



INTERIM MEMO FOR COMMENT

Posted: 08-10-2011

Comment period ends: 08-24-2011

This memo is in effect until further notice.

August 8, 2011

PM-602-0043

Policy Memorandum

SUBJECT: Process for Responding to Requests by the Department of State (DOS) to Accept a Locally Filed Form I-130, Petition for Alien Relative; Utilization of Reserved Section of the *Adjudicator's Field Manual (AFM)* – Chapter 21.12; *AFM* Update AD11-38

Purpose

This Policy Memorandum (PM) provides guidance and procedures for overseas managers when responding to requests by DOS to accept a locally filed Form I-130 where USCIS does not have a presence.

Scope

This PM applies to all USCIS employees.

Authority

8 CFR 204 and the instructions for Form I-130.

Background

Historically, the Department of State (DOS) consular officers have processed Form I-130 *Petition for Alien Relative* (I-130) filed overseas where USCIS does not have a presence. Based on recent discussions with DOS, USCIS has determined that it is more cost-effective for USCIS to adjudicate all I-130s with certain limited exceptions. As of August 15, 2011, the instructions for the Form I-130 will require a petitioner who resides overseas to file by mail with a USCIS domestic lockbox unless the petitioner lives in a country where USCIS has an overseas field office and prefers to file with the USCIS international office. In certain situations, circumstances may warrant expedited local processing of an I-130 by DOS at an embassy or consulate where USCIS does not have a presence.

Policy

DOS is amending the Foreign Affairs Manual (FAM) to provide that a petitioner's residency within the consular district is no longer a consideration when determining whether a Form I-130 can be processed with the Consular Section. If a consular officer in an embassy or consulate where USCIS is not present encounters an individual case that the officer believes requires immediate processing due to

exceptional circumstances, the consular officer should contact the USCIS Field Office Director (FOD) with jurisdiction over that location to determine whether DOS may accept and adjudicate the case.

If the USCIS FOD authorizes DOS to adjudicate a case, the consular officer may only adjudicate a case that is clearly approvable. If the case is not clearly approvable, DOS must forward the case to USCIS.

The following are some examples of exceptional circumstances when USCIS will likely authorize DOS to accept and process an I-130 petition.

- *Military emergencies:* A U.S. service member overseas becomes aware of a new deployment or transfer with very little notice. This should be an exception to the regular relocation process for most service members.
- *Medical emergencies:* A petitioner or beneficiary is facing an urgent medical emergency that requires immediate travel. This includes the situation where a petitioner or beneficiary is pregnant and delaying travel may create a medical risk or extreme hardship for the mother or child.
- *Threats to personal safety:* A petitioner or beneficiary is facing an imminent threat to personal safety.
- *Cases close to aging out:* A beneficiary is within a few months of aging out of eligibility.
- *Cases where the petitioner has recently naturalized:* A petitioner and family have traveled for the immigrant visa interview, but the petitioner has naturalized and the family member(s) requires a new, stand-alone petition;
- *Cases involving the adoption of a child:* A petitioner who has adopted a child locally and has an imminent need to depart the country. This exception should only be considered if the child has been in the petitioner's legal and physical custody for at least two years and the petitioner has a full and final adoption decree on behalf of the child.

This is not an exhaustive list of examples. FODs have discretion to authorize a DOS adjudication of an I-130 when there are compelling humanitarian reasons to do so. FODs should consult with the District Director or Deputy District Director when they have questions about whether to authorize a DOS adjudication of an I-130.

The petitioner does not have the right to appeal or request reconsideration of a USCIS decision to deny a DOS request to process Form I-130 on an exceptional basis.

USCIS may also authorize blanket processing of I-130s by DOS at an overseas location in response to a large scale crisis such as a natural disaster or widespread civil unrest that creates a humanitarian emergency for U.S. citizens or residents living abroad. In these circumstances, the Chief or Deputy Chief of USCIS International Operations may choose to give blanket authorization to DOS to accept and adjudicate I-130s for a specified period of time.

When DOS requests authorization to accept and adjudicate an emergency I-130, the following process will be followed:

1. A DOS employee will call the USCIS office having jurisdiction over their location and provide details to the FOD;
2. DOS will also e-mail the FOD to request permission to accept and adjudicate the I-130;
3. The FOD may provide verbal approval to proceed in particularly urgent circumstances and will respond to the e-mail via e-mail within 1-3 business days of receipt of the e-mail; and
4. If the decision is negative, DOS should instruct the individual to file the Form I-130 with the USCIS Chicago Lockbox.

The FOD will have discretion to determine which cases may be processed by DOS and which cases must be filed by mail with the USCIS lockbox in the United States.

During the initial implementation period of these new procedures, the FOD will be responsible for keeping track of the requests received from DOS and reporting the requests and responses to Headquarters International Operations (HQ IO) on a monthly basis. The reporting template is now under development and will be provided in the near future for use by all overseas field offices.

Implementation

The *AFM* is revised as follows:

- ☞ 1. Utilizing a reserved section of the *AFM* – Chapter 21.12.

Chapter 21.12 Process for Responding to Requests by the Department of State (DOS) to Accept a Locally Filed Form I-130, Petition for Alien Relative

(a) When DOS Contacts USCIS to Request Authorization for DOS to Accept and Adjudicate an I-130

If a consular officer in an embassy or consulate where USCIS is not present encounters an individual case that the officer believes requires immediate processing, the consular officer should contact the USCIS Field Office Director (FOD) with jurisdiction over that location to request authorization for DOS to accept and adjudicate the case. The FOD will determine whether DOS may accept and adjudicate the case.

(b) When DOS Can Adjudicate an Authorized Case

If the USCIS FOD authorizes DOS to adjudicate a case, the consular officer may only adjudicate a case that is clearly approvable. If the case is not clearly approvable, DOS must forward the case to the USCIS office with jurisdiction.

(c) Exceptional Circumstances

The following are some examples of exceptional circumstances when USCIS will likely authorize DOS to accept and process an I-130 petition:

- (1) *Military emergencies*: A U.S. service member overseas becomes aware of a new deployment or transfer with very little notice. This should be an exception to the regular relocation process for most service members.
- (2) *Medical emergencies*: A petitioner or beneficiary is facing an urgent medical emergency that requires immediate travel. This includes the situation where a petitioner or beneficiary is pregnant and delaying travel may create a medical risk or extreme hardship for the mother or child.
- (3) *Threats to personal safety*: A petitioner or beneficiary is facing an imminent threat to personal safety.
- (4) *Cases close to aging out*: A beneficiary is within a few months of aging out of eligibility.
- (5) *Cases where the petitioner has recently naturalized*: The petitioner and family have traveled for the immigrant visa interview, but the petitioner has naturalized and the family member(s) require a new, stand-alone petition.
- (6) *Cases involving the adoption of a child*: A petitioner who has adopted a child locally and has an imminent need to depart the country. This exception should only be considered if the child has been in the petitioner's legal and physical custody for at least two years and the petitioner has a full and final adoption decree on behalf of the child.

(d) Discretion

The list of examples provided in Chapter 22.12(b) is not exhaustive. FODs have the discretion to authorize a DOS adjudication of an I-130 when there are compelling humanitarian reasons to do so. FODs should consult with their District Director or Deputy District Director when they have questions about whether to authorize a DOS adjudication of the case.

(e) Appeal Rights

The petitioner does not have the right to appeal or request reconsideration of a USCIS decision to deny a DOS request for authority to process an I-130 because of exceptional circumstances.

(f) In the Event of a Large Scale Crisis

USCIS may authorize the blanket processing of I-130s by DOS at an overseas location in response to a large scale crisis. A large scale crisis includes a natural disaster or widespread civil unrest that creates a humanitarian emergency for U.S. citizens or residents living abroad.

In these circumstances, the Chief or Deputy Chief of USCIS International Operations may choose to give blanket authorization to DOS to accept and adjudicate I-130s for a specified period of time.

(g) When DOS Requests Exceptional Authorization

When DOS requests authorization to accept and adjudicate an emergency Form I-130, the following process will be followed:

- (1) A DOS employee will call the USCIS office having jurisdiction over their location and provide details to the FOD.
- (2) DOS will also e-mail the FOD to request permission to accept and adjudicate the I-130.
- (3) The FOD may provide verbal approval to proceed in particularly urgent circumstances and will respond via e-mail within 1-3 business days of receipt of the e-mail.
- (4) If the decision is negative, DOS should instruct the individual to file the Form I-130 with the USCIS Chicago Lockbox.

The FOD has the discretion to determine which cases may be processed by DOS and which cases must be filed by mail with the USCIS lockbox in the United States.

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

AD11-38 8/8/2011	Chapter 21.12	Establishes process for responding to requests by DOS to accept a locally filed Form I-130, Petition for Alien Relative
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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of 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 International Operations Division, Refugee, Asylum and International Operations Directorate.