing of late jointly filed Form I-751 petitions submitted without explanations for the late filing.

### Scope

Unless specifically exempted herein, this PM is applicable to, and is binding on, all USCIS employees.

### Authority

- Immigration and Nationality Act (INA) section 216(d)(2)(B)
- 8 CFR 216.4(a)(6)

### Background

According to INA section 216(d)(2)(A), a Conditional Permanent Resident (CPR) must submit a jointly filed I-751 within the 90-day period preceding the second anniversary of the date the CPR obtained lawful admission for permanent residence. INA section 216(d)(2)(B) permits U.S. Citizenship and Immigration Services (USCIS) to accept late filings of joint I-751s, if the alien establishes to the satisfaction of the Secretary of Homeland Security good cause and extenuating circumstances for failure to file the petition within the 90-day period described above.

Prior to the October 9, 2009 memorandum, if a Form I-751 petition was jointly filed, but was late and submitted without a written explanation for the late filing, the existing guidance required a Service Center Immigration Services Officer (ISO) to:

- Issue an RFE for a reasonable explanation for the late filing;
- Review and evaluate the response to the RFE to determine if the CPR established good cause for the late filing; and
- Relocate the Form I-751 petition to a field office for interview, if the CPR had not established good cause for the late filing.

USCIS issued the October 9, 2009 memorandum for the purpose of streamlining the Form I-751 process by expanding categories of cases that could be adjudicated at service centers without being relocated to a field office for interview. The memo instructed Service Center ISOs to deny, without sending an RFE, any untimely jointly filed Form I-751 petition that was submitted without an explanation for the untimely filing.

### **Policy**

This PM changes and clarifies the process of adjudicating a late jointly filed I-751 petition. When an ISO adjudicates a late jointly filed I-751 petition, the ISO will check for a written explanation of the late filing. If the I-751 petition is submitted with an explanation for the late filing, the ISO will review the explanation for the untimely filing in relation to the length of time the application was untimely filed, along with any corroborating evidence that was submitted, to determine if the CPR established good cause for the late filing.

If the CPR did not include a written explanation for the late filing, the ISO will issue an RFE, requesting a reasonable explanation for the late filing and corroborating evidence. If the ISO receives a response to the RFE, the ISO will evaluate the explanation, along with any corroborating evidence that was submitted, to determine if the CPR established good cause for the late filing.<sup>1</sup> Corroborating evidence is not necessary if the explanation is acceptable on its face. After receiving a response to the RFE, the ISO may relocate the I-751 for an interview if the documentary evidence leads to an inconclusive result and the determination of good cause for the late filing would benefit from a live interview. If the ISO does not receive a response to the RFE, the ISO will deny the I-751 for failing to comply with the filing requirements in INA section 216(c)(1)(A).

### **Implementation**

Accordingly, AFM Chapter 25.1 is revised and a new appendix, Appendix 25-5, is added as follows:

1. In Chapter 25.1, a new section (g)(6) is added to read:

#### **(g) Adjudication of the Joint Petition.**

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<sup>1</sup> INA section 216(c)(1)(A), in conjunction with INA section 216 (d)(2)(A), requires the CPR and the petitioning spouse to jointly file a Form I-751 during the 90-day period immediately preceding the second anniversary of the date the CPR acquired conditional resident status. INA section 216(d)(2)(B) permits USCIS to accept I-751 joint petitions filed after this 90-day period if the CPR establishes good cause and extenuating circumstances for the failure to timely file.

(6) Adjudication of Form I-751 Where the CPR Has Filed an Untimely Petition. The ISO must follow the steps outlined below and in the matrix in **Appendix 25-5** when adjudicating an untimely jointly filed Form I-751.

The CPR and spouse must jointly file Form I-751 within the 90-day period immediately preceding the second anniversary of the date the CPR acquired conditional resident status (see INA sections 216(c)(1)(A) and (d)(2)(A)). An ISO may consider a jointly filed I-751 petition submitted after the second anniversary of the date the CPR acquired conditional resident status only if the CPR is able to demonstrate good cause for the failure to timely file (see INA section 216(d)(2)(B)).

If a CPR and spouse do not jointly file an I-751 petition within the required period, the ISO must determine whether the failure to timely file the petition was based on good cause. The instructions for Form I-751 clearly state that a CPR may file a petition untimely only if he or she includes a written explanation for his or her failure to timely file and a request that USCIS excuse the late filing.

(A) Explanation included with the late filing. If the CPR has included an explanation for the late filing with an untimely jointly filed I-751 petition, the ISO will evaluate the explanation for the untimely filing in relation to the length of time the application was untimely filed, along with any corroborating evidence that was submitted, to determine whether there is good cause for the late filing. Corroborating evidence is not necessary if the explanation is acceptable on its face. The law provides for broad discretion as to what constitutes good cause. Some examples of what constitutes good cause may include, but are not limited to: hospitalization, long term illness, death of a family member, legal or financial problems, having to care for someone, bereavement, serious family emergency, and work commitment, or a family member on active duty with the U.S. military.

If the ISO determines that the response establishes good cause for the late-filed petition, the ISO may proceed with adjudication of the I-751. If the ISO determines that the explanation and corroborating evidence, if any, do not establish good cause for the late filing the ISO will deny the petition for failure to comply with the filing requirements in INA section 216(c)(1)(A).

If, based on the record, the ISO is unable to make a determination on whether the failure to timely file was due to good cause, he or she may request additional information.

If the ISO issues an RFE, and if no response is received, the ISO will deny the petition for failure to comply with the filing requirements in INA section 216(c)(1)(A).

If the CPR responds to the request for additional information and the ISO determines that the response establishes good cause for the late filing, the ISO may proceed with adjudication of the I-751. Corroborating evidence is not necessary if the explanation is acceptable on its face. If the ISO determines that

the response does not establish good cause for the late filing the ISO will deny the petition for failure to comply with the filing requirements in INA section 216(c)(1)(A). After receiving a response to the request for additional evidence, the ISO may relocate the I-751 for an interview if the documentary evidence leads to an inconclusive result and the determination about whether there is good cause for the late filing would benefit from a live interview. The ISO should clearly document his or her concerns in the relocation memo.

(B) Explanation not included with the late filing. If the CPR has not included an explanation for the late filing, the ISO will issue an RFE for an explanation and any corroborating evidence.

If there is no response to the RFE, the ISO will deny the petition for failure to comply with the filing requirements in INA section 216(c)(1)(A).

If the CPR responds to the RFE, the ISO will evaluate the response to determine whether there is good cause for the late filing. Corroborating evidence is not necessary if the explanation is acceptable on its face. The law provides for broad discretion as to what constitutes good cause. Some examples of what constitutes good cause may include, but are not limited to: hospitalization, long term illness, death of a family member, legal or financial problems, having to care for someone, bereavement, serious family emergency, and work commitment, or a family member on active duty with the U.S. military.

If the ISO determines that the response establishes good cause for the untimely filing, the ISO may proceed with adjudication of the I-751.

If the ISO determines that the response does not establish good cause for the late filing, the ISO will deny the petition for failure to comply with the filing requirements in INA section 216(c)(1)(A).

After receiving a response to the request for additional evidence, the ISO may relocate the I-751 for an interview if the documentary evidence leads to an inconclusive result and the determination about whether there is good cause for the late filing would benefit from a live interview. The ISO should clearly document his or her concerns in the relocation memo.

- ☞ 2. A new appendix, Appendix 25-5, is added to read:

**Appendix 25-5**

**Joint I-751 Petitions That Are Filed Untimely**

If the ISO is adjudicating an I-751 filed ...	Then the ISO will ...
...that is <b>untimely</b> and the ISO verifies that the A-file contains a written explanation and request to excuse the late filing either filed with the initial documentation or as a response to an RFE,	... <b>determine</b> if the CPR has established good cause for the late-filed joint petition. If yes, proceed with adjudication of the case. If no, deny the case for failure to comply with the filing requirements in INA section 216(c)(1)(A). If unable to make such determination, issue an RFE (if not already issued) or refer the case to local office for interview (if an RFE has already been issued). Specify the reasons in the relocation memo.
...that is <b>untimely</b> and where a written explanation and a request to excuse the late filing is not included with the initial documentation,	... <b>issue</b> an RFE for an explanation and corroborating evidence.
...that is <b>untimely</b> for which an RFE was sent, but there is no response to the RFE,	... <b>deny</b> the I-751 for failure to comply with the filing requirements in INA section 216(c)(1)(A)

- ☞ 3. The AFM **Transmittal Memoranda** button is revised by adding, in numerical order, a new entry to read:

AD11-43 12/23/2012	<b>Chapter 25.1(g)(6) Appendix 25-5</b>	Revises guidance on adjudication of an I-751 Joint Petition filed after the 2nd anniversary of the date the alien acquired CPR status.
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**Use**

This PM is intended solely for the instruction and guidance of USCIS personnel in performing their duties relative to adjudications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

**Contact Information**

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Service Center Operations Directorate.