U.S. Citizenship and Immigration Services

AILA InfoNet Doc. No. 13012453. (Posted 2/7/13)

Overview

- This presentation will cover three different types of humanitarian benefits related to the I-130, Petition for Alien Relative.
  - Conversion to I-360 for Surviving Spouses
  - Section 204(l) of the Immigration and Nationality Act
  - Humanitarian Reinstatement

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Conversion to I-360 for Surviving Spouses

U.S. Citizenship and Immigration Services

Background of 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.

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Background of I-360 Conversion (Cont'd)

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

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Who Can Receive I-360 Conversion Benefits?

- The surviving spouse, if:
  - The deceased was a U.S. citizen,
  - The deceased spouse had already filed Form I-130 on behalf of the surviving spouse,
  - The marriage to the citizen was bona fide,
  - The surviving spouse and citizen were not legally separated at the time of death, and
  - The surviving spouse has not remarried.

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Who Can Receive I-360 Conversion Benefits? (Cont'd)

- Children of widows/widowers are eligible for derivative classification.
  - They can be included in the approved I-360 and follow to join the principal.

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Who Can Receive I-360 Conversion Benefits? (Cont'd)

- When the widow/er's approved or pending I-130 converts to an approved or pending I-360, the children are included, regardless of whether the U.S. citizen step-parent had filed separate petitions for them.
  - If the children are able to adjust based on the I-360, any previously submitted I-130, in their behalf, will be terminated.

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How is I-360 Conversion Requested?

- Conversion need not be requested, as it occurs automatically for both pending and approved I-130 petitions.
- The beneficiary does, however, need to inform USCIS of the petitioner's death, and provide a death certificate.

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Other Ways to Obtain Widow/Widower Classification via Form I-360

If the surviving spouse did not have a pending or approved I-130 on file when the U.S. citizen spouse died, he/she may file Form I-360 in the following situations, if:

- A spousal I-130 was denied before 10/28/09
  - Form I-360 must be filed on or before 10/28/11
- A spousal I-130 was never filed and the citizen's death occurred <u>before</u> 10/28/09
  - Form I-360 must be filed on or before 10/28/11

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Other Ways to Obtain Widow/Widower Classification via Form I-360 (Cont'd)

- A spousal I-130 was never filed and the citizen's death occurred on or after 10/28/09
  - Form I-360 must be filed within two years of the citizen's death
  - Surviving spouses should file Form I-360 with the appropriate Lockbox, as designated on that form's instructions.

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Service Centers' Decision and Notification

- When an I-130 is with Service Center Operations (SCOPS) and is converted to Form I-360:
  - Service Centers will send the beneficiary a written decision notifying him/her of the conversion.
- If not eligible for conversion:
  - The I-130 will be denied/revoked and a notice of the decision will be sent to the beneficiary stating the reason(s) for denial/revocation.

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Section 204(l)

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Background of 204(l)

- Section 568(d) of the FY 10 DHS Appropriations Act created INA section 204(l) to provide benefits to other surviving relatives, including the spouses of deceased lawful permanent residents.
  - For family-based petitions, INA 204(l) covers principal and derivative beneficiaries.
  - It also covers the adjustment application (IF eligible to adjust) and related applications.

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Who Can Receive Benefits Under 204(l)?

- This law was enacted on October 28, 2009 and applies to any petition adjudicated on or after that date - even if the case was filed before that date.
- While eligibility for relief under 204(l) is not limited to I-130 cases, this presentation will focus on I-130 cases.

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

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

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

- Further, to qualify for 204(l) benefits, the surviving beneficiary must:
  - Have resided in the U.S. when the qualifying relative (petitioner or principal beneficiary) died; and
  - Continue to reside in the United States on the date of the decision on the pending petition or application.
- If one derivative beneficiary meets the residence requirements, the petition can be approved/reinstated which means the remaining derivative beneficiaries also obtain the benefit.
- A Form I-864, filed by an eligible substitute sponsor, may be required for most family-based petitions.

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

- All other I-130 eligibility requirements must be met through the submission of all required regulatory documentation.
- Beneficiary must have a qualifying relative willing to act as the substitute sponsor on Form I-864, Affidavit of Support
- No fee is necessary.
- No official form exists.

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Qualifying Relative

- Spouse,
- Parent,
- Mother-in-law or father-in-law,
- Sibling,
- Child who is at least 18 years of age, son or daughter,
- Son-in-law or daughter-in-law,
- Sister-in-law or brother-in-law,
- Grandparent
- Grandchild
- Legal Guardian

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Qualifying Relative, cont.

- Must be a United States Citizen, National or Lawful Permanent Resident
- 18 years of age or older
- Domiciled in any state of the US, District Columbia or any US territory/possession
- Must demonstrate the means to maintain annual income at least 125% of Federal Poverty Line
  - Form I-864 is not adjudicated until the beneficiary is undergoing the visa issuance or adjustment of status process

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How is 204(l) Requested?

- For pending petitions:
  - Send your request for 204(l) consideration, accompanied by the death certificate and evidence of qualifying U.S. residence, to the office that has the relative petition.
- For approved petitions where USCIS has not sent a notice of automatic revocation:
  - Send request to the USCIS office that approved the I-130 OR to the USCIS office with jurisdiction of a pending I-485.

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

- For petitions that were denied or where USCIS sent a notice of automatic revocation, 204(l) eligibility 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 fee, or fee waiver request.
    - Motion should be accompanied by the death certificate and evidence of qualifying U.S. residence.
    - The motion should be filed with the appropriate Lockbox

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

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

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Service Centers' Decision and Notification

- 204(l) determinations on pending petitions, or approvals returned from the Department of State:
  - When 204(l) eligibility is established:
    - Service Centers will send the beneficiary an electronically-generated approval/reaffirmation notice.
  - If 204(l) eligibility is not established:
    - The I-130 will be denied/revoked and a notice of decision will be sent to the beneficiary that discusses the reason(s) for denial/revocation.

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Questions?

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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 ***family-based*** petitions are eligible for consideration
- USCIS determines whether to exercise discretion on a case-by-case basis, given the humanitarian considerations of the particular case

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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 entitled to accompany or follow to join principal beneficiary

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How to Apply?

- Principal beneficiary makes request
  - No official form
  - Letter of request and supporting documentation is sent to the USCIS office that rendered the most recent decision
- Beneficiary must have a qualifying relative willing to act as the substitute sponsor on Form I-864, Affidavit of Support
- No fee
- Request may be submitted at any time

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Relatives Eligible to be Substitute Sponsors for Form I-864

- Spouse,
- Parent,
- Mother-in-law or father-in-law,
- Sibling,
- Child who is at least 18 years of age, son or daughter,
- Son-in-law or daughter-in-law,
- Sister-in-law or brother-in-law,
- Grandparent
- Grandchild
- Legal Guardian

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Substitute Sponsors (Cont'd)

- Must be a United States Citizen, National or Lawful Permanent Resident
- 18 years of age or older
- Domiciled in any state of the US, District Columbia or any US territory/possession
- Must demonstrate the means to maintain annual income at least 125% of Federal Poverty Line
  - Form I-864 is not adjudicated until the beneficiary is undergoing the visa issuance or adjustment of status process

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What to Submit

- Required letter from the Beneficiary requesting reinstatement describing the reasons for the request
- Evidence of substitute sponsor's status in the US
- Form I-864 (must contain original signature of substitute sponsor)
- Evidence to support humanitarian reason for request

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Helpful Documentation

- Evidence of relationship with substitute sponsor
- Death certificate of the petitioner
- Copy of approval notice (Form I-797)
- Any correspondence received from the Department of State

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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 alien.

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Processing Requests

- No standard processing time
- Expedited handling may be requested and is held to the same standards as any pending application/petition
- If a favorable decision is made,
  - Approval is reinstated and reaffirmed
  - Petition is forwarded back 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 unfavorable decision is rendered,
  - Petition remains revoked
  - Notice 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
  - Decision cannot be appealed
  - Motion to reconsider may be filed with fee

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Who Is Not Eligible for Humanitarian Reinstatement under INA 205?

- Principal, family-based beneficiaries are not eligible if the petitioner's death occurred before the petition was approved
  - Such beneficiaries may seek benefits under 204(l) if they meet the residence requirements
- Derivative beneficiaries, regardless of when the petitioner or principal beneficiary passed away and regardless of the place of residence at the time of death.
  - A derivative may seek benefits under 204(l) when the principal passed away if they meet the residence requirements

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What are the Differences Between INA 204(l) and 8 CFR 205.1 Reinstatement?

- **INA 204(l) provides for reinstatement on:**
  - Pending and approved petitions
  - Family-based principal and derivative beneficiaries

Please Note: INA 204(l) requires the principal/ derivative beneficiary to be residing in the U.S. when the qualifying relative died.

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What are the Differences Between INA 204(l) and 8 CFR 205.1 Reinstatement? (Cont'd)

- **8 CFR 205.1 provides for reinstatement on:**
  - Family-based petitions that were approved while the petitioner was alive, but approval was revoked automatically when the petitioner died, regardless of where the beneficiary was residing.

- **8 CFR 205.1 does not cover:**
  - Any *pending* family-based petitions
  - Derivative beneficiaries (if the principal beneficiary died)

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When are INA 204(l) and 8 CFR 205.1 Available?

- **Both the 204(l) and 205.1 options are available on family-based cases where:**
  - Surviving relative is the principal beneficiary;
  - Petition was already approved when the petitioner died; and
  - Principal beneficiary resided in the U.S. when the petitioner died.
- Unless exempt under 8 CFR 213a.2(a)(2)(ii), a legally binding I-864 will be required from an eligible substitute sponsor.

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Only INA 204(l) is Available …

- **Only the 204(l) option is available if the:**
  - Surviving relative is the derivative beneficiary; and/or
  - Petition was pending or approved when the petitioner died.

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Only 8 CFR 205.1 is Available …

- **Only the 8 CFR 205.1 option is available if the:**
  - Surviving relative is the principal beneficiary of a family-based petition
  - The petition was approved when the petitioner died.
  - The surviving relative was not residing in the U.S. when the petitioner died.

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Customer Service and Public Engagement Directorate
Washington, DC 20529-2260

U.S. Citizenship and Immigration Services

Teleconference Invitation

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Approval of Petitions and Applications after the Death of a Qualifying Relative
Thursday, February 7, 2013 @ 2:00 pm (Eastern)

The U.S. Citizenship and Immigration Services (USCIS) Public Engagement Division invites interested individuals to participate in a stakeholder engagement on **Thursday, February 7 from 2:00 to 4:00 p.m. (Eastern)**.

USCIS previously published policy guidance on the adjudication of petitions and applications after the death of a qualifying relative, in accordance with Section 204(l) of the Immigration and Nationality Act. During the engagement, subject matter experts will outline key provisions of the policy memorandum and address stakeholders' questions and concerns.

To Participate in the Session
To register, please email the Public Engagement Division no later than **Wednesday, February 6** at Public.Engagement@uscis.dhs.gov and reference "Qualifying Relative" in the subject line of your email**.** Please also include your full name and the organization you represent in the body of the email.

To Join the Session
On the day of the engagement, please use the information below to join the session. We recommend calling in at least 10 minutes before the start of the teleconference.

Call-in Number: 800-779-9654
Passcode: Relative

We look forward to engaging with you!