



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

May 13, 2024

Ur Jaddou  
Director  
Department of Homeland Security  
U.S. Citizenship and Immigration Services  
5900 Capital Gateway Drive  
Camp Springs, MD 20588

Submitted via e-mail: [policyfeedback@uscis.dhs.gov](mailto:policyfeedback@uscis.dhs.gov)

**RE: USCIS Policy Manual, Volume 6: Immigrants, Part I, Family-Based Conditional Permanent Residents, Chapters 1, 2, 3 (additions), 4, 5, 6, and 7.**

Dear Director Jaddou:

The American Immigration Lawyers Association (AILA) submits the following feedback in response to updated USCIS policy guidance regarding interview waiver criteria in Petition to Remove Conditions on Residence (I-751), found in Volume 6: Immigrants, Part I, Family-Based Conditional Permanent Residents, Chapter 1 - 7, Petition to Remove Conditions on Residence of the USCIS Policy Manual as announced in a Policy Alert dated December 12, 2023 (“Policy Alert”).<sup>1</sup>

AILA is a voluntary bar association of nearly 17,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to provide comments to USCIS relating to its recent updates to Volume 6, Part I, USCIS Policy Manual to Petition to Remove Conditions on Residence (I-751). We believe that our collective expertise and experience make us particularly well-qualified to offer views that will benefit the public and the government.

**A. AILA Comments on USCIS Policy Manual**

AILA submits the following comments to commend the Agency’s proposed sections related to the Petition to Remove Conditions on Residence (I-751). AILA appreciates that the Agency’s update

---

<sup>1</sup> See *Family-Based Conditional Permanent Residents*, U.S.CITIZENSHIP & IMMIGRATION SERV., PA-2023-33 (December 12, 2023), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20231212-Family-BasedCPRs.pdf>.

**AILA National Office**  
1331 G Street NW, Suite 300, Washington, DC 20005  
Phone: 202.507.7600 | Fax: 202.783.7853 | [www.aila.org](http://www.aila.org)

is a release of guidance related to all parts of the I-751 process. Previously, USCIS had only updated the interview waiver criteria found in Chapter 3 in 2022.<sup>2</sup> Officers and the public will now have additional guidance on complex issues involving the filing and adjudication of I-751 Petitions. AILA previously provided the Agency with detailed comments on the 2022 update.<sup>3</sup>

We hope, in some small part, this guidance will help reduce the currently extensive delays in the adjudication of these petitions and thus positively impact other benefits requests being interviewed at USCIS Field Offices. In 2022, AILA hoped that the expanded waiver criteria would reduce the backlog of adjudications in these cases. However, USCIS historical processing times report that these wait times have actually increased from 18.2 months in FY 22 to 25.2 months in FY 24.<sup>4</sup> AILA remains concerned about the lengthy wait times on adjudications of these petitions. We encourage USCIS to take as many steps as possible to address backlogs with Form I-751 cases. Backlogs on these cases, as we outlined in our 2022 comments, continue to impact conditional permanent residents (CPRs) and their families, including:

- Confusion on issues of eligibility and processing for naturalization.
- Increasing the need to amend a petition or file a new petition when there is a change to the filing status during the pendency of a case, including waiver requests.
- Increased need for I-551 (ADIT) stamps and requests for Infopass appointments at local Field Offices.
- Concerns for CPRs traveling abroad. This includes CPRs who need to apply for Re-Entry Permits and receive the full two years of Permit validity.

USCIS has only partially addressed these delays, including expanding the automatic extension period after card expiration in the last few years from 18 (2018), to 24 months (2021)<sup>5</sup>, and, most recently, 48 months (2023).<sup>6</sup> We note that this is a 300% increase from the prior long-standing 12-

---

<sup>2</sup> See *Interview Waiver Criteria for Family-Based Conditional Permanent Residents*, U.S. CITIZENSHIP & IMMIGRATION SERV., PA-2022-13 (April 07, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220407-Family-BasedCPRInterviewWaiver.pdf>.

<sup>3</sup> “Policy Manual Comment on I-751 Interview Waivers,” AILA Doc. No. 22051203, May 11, 2022, <https://www.aila.org/library/policy-manual-comment-on-i-751-interview>.

<sup>4</sup> See *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year* at <https://egov.uscis.gov/processing-times/historic-pt>.

<sup>5</sup> See *USCIS Extends Evidence of Status for Conditional Permanent Residents to 24 Months with Pending Form I-751 or Form I-829*, U.S. CITIZENSHIP & IMMIGRATION SERV., (Sept. 03, 2021) <https://www.uscis.gov/newsroom/alerts/uscis-extends-evidence-of-status-for-conditional-permanent-residents-to-24-months-with-pending-form>.

<sup>6</sup> See *USCIS Extends Green Card Validity for Conditional Permanent Residents with a Pending Form I-751 or Form I-829*, S. CITIZENSHIP & IMMIGRATION SERV., (January 23, 2023), <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-for-conditional-permanent-residents-with-a-pending-form-i-751-or>.

month extension previously granted.<sup>7</sup> While it reflects that the Agency is trying to alleviate the need for I-551 stamps, it is also an implicit acknowledgement of the significant adjudication delays for these petitions.<sup>8</sup> Furthermore, USCIS, with the USCIS Ombudsman, previously clarified on October 7, 2020, issues of concurrent adjudications of I-751 and N-400, Application for Naturalization.<sup>9</sup> However, these ameliorative actions do not alleviate the critical need for the timely processing of these petitions.

### **B. AILA Commends Steps to Provide Clarification on Joint filings, Individual Filing Requests, Waivers, and Changes to Filing Status after a Case is Filed.**

USCIS has addressed some of the complexities that have been raised in Form I-751 adjudications related to filing type and changes to that filing type while a petition is still pending. The guidance provides needed clarity on a sometimes-confusing part of Form I-751 petitions. It is not uncommon, especially given the length of adjudication of these petitions, for the filing status of a petition to require amendment before adjudication.

We find the overall guidance helpful in addressing the most common situations in which a Form I-751 is pending and the filing needs to be amended. However, the guidance related to a pending marriage termination seems both potentially confusing and problematic.

In most cases, the current I-751 may be amended (adding, changing, or removing information) by providing notification to USCIS in writing to the USCIS Service Center or Office that most recently was known to be adjudicating the case or during a scheduled interview with the opportunity to provide additional evidence.<sup>10</sup> The one noted exception in Chapter 5 relates to when cases involving changes to, or from, a filing basis involving battery or extreme cruelty. In the case of withdrawing a waiver based on battery or extreme cruelty, the petitioner must take three steps: 1) make a written request to USCIS; 2) attend an in-person interview; and 3) file a new Form I-751 with the appropriate fee or fee waiver jointly with the spouse or stepparent.<sup>11</sup>

---

<sup>7</sup> *Update to Form I-797 Receipt Notices for Form I-751 and Form I-829*, U.S. CITIZENSHIP & IMMIGRATION SERV., (June 12, 2018), <https://www.uscis.gov/archive/update-to-form-i-797-receipt-notices-for-form-i-751-and-form-i-829>.

<sup>8</sup> AILA has taken note that USCIS has provided no cycle time processing goals for I-751 adjudications and we believe that doing so may help to address concerns related to the processing times for I—751. *See Reducing Processing Backlogs*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://egov.uscis.gov/processing-times/reducing-processing-backlogs> (last accessed May1, 2024).

<sup>9</sup> “USCIS’ Processing of Concurrently Pending Forms N-400 and Forms I-751,” U.S. DEPT HOMELAND SECURITY, (December 01, 2020), <https://www.dhs.gov/publication/uscis-processing-concurrently-pending-forms-n-400-and-forms-i-751>.

<sup>10</sup> *See* “Changing or Supplementing the Filing Basis,” *USCIS Policy Manual*, Vol. 6, Part I, Ch. 5, January 24, 2024, <https://www.uscis.gov/policy-manual/volume-6-part-i-chapter-5>.

<sup>11</sup> *Id.*

As the Form I-751 is not currently filed online, the Policy Manual did not address using USCIS accounts to update this information. Still, we hope that USCIS will consider providing updated guidance on these amendments when the ability to use USCIS accounts does occur.

Despite the general helpfulness of this guidance, our members' concern about this process is similar to any amendments that would be filed in connection with a benefit request. In the Agency's mostly paper-based system, there is concern about whether the amendment would be matched up to the Form I-751 Petition and also the speed at which such filing is updated. We note that the petitioner or their attorney frequently may only have the last known location of a filing which may have subsequently been transferred to a different service center or field office, with, in some cases, these parties not being made aware. Thus, this process may take several months, leaving petitioners with little acknowledgment that USCIS received the request discussed in this updated guidance. The potential for such an update to be sent through an online account would significantly alleviate concerns about whether the notification was received and reviewed. In the alternative, or as an adjunct to an online filing option, we recommend that USCIS provide a dedicated email and/or physical address for petitioners to file amendments.

### **C. AILA Recommends Further Clarifying Guidance Related to a Pending Divorce or Separation**

While AILA commends the Agency for much of the guidance about filing status and amendments, AILA strongly believes that the Agency should be more precise and careful with respect to its regulatory and statutory authority related to guidance covering when a marriage termination is not final while a Form I-751 petition is pending. A waiver of the joint filing requirement is only authorized when the marriage was entered into in good faith, the marriage has been terminated based on divorce or annulment, and the conditional permanent resident was not at fault for failure to timely file the Form I-751.<sup>12</sup>

The Policy Manual did provide some helpful guidance as to the "fault requirement," indicating:

*While there is no binding legal guidance on how to apply the "at fault" requirement, it has not been interpreted to mean that the CPR is at fault for the terminated marriage. Therefore, it does not matter if the CPR left the marriage or initiated divorce proceedings. The CPR does not need to establish that the CPR is not at fault for the terminated marriage.<sup>13</sup>*

---

<sup>12</sup> INA §216(c)(4)(B). See also *Immigration and Naturalization Service Memorandum*, "Filing a Waiver of the Joint Filing Requirement Prior to Final Termination of the Marriage," U.S. CITIZENSHIP & IMMIGRATION SERV., April 10, 2003.

<sup>13</sup> "Good Faith Marriage (Divorce)," *USCIS Policy Manual*, Vol. 6, Part I, Ch. 5, January 24, 2024, <https://www.uscis.gov/policy-manual/volume-6-part-i-chapter-5>.

We appreciate that the requirement of a legal termination being final for a waiver eligibility creates complexity in adjudications for the Agency and CPRs with several different permutations of situations that could occur. However, absent regulatory authority, AILA recommends that the Agency review its guidance to simplify it where possible around a pending termination of the marriage or separation of the couple, including considering revising the notification requirement of a pending termination or separation.

The Code of Federal Regulations (CFR) has not elaborated in detail on this issue. The CFR states that a waiver may be granted when the conditional permanent resident establishes: “The marriage upon which his or her status was based was entered into in good faith by the conditional resident alien, but the marriage was terminated other than by death, and the conditional resident was not at fault in failing to file a timely petition...”<sup>14</sup> The CFR does not provide guidance related to pending terminations.<sup>15</sup> Likewise, USCIS’s Form I-751 and its instructions only discuss when there is a final termination due to divorce or annulment.<sup>16</sup>

USCIS previously released guidance on this issue in the July 2009 memorandum by Donald Neufeld entitled, “I-751 Filed Prior to Termination of Marriage” (“Neufeld I-751 Memo”).<sup>17</sup> The Policy Manual does not cite this guidance in footnotes but does appear to continue to build on it. The Neufeld I-751 Memo addressed two situations:

- An I-751 is filed with a waiver request post-separation but prior to final marriage termination; and,
- If joint I-751 is filed post-separation but prior to final marriage termination.<sup>18</sup>

In the situation in which a Form I-751 is filed with a waiver request, the Neufeld I-751 Memo indicated that, when a Form I-751 petition is filed with a waiver request, and the marriage termination is not final, the Agency should issue a Request for Evidence (RFE) for the finalized marriage termination with the maximum RFE period of 87 days (the maximum time allotted). If the RFE response establishes that the marriage termination is final, then USCIS should process the petition as a waiver request. However, if the divorce is not final within that period or no response to the RFE is received, the Neufeld I-751 Memo indicates that the Agency must deny the Form I-751 due to ineligibility for a waiver and then must issue “a Notice of Termination of Conditional

---

<sup>14</sup> 8 CFR §216.5(a)(1).

<sup>15</sup> 8 CFR §216.5(e)(2).

<sup>16</sup> See “Form I-751” and “Instructions for Form I-751” (Edition Date: December 12, 2019), U.S.CITIZENSHIP &IMMIGRATION SERV., January 30, 2024, <https://www.uscis.gov/i-751>.

<sup>17</sup> “I-751 Filed Prior to Termination of Marriage,” U.S. CITIZENSHIP &IMMIGRATION SERV., July 21, 2009, AILA Doc. No. 09072166.

<sup>18</sup> *Id.*

Resident Status. The [adjudicating officer] then refers the case through the proper chain of command for issuance of a Notice to Appear (NTA).”<sup>19</sup>

In the second scenario referenced above, the Form I-751 is a jointly filed petition. After the filing, the Agency learns of a pending termination, at which time the officer should issue an RFE. The Policy Manual guidance indicates, consistent with the prior Neufeld I-751 Memo language, that, if the divorce is not final within that period or no response to the RFE is received, the Agency should “assess evidence of the bona fides of the marriage to determine whether the petition should be approved, denied, or relocated to a Field Office for an in-person interview.”<sup>20</sup> This guidance, as continued in the Policy Manual, specifically notes that the Agency may not deny a petition solely because the spouses are separated and/or have initiated divorce or annulment proceedings.<sup>21</sup> We greatly appreciate that this guidance related to denials continues in the current Policy Manual.

Furthermore, in August 2009, stakeholders inquired about a variation of the second situation in the Neufeld I-751 Memo at a Vermont Service Center Stakeholder’s Meeting.<sup>22</sup> The Agency indicated:

*If clients filed a joint petition because they were married and living together at the time, but the situation changes while the application is pending, send a letter to VSC indicating the change in the parties’ status. State that you wish to convert to a waiver application or even if you do not wish to convert, let VSC know that the parties are no longer living together and/or will be filing for divorce. The application will then be processed accordingly.*<sup>23</sup>

The Policy Manual updates announced in the Policy Alert appear to go beyond the 2009 guidance, as well as the prior Chapter 25 of the Adjudicator’s Field Manual, to create a “duty” on the petitioner to notify the Agency of a pending divorce, separation, or annulment. AILA does believe that, when a final termination occurs while a Form I-751 is pending, that a petitioner should be required to notify USCIS and request joint filing waiver(s) as necessary, given there is then a material change to the filing. Also, if the Agency learns of a potential termination/separation during an interview, an address change, or withdrawal by the petitioning spouse<sup>24</sup> then there are reasonable lines of inquiry into the issue in the adjudication of the Form I-751.

---

<sup>19</sup> *Id.* at 1-2.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> See “Good Faith Marriage (Divorce),” *USCIS Policy Manual*, Vol. 6, Part I, Ch. 5, January 24, 2024, <https://www.uscis.gov/policy-manual/volume-6-part-i-chapter-5>.

<sup>22</sup> See “VSC Stakeholder Qs & As with Meeting Minutes,” U.S. CITIZENSHIP & IMMIGRATION SERV., August 20, 2009, AILA Doc. No. 09090265.

<sup>23</sup> *Id.* at Pg. 6.

<sup>24</sup> See “Withdrawals,” *USCIS Policy Manual*, Vol. 6, Part I, Ch. 6, January 24, 2024, <https://www.uscis.gov/policy-manual/volume-6-part-i-chapter-6>.



However, AILA believes that the creation of a duty to provide notice for all circumstances involving a pending divorce, separation or annulment is not supported by statute or regulation. Specifically, we are concerned by the Policy Manual provision stating the following:

“The CPR is also responsible for proactively notifying USCIS of a separation or pending or finalized divorce or annulment proceedings, even if no RFE is issued. In these instances, the CPR should contact the USCIS office that issued the receipt notice or most recent correspondence.”<sup>25</sup>

This section does not clarify the term “separation” as to whether it includes both legal and physical separation.<sup>26</sup> Legal separation will implicate a myriad of state or indeed foreign law considerations as to when a married couple is legally separated, assuming such provisions exist under applicable law. Physical separation is even more complicated as it does not generally involve legal processes as to how to define it.

AILA believes this Policy Manual guidance must provide clarification as to what type of separation requires a notification to the Agency. Jobs or family commitments could physically separate a spouse without any concerns related to the potential termination of the relationship. Furthermore, physical separation is not uncommon in many marriages and many times does not lead to a termination. Do spouses who live in the same house but sleep in separate rooms for a brief period need to notify USCIS? If a spouse stays with a relative for a few nights during a rough patch, do they have to notify USCIS? The scenarios that could be considered a separation are numerous and many would not implicate the validity of the marriage. Accordingly, we believe clarification is critically needed with respect to the scope of this notice requirement.

AILA believes that the Agency may have overstepped the statutory and regulatory requirements in creating a notification requirement for a pending (not yet final) divorce, annulment, or separation. There is no notification requirement in the statute or regulations. In reality, there are often situations in which a couple may separate or file for termination and then resume their marriage without a final termination ever occurring. Also, a separated couple may agree to continue with the jointly filed Form I-751 petition despite the separation, in the hopes of reconciling or settling a termination at a later point. Marriages are complex as relationships can, and often do, evolve in unpredictable and nonlinear ways, and it is important that USCIS’ Policy Manual reflects these realities.

---

<sup>25</sup> See “Good Faith Marriage (Divorce),” *USCIS Policy Manual*, Vol. 6, Part I, Ch. 5, January 24, 2024, <https://www.uscis.gov/policy-manual/volume-6-part-i-chapter-5>.

<sup>26</sup> See *Merriam-Webster Dictionary* defines separation in the context of marriage in a few ways: “cessation of cohabitation between a married couple by mutual agreement or judicial decree” and “cessation of cohabitation between a married couple by mutual agreement with intent that it be permanent.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/separation>.

Overall, we believe the updated Policy Manual guidance will be helpful to both Agency and the public. However, we recommend that USCIS critically review its guidance and provide needed clarification for situations involving a separation when the marriage may still be viable.

We appreciate the opportunity to comment on the revised Policy Manual guidance for Form I-751 and we look forward to a continuing dialogue with USCIS on this important matter.

Respectfully submitted,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION



