



U.S. Citizenship
and Immigration
Services

SEP 22 2009

HQ 70/6.1.8
HQ 70/6.1.1
AD 09-47

Memorandum

TO: Service Center Directors

FROM: Barbara Velarde
Chief, Service Center Operations

Handwritten signature of Barbara Velarde in black ink.

SUBJECT: Standalone Form I-130 and Jointly Filed Form I-751: Discretionary Procedures for Petitioning Military Members and their Dependents

Additions to *Adjudicator's Field Manual*, Chapter 21.2(b)(1)(C) and 25.1(c)(3) and Appendix 21-7 (AFM Update AD09-47)

1. Purpose

This memorandum provides policy guidance to service centers adjudicating a standalone Form I-130, *Petition for Alien Relative*,¹ or jointly filed Form I-751, *Petition to Remove Conditions on Residence*,² filed by a military member on behalf of his or her alien spouse or child. For purposes of this memo, military member is defined as any United States citizen (USC) or lawful permanent resident (LPR) active duty member of any branch of the U.S. Armed Forces who is currently deployed.³ This includes activated reservists and mobilized National Guardsmen.

The guidance in this memorandum supersedes the Memorandum: *Guidance on the Processing of Form I-751, Petition to Remove Conditions on Residence, Filed by Conditional Permanent Residents Overseas on Official Military or Government Orders*, dated June 2, 2006.

2. Background

When a petitioner files a standalone Form I-130 or jointly filed Form I-751, he or she must provide specific information to establish the bona fides of the relationship between the petitioner and his or her spouse or child. When a military member is the petitioner, service center Immigration Service Officers (ISOs) may use this guidance to determine what types of specific documents military

¹ Standalone I-130s do not include I-130s filed concurrently with Form I-485, *Application to Register Permanent Residence or to Adjust Status*.

² This memorandum only applies to Form I-130 or Form I-751 filed by a military member. It does not restrict nor expand the interview waiver criteria for other petitioners.

³ This includes, but is not limited to, Permanent Change of Station (PCS) orders or Deployment Orders issued to the military member for a permanent tour of duty.

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members may be able to provide to establish bona fides of the marriage. This guidance will also enable service centers to adjudicate most cases involving military members without having to relocate them to a field office for interview.

3. Guidance

Evidence pertaining to military members

USCIS service centers reviewing a standalone Form I-130 or jointly filed Form I-751 will evaluate every properly filed petition in chronological order by the receipt date.

The ISO will review the file for the following:

- Evidence that the petition involves an active duty military member;
- Evidence establishing that the active duty military member is deployed;
- Evidence of the claimed relationship:
 - If the military member is filing the petition on behalf of an alien spouse, evidence establishing a bona fide marriage between the alien and the military member; and
 - If the military member is filing the petition on behalf of an alien child, evidence establishing a parent-child relationship between the child and the military member.

Military-specific evidence can be deemed as strong evidence towards the bona fides of the marriage.. Such evidence may include but is not limited to the following.

- All pages of the service member's Form DD-1172, "Application for Uniformed Services Identification Card DEERS Enrollment," naming dependents
- Dependent's Military Identification and Privilege Card
- Form DD-1278, "Certificate of Overseas Assignment to Support Application to File Petition for Naturalization"
- Copy of Permanent Change of Station (PCS) orders issued to the service member for permanent tour of duty overseas that specifically name the spouse or child
- Designation of the beneficiary on the military members' Group Life Insurance (SGLI) policy
- Evidence of a Family Service Members' Group Life Insurance (FSGLI) policy
- Evidence of the military member's health insurance policy on behalf of dependent

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- Documentation showing that the spouse and/or child resides in military base/post housing
- Powers of Attorney life insurance designation (general or specific)
- Military TRICARE medical ID card for usage of military medical facilities
- Leave and Earnings Statement showing: Family Separation Allowance or allotments to dependents
- Living will and/or last will and testament
- Pre-authorization for emergency financial assistance
- A copy of the service member's Record of Emergency Data

Adjudicative actions for I-130 and I-751 petitions filed by military members

If the I-130 or I-751⁴ petition is approvable, the ISO will approve the petition and follow the normal post-adjudication process.

If the ISO cannot approve the petition, and the petition cannot be statutorily denied (for example, because it was based on a non-qualifying relationship), the ISO will send the military member a Request for Evidence (RFE). The ISO will do the following:

- (a) Issue the RFE to the military member's last known (physical or APO/FPO) address.
- (b) If the service center receives a response to the RFE, the ISO will continue the adjudication process.
- (c) If there is no response to the RFE within the appropriate RFE response period (12 weeks), or the RFE is returned as undeliverable, the ISO will place the petition on hold for up to 18 months.
- (d) If 18 months have passed since the service center placed the case on hold, the ISO will deny the petition if the petitioner is no longer in the military; otherwise, the ISO will administratively close the petition. Upon request, the petitioner may, at any time, request to reopen/reactivate the petition at no charge to the petitioner.

⁴ If there is evidence that a conditional permanent resident (CPR) spouse or child has filed an N-400 application, the ISO will not adjudicate any I-751 filed to remove the conditions on that spouse's or child's status. Instead, the ISO will transfer the I-751, and the N-400 if accompanying the I-751, to the appropriate field office for adjudication. For additional guidance, please refer to the memorandum, *Conditional Permanent Residents and Naturalization under Section 319(b) of the Act Revisions to Adjudicator's Field Manual (AFM), Chapters 25 (AFM Update AD09-28)*, dated August 4, 2009. See also AFM chapter 25.1 (k)(2)(d). If there is no N-400 application, the ISO will proceed with adjudication of the I-751 petition.

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If the service center receives a response from the petitioner, the ISO will do the following:

- a) If the petition is approvable, the ISO will approve the petition and continue with the normal post-adjudication process.
- b) If the evidence submitted is insufficient to support approval, the ISO will place the petition on an overseas hold until the military member returns to the U.S.
- c) If the military member notifies USCIS of his or her return,⁵ the ISO will take the case off hold and relocate it to the appropriate field office. See AFM chapter 21.2 (b)(1).
- d) If 18 months have passed since the service center placed the case on overseas hold, and the military member has not notified USCIS of return to the U.S., the ISO will administratively close the petition. The ISO must notify the petitioner that the case is being administratively closed because USCIS must conduct an interview to proceed with a decision. The notice should advise the petitioner that he or she may, at any time after returning to the U.S., request to reopen/reactivate the petition at no charge to the petitioner.

4. Adjudicator's Field Manual Update:

The AFM is revised to add Chapters 21.2(b)(1)(C) and 25.1(c)(3) and Appendix 21-7.

21.2 Factors Common to the Adjudication of All Relative Visa Petitions.

* * *

(b) Adjudicative Procedures.

* * *

(1) Review of the Petition.

* * *

(C) Discretionary Procedures for Petitioning Military Members and Their Dependents. [Chapter added on (date memo signed)]

When adjudicating a standalone Form I-130 filed by a military member on behalf of his or her alien spouse or child, service center ISOs must follow the steps below:

- Review every properly filed petition in chronological order by the receipt date;

⁵ Notification of return may occur via an AR-11 change of address or direct correspondence.

Standalone Form I-130 and Jointly filed Form I-751: Discretionary Procedures for Petitioning Military Members and their Dependents
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- Determine whether the petition involves an active duty military member (by checking the file for military orders) before issuing a request for evidence (RFE);

Note

The evidence necessary for the issuance of an RFE in this situation includes but is not limited to the list of documents listed in the memo entitled *Standalone Form I-130 and Jointly Filed Form I-751: Discretionary Procedures for Petitioning Military Members and their Dependents*. See Appendix 21-7;

- Review the evidence submitted to determine the nature of the member's deployment; the claimed bona fides of the marriage and relationship to any children involved. See memo entitled *Standalone Form I-130 and Jointly Filed Form I-751: Discretionary Procedures for Petitioning Military Members and their Dependents*. See Appendix 21-7;

The detailed steps that the ISO must follow are listed in Appendix 21-7

25.1 Immigration Marriage Fraud Amendments of 1986.

* * *

(c) Filing of Removal of Conditions.

* * *

(3) Discretionary Procedures for Petitioning Military Members and Their Dependents. [Chapter added on (date memo signed)]

When adjudicating a Form I-751 filed by a military member on behalf of his or her alien spouse or child, service center ISOs must follow the steps below:

- Review every properly filed petition in chronological order by the receipt date;
- Determine whether the petition involves an active duty military member (by checking the file for military orders) before issuing a request for evidence (RFE);

Note

The evidence necessary for the issuance of an RFE in this situation includes but is not limited to the list of documents listed in the memo entitled *Standalone Form I-130 and Jointly Filed Form I-751: Discretionary Procedures for Petitioning Military Members and their Dependents*. See Appendix 21-7;

Standalone Form I-130 and Jointly filed Form I-751: Discretionary Procedures for Petitioning Military Members and their Dependents

Additions to *Adjudicator's Field Manual*, Chapter 21.2(b)(1)(C) and 25.1(c)(3) and Appendix 21-7 (AFM Update AD09-47)

- Review the evidence submitted to determine the nature of the member's deployment; the claimed bona fides of the marriage and relationship to any children involved. See memo entitled *Standalone Form I-130 and Jointly Filed Form I-751: Discretionary Procedures for Petitioning Military Members and their Dependents*. See Appendix 21-7;

If	And the ISO believes	Then
The evidence to support the standalone I-130 is received and all items provided are sufficient	that the I-130 petition is approvable	the ISO will approve standalone Form I-130 and continue the normal post adjudication process
The evidence to support the I-751 is received and all items provided are sufficient	that the I-751 petition is approvable	the ISO will approved the Form I-751 and continue the normal post adjudication process. If there are any interfiled or concurrently filed N-400 applications, the ISO must refer to the 319(b) memorandum for further guidance.

Standalone Form I-130 and Jointly filed Form I-751: Discretionary Procedures for Petitioning Military Members and their Dependents
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Appendix 21-7 Form I-130 and Form I-751 Adjudication Steps for USCIS Service Center Immigration Services Officers (ISOs) Appendix added [date memo signed]; AD09-47]

If	Then
The ISO cannot approve the petition and the petition cannot be statutorily denied (e.g., the petition is based on a non-qualifying relationship)	The ISO will send the military member an RFE for additional documentation to establish claimed relationships or to address other deficiencies to the military member's last known (physical or APO/FPO) address.
The service center receives a response to the RFE	The ISO will continue the adjudication and post adjudication processes.
The RFE response is still insufficient the ISO will	The ISO will place the petition on an overseas hold until the military member returns to the U.S.
There is no response to the RFE within the appropriate RFE response period (12 weeks)	The ISO will place the petition on hold for up to 18 months.
The response to the RFE is returned as undeliverable the ISO will	The ISO will place the petition on hold for up to 18 months.
Eighteen (18) months have passed since the service center placed the petition on hold	The ISO will either: (a) deny the petition if the petitioner is no longer in the military Or (b) administratively close the petition if the petitioner is still in the military.
The petition is denied	The ISO will reopen and/or reactive the petition upon the petitioner's request (at anytime and at no charge to the petitioner).
The petition is administratively close	The ISO will reopen and/or reactive the petition upon the petitioner's request (at anytime and at no charge to the petitioner).

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

<p>AD09-47 [dated memo signed]</p>	<p>Chapters:</p> <ul style="list-style-type: none"> • 21.2(b)(1)(C)(2) • 25.1(c)(3) <p>Appendix 21-7</p>	<p>The AFM is updated to add Chapter 21.2(b)(1)(C) and Appendix 21-7. The chapter and appendix set forth adjudicative procedure that Immigration Services Officers must follow when adjudicating standalone Forms I-130.</p> <p>The AFM is updated to add Chapter 25.1(c)(3), "Discretionary Procedures for Military Members and their Dependents.</p>
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5. Use

This memorandum is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications. 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.

6. Contact Information

Questions regarding the operational guidance in this memorandum may be directed through appropriate channels to Felicia Cameron, Program Manager in Service Center Operations Division or Heather Evelyn, Program Manager in Service Center Operations Division.

Originating Office:	<u>Office of Service Center Operations</u>	Originating Official:	<u>Bryan Christian</u>
Contact Officer:	<u>Felicia Cameron</u>	Contact Number:	<u>202-272-8169</u>
Date:	<u>08/04/2009</u>	Suspense Date:	<u>08/12/2009</u>
Subject:	<u>Military Members on the MFAS Terminate Report</u>		

EXECUTIVE SUMMARY:

This memorandum provides guidance to the Service Centers on how to handle military I-751 cases:

• This memorandum provides policy guidance to Service Centers when requesting military-specific documentation through the issuance of a Request for Evidence (RFE) for certain deployed United States citizen (USC) or lawful permanent resident (LPR) military members filing Form I-130, Petition for Alien Relative, and filing Form I-751, Petition to Remove Conditions on Residence.



FINAL PUBLICATION AND DISSEMINATION (CHECK APPROPRIATE BOX):

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<input type="checkbox"/> Press needed	<input checked="" type="checkbox"/> Leadership Alert	
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Administration				Communication				Ombudsman Liaison			
Administrative Appeals				Congressional Relations				Policy & Strategy			
Chief Financial Officer				Domestic Operations				Refugee, Asylum, International			
Chief Counsel	X			Human Capital				Security			
Chief Information Officer				National Security and Records Verification				Transformation			
Citizenship				Field Operations				Regulatory Management Division			

Reviewer Signature (or Designate)  *assoc. Counsel* Date: 09/03/09

Office: Office of the Chief Counsel *ALD*

Check one:

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Office	Signature	Action			Date
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Executive Secretariat					
Chief of Staff					
Deputy Director					
Director					

Originating Office: Office of Service Center Operations Originating Official: Bryan Christian
 Contact Officer: Felicia Cameron Contact Number: 202-272-8169
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Chief Counsel				Human Capital				Security			
Chief Information Officer				National Security and Records Verification				Transformation			
Citizenship				Field Operations	X			Regulatory Management Division			

Reviewer Signature (or Designate) [Signature] Date: 1 Sept 2009
 Office: DOMO / OFO
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Chief of Staff					
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				Service Center Operations	X						

Reviewer Signature (or Designate) _____ **Date:** _____

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Check one:

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Executive Secretariat					
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Director					