A Music City Miracle: Your Client Has Received Asylum or Withholding of Removal, Now What?

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Asylee Family Reunification via the I-730 Petition

- Refugee following to join provisions are at INA §207(c)(2)
- Asylee following to join provisions are at INA §208(b)(3)
- Both provide for reunification benefits for the spouse and unmarried children, under 21, of a principal applicant refugee/asylee.

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Spouse:

- The validity of a marriage is determined by the law of the place where it is contracted or celebrated and if it is valid there, it is valid everywhere. *Matter of H.*, 9 I&N Dec. 640 (BIA 1962). An exception is made when the marriage is contrary to U.S. public policy.
- Don't give up on "cultural" and/or "ceremonial" marriages—if civil registration is not required in the country where marriage occurred, the marriage may be lawful despite this apparent deficiency.

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CSPA Age-Out Protection for I-730 Beneficiaries

- CSPA protects derivative children from age-out if child was under 21 on the date that the PA applied for asylum.
- INA §208(b)(3)(B) [child] who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 209(b)(3), <u>if the alien attained 21 years of age after such application was filed but while it was pending.</u>

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The Principal Applicant Requirement

- Only the principal applicant (PA) refugee/asylee is eligible to file for following-to-join benefits for his/her derivative spouse and children.
- PA status is not always evident, so make sure the petitioner IS in fact the PA before filing I-730's on behalf of a spouse or child. (For asylees, form I-589 should tell you.)

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How to Tell if a Refugee is a Principal

<u>Refugees: Pre-Arrival Documents</u>

- I-590 "Application for Classification as a Refugee" – RE-1, RE-2 or RE-3
  - Currently, refugees do not receive copy of their approved form I-590. It can only be obtained through FOIA request.

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How to Tell if a Refugee is a Principal

- BEWARE!
- Ports of entry at JFK, LAX use "207(c)(2)" stamp erroneously on PA refugees, making them appear to be derivatives.

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The Two-Year Filing Deadline

- 8 CFR §208.21(c) –(d) A separate Form I-730 for each qualifying family member must be filed before February 28, 2000, or within 2 years of the date in which the asylee was granted asylum status, whichever is later, unless the service determines that the filing period should be extended for humanitarian reasons.

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Exception to Deadline

- Requirement: evidence of "humanitarian" reasons why petitioner could not file application:
  - Ineffective assistance of counsel.
  - Beneficiary was missing or believed dead during the eligibility period.
  - Good faith effort to file by petitioner.
  - Illiterate petitioner, no access to legal services providers.

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Beware! If your best evidence is "crappy"

- I-730s generate ferocious RFEs for a number of reasons:
  - PA asylee often fled home country without stopping to make copies of civil documentation,
  - Derivative spouses and children are often stuck in the country of the PA's persecution, making it risky to event attempt to get required documentation.

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Common Evidentiary Hurdles

1) Lack of civil documentation
2) Late-issued documentation
3) Non-disclosure of relative on prior application
4) Proof of parent/child relationship
5) Humanitarian extension

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Quick Hypo:

- RFE issued in the case of a petitioning mother for her out of wedlock child who has not subsequently been legitimated.
- RFE says, "You must comply with the following in order to establish that a *bona fide parent/child relationship* existed between you and the beneficiary prior to the beneficiary's 21st birth date. Please furnish any and all documentation you have to demonstrate that such a relationship exists or existed."

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Wake Up!

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Nifty Anomalous Things About I-730s

- Under 8 CFR §208.21(c) a derivative spouse or child can benefit from an I-730 as an in-country beneficiary even if h/she EWI'd
- LPR who was formerly a refugee/asylee can still file an I-730 after they adjust status
- Dead petitioner memo makes it possible for derivatives in some cases to benefit even after death of petitioner.

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Effect of Death of the Petitioner:

- Memo of 12/16/2010 allows for approval of I-730 for derivative refugees and asylees ONLY IF beneficiary is already in country and petition is pending at time of death.
- 9 FAM Appendix O: Tells consular officers to consider granting P-1 status or humanitarian parole to would-be beneficiaries of deceased petitioner.

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If I-730 Not an Option Consider Humanitarian Parole:

- Humanitarian Parole is a good option in cases where the no-derivative-derivatives rule applies, or where there are other emergent issues necessitating expedite.

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Visa-92 Consular Processing

Turn this…

Into this!

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Who Does What?: An Overview

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V-92/93 Pilot Project

- Implemented March 31st, 2011 in 5 countries:
  - Cameroon
  - Ethiopia
  - Haiti
  - India
  - Guatemala
  - Recently added Uzbekistan (October 2011)
- Implicates the NVC more in the process
- Once I-730 arrives at NVC, NVC sends request for original documents (photographs, birth/marriage certificates)
- If no original docs exist, NVC should forward petition on in 45 days

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"Tangled Patchwork of Agencies": An Overview of the System

- Who is in charge of processing the case once the I-730 is approved?
  - U.S. State Dept. via consulates & embassies
  - USCIS International Offices
  - International Organization for Migration (IOM)
  - V-93/V-92 Pilot Project: National Visa Center

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Rules and Regulations of V-92/93 Processing

- 9 Foreign Affairs Manual Appendix O
  - § 700 for V-93 Processing (Refugees)
  - § 1200 for V-92 Processing (Asylees)
- 9 FAM: Consular Officer's Bible
- Extremely helpful in guiding you through the steps of the process, plus, can be used to educate consular officers who erroneously insist on adhering to I-130 type consular processes.

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Consular Advocacy: What to Expect for the Interview

- Some consulates request forms to be filled out
  - I-590 Application for Refugee Status
  - G-325 C Biographical Information
  - G-646 Inadmissibility Questions
  - I-765 Employment Authorization Document
- Consular officers look for:
  - Verification of identity
  - Confirmation of relationship to petitioner
  - INA 212 Inadmissibility problems
- Interviews last 5-15 minutes

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Interview Tips and Tricks

- GET A PERSONAL EMAIL WHERE POSSIBLE
  - Faster responses
  - More competent personnel
  - Personal touch
- Refer to FAM and Reciprocity Table if evidentiary issues arise
  - Police certificate, etc.

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Adjustment of Status

- Means by which an asylee or refugee obtains permanent residence without leaving the U.S.
- Must be physically present in U.S. for at least one year from date of asylum grant
- Must meet the definition of refugee or be spouse/child of refugee; not be firmly resettled; and be admissible

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Procedure for Adjustments

- USCIS Service Centers adjudicate adjustments
- Exclusive procedures are found at 8 CFR §209.2
- Filing Fee: No fee for refugee adjustments; filing fee is $1070 (including biometrics) for asylees but can request fee waiver with Form I-912

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Adjustments: Documents

- I-485; G-325A for applicants between ages 14 -79
- Medical Exam Form I-693
- Photographs
- Proof of Asylee Status (I-94; IJ Order; or Asylum Office Grant Letter)

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Check Before You File

- Review record to identify any inadmissibility grounds and review in particular for potential TRIG issues
- Review record with client to identify any errors in record (the devil lurks in the details)

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Trouble for Derivatives and the *Nunc Pro Tunc* Solution

- Spouse
  - ceases being derivative when principal spouse dies, divorces, or naturalizes
- Child
  - ceases being derivative when principal dies or naturalizes
- Nunc Pro Tunc grant must be obtained prior to adjustment

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Applying for Asylum *Nunc Pro Tunc*

- File I-589 with request for *Nunc Pro Tunc* grant with asylum office having jurisdiction over applicant's residence
- Why bother? USCIS will not adjust asylee who has ceased to qualify as derivative; client faces denial and loss of fees paid

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Ground of Inadmissibility

- INA §209(c) exempts refugees and asylees from the following inadmissibility grounds:
  - §212(a)(4) public charge
  - §212(a)(5)(A), (B) & (C) labor certification, unqualified physicians, uncertified health care workers
  - §212(a)(7)(A)(i) immigrant documentary requirements
  - §212(e) foreign residence requirements

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Grounds of Inadmissibility

- INA §209(c) waives most grounds of inadmissibility, except for the following:
  - §212(a)(2)(c) controlled substance traffickers;
  - §212(a)(3)(A) spies, saboteurs and overthrowers
  - §212(a)(3)(B) terrorist activities
  - §212(a)(3)(C) potentially serious adverse foreign policy consequences
  - §212(a)(3)(E) Nazi persecutors, participators in genocide, torturers

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Why We Love The 209(c) Waiver

- All other grounds not mentioned above can be waived *"for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest."*
- The waiver is not without limit, as violent or dangerous crimes may not be waived as matter of discretion, *Matter of Jean,* 23 I&N Dec. 373 (A.G. 2002)
- Waiver Form: Submit Form I-602 with the I-485

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Travel While Adjustment Pending and After LPR Grant

- Refugee Travel Document = danger, danger!
  - Risks of returning to home country
- INA §208(c)(2) lists reasons asylum can be terminated. Return home may be relevant to termination analysis. Note that an alien's underlying asylum status can be terminated if the alien is an LPR.

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Decisions on Adjustments

- When is interview required?
- Approval codes: AS6 – principal; AS7 – derivative spouse; AS8 - derivative child
- Cases in Limbo/Who ya gonna call?
  - Texas: asylumtsc@uscis.dhs.gov;
  - Nebraska: ncscfollowup.nsc@dhs.gov

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The TRIG Black Hole

- Whether to seek adjudication
- Is your client a terrorist? Time to review INA §212(a)(3)(B)
- TRIG Inquiries: scopsscata@dhs.gov with "TRIG Inquiry" in subject header. See AILA/NSC Liaison Practice Pointer: TRIG I-485 and I-730 Inquiries (posted at AILA InfoNet Doc. No. 11031667).

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Distinctions Between Refugee-Based and Asylum Based AOS

- Asylees must pay the USCIS filing fee whereas refugees are fee exempt.
- Asylee "resident since" date is backdated one year prior to the I-485 approval date whereas refugee "resident since" date is backdated to their arrival date in the U.S.
- After INA §207 admission, refugees maintain derivative status even if they no longer meet the def. of spouse/child with respect to the PA refugee, whereas asylees may lose their derivative status and must do *Nunc Pro Tunc* before adjusting.

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§241(b)(3) Withholding and CAT Relief

- The good news: can apply for employment authorization.
- Hope for the future: marriage to a wonderful U.S. citizen. Can alien adjust under INA §245(a)?
- The bad news: cannot travel, cannot obtain status for family members, cannot adjust status.

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Questions & Answers

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