



November 30, 2018

**PM-602-0168**

## Policy Memorandum

**SUBJECT: Revised Interview Waiver Guidance for Form I-751, Petition to Remove Conditions on Residence**

### **Purpose**

The purpose of this policy memorandum (PM) is to provide guidance to U.S. Citizenship and Immigration Services (USCIS) officers on waiving the interview requirement for Form I-751, Petition to Remove Conditions on Residence. This PM revises the Adjudicator's Field Manual (AFM) at Chapter 25.1(g) and 25.1(i).

### **Scope**

This PM applies to all USCIS officers adjudicating Form I-751. This guidance fully supersedes the June 24, 2005 memorandum, "Revised Interview Waiver Criteria for Form I-751, Petition to Remove the Conditions on Residence."

Generally, officers must interview a conditional permanent resident who has obtained lawful permanent resident status on a conditional basis and who is the principal petitioner on a Form I-751, unless the interview is waived. This guidance addresses when officers may consider interview waivers. This guidance goes into effect on December 10, 2018, and applies to all Form I-751s received on or after December 10, 2018.

### **Authority**

- Immigration and Nationality Act (INA) sections 216(c)(1)(B) and 216(d)(3)
- Title 8 Code of Federal Regulations (CFR) sections 216.4(b)(1) and 216.5(d)

### **Background**

Foreign nationals whose qualifying marriage to their petitioning spouse is less than 2 years old at the time of admission or adjustment of status will obtain lawful permanent resident status on a conditional basis. These foreign nationals are considered conditional permanent residents. Qualifying children of these individuals may also obtain conditional permanent resident status. To avoid having their status terminated after two years, conditional permanent residents must request that USCIS remove the conditions on their lawful permanent resident status by filing

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Form I-751 either jointly with their petitioning spouse/stepparent or individually through a request for a waiver of the joint filing requirement (waiver request). When submitting Form I-751, conditional permanent residents must submit the required initial evidence that establishes the bona fides of the marriage and that the marriage was not entered into for the purpose of evading the immigration laws of the United States.<sup>1</sup>

As part of the Form I-751 adjudication, conditional permanent residents must appear for an interview.<sup>2</sup> Interviews provide USCIS with the opportunity to verify information contained in the petition or application, as well as the opportunity to discover new information that may be relevant to the adjudication or to determine the credibility of the individual seeking to remove the conditions on his or her lawful permanent resident status.

USCIS, however, may waive the requirement for an interview and adjudicate the Form I-751 without conducting an interview.<sup>3</sup>

### **Policy**

Generally, conditional permanent residents who file a Form I-751 must appear for an interview. However, USCIS officers may consider waiving an interview if they are satisfied that:

- They can make a decision based on the record because it contains sufficient evidence about the bona fides of the marriage and that the marriage was not entered into for the purpose of evading the immigration laws of the United States;
- For Form I-751 cases received on/after December 10, 2018, USCIS has previously interviewed the I-751 principal petitioner (for example, for a Form I-485 or Form I-130);
- There is no indication of fraud or misrepresentation in the Form I-751 or the supporting documentation; and
- There are no complex facts or issues that require an interview to resolve questions or concerns.

When determining whether to waive an interview, the considerations listed above apply regardless of whether the Form I-751 is filed as a joint petition or as a waiver of the joint filing requirement.

Cases involving fraud or national security concerns must be referred to the Fraud Detection and National Security Directorate according to local procedures.

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<sup>1</sup> See 8 CFR 216.4(a)(5). Note, however, that evidence that the marriage was entered into in good faith is not required for waiver requests based on extreme hardship.

<sup>2</sup> See INA 216(c)(1)(B).

<sup>3</sup> See INA 216(d)(3) and 8 CFR 216.4(b)(1).

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## Implementation

The AFM is revised as follows:

### ☛ 1. Chapter 25.1(g) is revised as follows:

(g) Adjudication of Form I-751. [Section (g) updated December 10, 2018]

#### (1) Interviews.

Generally, conditional permanent residents who file a Form I-751 must appear for an interview.<sup>4</sup> However, USCIS officers may consider waiving<sup>5</sup> an interview if they are satisfied that:

- They can make a decision based on the record because it contains sufficient evidence about the bona fides of the marriage and that the marriage was not entered into for the purpose of evading the immigration laws of the United States;
- For I-751 cases received on/after December 10, 2018, USCIS has previously interviewed the I-751 principal petitioner<sup>6</sup> (for example, for a Form I-485 or Form I-130);
- There is no indication of fraud or misrepresentation on the Form I-751 or the supporting documentation; and
- There are no complex facts or issues that require an interview to resolve questions or concerns.

When determining whether to waive an interview, the considerations listed above apply regardless of whether the Form I-751 is filed as a joint petition or as a waiver of the joint filing requirement.

Cases involving fraud or national security concerns must be referred to the Fraud Detection and National Security Directorate according to local procedures.

#### (2) Special Cases.

##### (A) Overseas Holds.

##### (i) Petitioner and/or Spouse Live Outside the United States.

If the petitioner and/or spouse live outside the United States, the case is held for a reasonable

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<sup>4</sup> See INA 216(c)(1)(B).

<sup>5</sup> See INA 216(d)(3) and 8 CFR 216.4(b)(1).

<sup>6</sup> Generally, USCIS will not have interviewed I-751 petitioners with the following codes of admission: CR1, CR2, C21, C22, C23, CX1, CX2, and CX3.

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amount of time until the return of the petitioner and/or spouse to the United States, and they are able to provide a U.S. address. USCIS will resume processing of the Form I-751 if the conditional permanent resident notifies USCIS that he/she has returned to the United States.

(ii) Petitioner and/or Spouse Live Outside the United States Pursuant to Military or Federal Government Orders.

Form I-751s filed by conditional permanent residents who are currently overseas under military or Federal Government orders and who have valid APO/FPO addresses are not automatically placed on an “overseas hold,” because a Permanent Resident Card (also referred to as “Green Card” or an I-551 card) can be issued and sent to an APO/FPO address if these I-751s are approved. Instead, the officer will review the Form I-751 and supporting documentation filed by the conditional permanent resident and his or her spouse to determine whether to waive the interview requirement in accordance with the guidance outlined in section (g)(1).

(B) Improperly Classified.

These are cases where the conditional permanent resident was incorrectly classified when he or she became a permanent resident (generally because the inspecting or adjudicating officer failed to notice that the alien had been married for at least two years at the time he or she was admitted to the United States as a permanent resident or adjusted his or her status to that of a permanent resident). When an officer determines that the alien was improperly classified as a conditional permanent resident, the officer should follow appropriate procedures to notify the conditional permanent resident of the misclassification.

(3) Inability of Child to be Included in Joint Petition.

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**☞ 2. Chapter 25.1(i) is revised as follows:**

**(i) Interview at the Field Office . [Section (i) updated December 10, 2018]**

Unless the interview is waived, an interview must be conducted by an immigration services officer at the field office having jurisdiction over the petitioner’s residence.

**(1) Joint Petition.**

\* \* \* \* \*

**☞ 3. Chapter 25.1(i)(2) is revised by deleting the first sentence of the first paragraph.**

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

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PM-602-0168 [November 30, 2018]	<b>Chapter 25.1(g) and 25.1(i)</b>	Revises interview waiver guidance for Form I-751, Petition to Remove Conditions on Residence
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**Use**

This PM is intended solely to guide USCIS personnel in performing their official duties. 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 Office of Policy and Strategy.