

USA PATRIOT Act Series No. 6 Relief for Visa Applicants Directly and Adversely Affected by the Events of September 11

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SUBJECT: USA PATRIOT Act Series: No. 6 Relief for Visa Applicants Directly and Adversely Affected by the Events of September 11

REF A: STATE 190946 REF B: STATE 032257

1. Summary: Several sections of the USA Patriot Act were designed to insure that certain aliens do not lose immigration benefits due to circumstances resulting from specified terrorist activity against the United States. Benefits for some DV 2001 visa holders have already been reported in Ref B. Additionally, the Act grants immigration benefits to some surviving spouses, children, and in some cases, parents, of U.S. citizens or LPRs killed or disabled on September 11, 2001. Finally, the Act automatically extends legal NIV status in the United States for some NIV holders. End Summary.

Definition of specified terrorist activity

2. Section 428 of the Patriot Act defines specified terrorist activity as any terrorist activity conducted against the government or people of the United States on September 11, 2001. This includes the attacks on the World Trade Center area and the Pentagon, as well as the crash of Flight 93 in Pennsylvania. It does not include the subsequent anthrax attacks or other previous or subsequent terrorist activities. New FAM note at 40.1, N12.

Relief for spouses/children/fiancés of U.S. citizens killed in the terrorist attacks of September 11, 2001 for whom IV petitions were filed

3. If the U.S. citizen had filed the I-130 or fiancé petition on or before September 11, 2001, the petition was of course nullified by the death of the U.S. citizen petitioner. However, under Section 421 of the Patriot Act, a surviving spouse, child, or fiancé may regain the chance to immigrate by self-petitioning for special immigrant (SI) status for him/herself.

4. How such beneficiaries apply: Surviving family members submit USCIS Form I-360 to the USCIS service center that has jurisdiction over the alien's place of residence. USCIS must approve the I-360 before overseas consular processing can begin. Applicants should be told to contact USCIS for detailed application procedures and requirements.

5. Overseas Consular Processing: NVC will relay USCIS approval of the I-360 to post which may then proceed with regular IV processing. Applicants must comply with the usual security checks, demonstrate evidence of relationships, and undergo the standard medical exam. However, no I-864 affidavit of support may be required as the Patriot Act specifically exempts applicants from the public charge ground of inadmissibility in Section 212(a)(4) of the INA. Issue the new SP immigrant visa to principal, fiancé and derivatives with an annotation issued under Sec. 421 Patriot Act. New FAM notes will be found at 42.32(d)(9),

N1-4.

Relief for spouses, children of U.S. citizens for whom no petitions were filed

6. If no petition was filed by the U.S. citizen for a spouse or a child, under Section 423 of the Patriot Act, the surviving spouse or child may file an I-130 petition on behalf of him/herself within two years of the death of the petitioner. To qualify, the spouse cannot have been legally separated from the deceased U.S. citizen at the time of his/her death, and the surviving spouse cannot remarry and continue to qualify under this provision.

7. However, a child of an U.S. citizen killed in the attacks for whom no petition was filed, continues to qualify as an immediate relative for 2 years after the death of the U.S. citizen in the attack regardless of the age or marital status of the child.

8. How such beneficiaries apply: Under Section 423, file I-130 petitions with either the USCIS office that has jurisdiction over the place of residence, or with the overseas consular post in which district the beneficiaries reside. Applicants must provide evidence that the U.S. citizen spouse or parent was killed in the attacks of September 11, as well as relationship to the deceased.

9. Consular processing: Applicants will be processed as IR1/IR2, even if the IR2 is 21 years or older. The usual NCIC, security checks, medical exam, as well as birth/death/divorce/marriage certificates are required. No I-864 affidavit of support is required. Applicants are exempt from the public charge inadmissibility of INA section 212(a)(4). Issue IR1 to spouses who qualify under Section 423. Issue IR2 to children/son or daughter who qualify under this section regardless of age or marital status. Annotate the IV issued under Sec 423 Patriot Act. New FAM notes at 42.21, N1.2 1.2-2.

No relief for fiancés of U.S. citizens for whom no petitions were filed

10. If the U.S. citizen filed no fiancé petition for a fiancé on or before September 11, 2001, that fiancé gains no immigration benefits under the Patriot Act.

Relief for spouses/children/sons/daughters of LPRs killed by the attacks of September 11 for whom petitions were filed

11. Surviving family members of an LPR who died as a result of the September 11 terrorist attacks for whom the LPR had filed I-130 immigration petitions on or before September 11, 2001, are given a choice as to how they might preserve immigration benefits for themselves.

12. Under Section 421, a spouse or child for whom a petition was filed but nullified by the death of the LPR petitioner may self-petition for special immigrant status. A derivative child must follow to join the principal applicant by September 11, 2003.

13. Alternatively, under Section 423(b), petitions for a spouse, child or unmarried adult son or daughter of an LPR, may remain valid indefinitely and may continue to be processed as if the LPR petitioner had not died. The beneficiary retains his/her priority date.

14. How beneficiaries apply: Under Sec 421, applicants file an I-360 petition with the USCIS office that has jurisdiction over their place of residence. Under Sec. 423(b), no new petition is required to retain the priority date already granted.

15. Consular Processing: Under Sec 421, standard IV processing once the approved I-360 petition is received from USCIS via NVC, except no I-864 is required and 212(a)(4) does not apply. Issue the new SP immigrant visa to both the spouse and derivatives with an annotation issued under Sec 421 Patriot Act. Under Sec 423, standard IV processing once the priority date becomes current and post receives from NVC the I-130 petition filed by the LPR on or before his/her death on September 11, 2001, except no I-864 is required and 212(a)(4) does not apply. Issue family second preference IVs, with an annotation issued under Sec 423 Patriot Act. As such petitions remain valid for years and are already in the pipeline, there will be no notation

on the I-130 petition to inform consular officers that the beneficiaries continue to qualify under the Patriot Act despite the death of the petitioner. This information would likely only come to a consular officer's attention during document collection and the IV interview. New FAM notes at 40.42 and 42.32(d)(9) N2.

Relief for Surviving spouses/children/adult sons and daughters of LPRs for whom no petitions were filed

16. If no family-based petition was filed for a surviving spouse, child or adult son or daughter of an LPR killed in the September 11 attacks, under Sec 423, they may file self-petitions using form I-130. They will be processed for an IV as if the LPR petitioner had not died as a result of 9/11. In addition to the usual documentary requirements, such petitioners and derivatives must demonstrate that they were present in the United States on September 11, 2001, that the LPR spouse or parent was killed as a result of the September 11 attacks, and that the LPR had LPR status on September 11, 2001.

17. How beneficiaries apply: File an I-130 with the USCIS office that has jurisdiction over place of residence. It is likely that any eligible beneficiaries are in the United States and will file at an USCIS office.

18. Consular Processing: Standard IV processing once an approved I-130 petition is received, no I-864 required, no 212(a)(4) ineligibility. Issue second preference IVs annotated issued under Sec 423 Patriot Act.

Grandparents of orphans of U.S. citizens or LPRs killed by the attacks of September 11

19. In an unusual move, the legislation allows parents of U.S. citizens, nationals, or LPRs who were killed in the September 11 attacks to immigrate as derivative family members under very limited circumstances, regardless of whether or not they were beneficiaries of any IV petitions filed by their sons or daughters. Section 421(b)(3) of the Patriot Act enables a grandparent of a child orphaned by the events of September 11 to self-petition USCIS using form I-360 for SI status, if the alien is the grandparent of a child, both of whose parents died in the terrorist attacks on September 11. To qualify, one of the child's deceased parents must have been an U.S. citizen or national, or an LPR.

20. According to USCIS, in addition to the usual requirements for documentary evidences, to qualify for this SI status, a grandparent must demonstrate that he/she has or will assume legal custody of the orphaned child in the United States before the child becomes 21 years old. Note that a spouse/child of a grandparent applying under this section may accompany or follow-to-join the principal applicant.

21. Consular Processing: Standard IV processing once an approved I-360 petition is received, no AOS requirement, no 212(a)(4) ineligibility applies, issue the new SP immigrant visas annotated issued under Sec 421(b)3. New FAM notes at 42.32(d)(9), N7.3-7.3-2.

Relief for principal aliens approved for labor certification and their derivative spouses and children

22. Under Section 421, a principal alien beneficiary of an approved labor certification that is revoked due to the disabling of the principal alien or the loss of his/her employment due to physical damage caused by the terrorist attacks of September 11 is eligible for SI status, as are his/her derivative spouse and children. A surviving spouse or child of a principal alien killed in the September 11 attacks remains eligible for SI status as if the PA had not died. The labor certification must have been filed on or before September 11, 2001. The relationship of a derivative spouse or child to the principal alien must have existed on September 10, 2001.

23. How beneficiaries apply: File I-360 with USCIS.

24. Consular Processing: Standard IV processing once the approved petition is received from USCIS, no I-864 requirement and no 212(a)(4) ineligibility. Issue the new SP visas annotated issued under Sec 421, Patriot Act. New FAM note 42.32(d)(9), N8.

Surviving spouses and children of employment-based immigrants killed in the September 11 terrorist attacks

25. Under Sec 423(c), a surviving spouse or child of an alien killed in the attacks of September 11 who was an employment-based LPR or had an employment-based I-485 pending, may continue to have his I-485 adjudicated as if the death had not occurred, provided the I-485 was filed on or before September 11, 2001. If the surviving spouse or child was not already in the United States on September 11 and was not already an applicant for an adjustment of status to that of the principal alien who died in the attacks, they are ineligible for relief under the Patriot Act. Such beneficiaries would apply to the USCIS office with jurisdiction over place of residence. No overseas consular processing is possible.

Approval of Petitions under the Patriot Act

26. I-360 and I-130 petitions processed by USCIS will be annotated to indicate approval under the specific section of the Patriot Act. Consular Officers must not apply either the I-864 AOS requirement or 212(a)(4) ineligibilities. Any I-130 petition approved by post should be similarly annotated.

27. Note that the I-360 petition for SI status allows for derivatives to be listed on the same petition, there is no need to file separate I-360 petitions for each surviving family member. FAM notes at 42.42.

Extension of NIV Status

28. Section 422 of the Patriot Act allows for automatic extension of NIV status for some aliens lawfully present in the United States in NIV status on September 10, 2001. This includes those aliens who were disabled in the terrorist attacks of September 11, 2001, or spouses and children of an alien who died or was disabled in those attacks, provided the relationship existed on September 10, 2001. All such extensions will be handled only by USCIS, and not by overseas consular officers.

29. NIV status may be extended to either the date such lawful NIV status otherwise would have terminated even though the principal applicant is deceased or no longer employed, or one year after the death or onset of disability of the principal alien due to the attacks of September 11, 2001, whichever is later.

30. For example, this would mean that derivatives of a principal alien who was in lawful NIV status on September 10 and who was killed or disabled in the attacks of September 11, would retain the NIV status they already had in the United States despite the death or disability of the principal applicant. Derivatives would be able to depart and reenter the United States with visas they already hold. The Patriot Act merely extends the legal NIV status that derivatives had already been granted on or before September 11, 2001. Consequently, derivatives who were not in lawful NIV status in the United States on September 10, 2001, cannot now obtain accompanying or follow-to-join status that they did not have before September 11, 2001.

Evidence of Death, Disability, Loss of Employment due to the terrorist attacks against the U.S. on September 11, 2001

31. Section 426 directs USCIS to establish evidentiary standards for purposes of adjudicating cases under the Patriot Act. New FAM notes will be found at 40.1, N12.1 - 12.5. USCIS has formulated the following:

32. Death: To demonstrate that a person was killed in the terrorist attacks against the United States on September 11, 2001, the following U.S. documents may be used:

- a. Official death certificate listing the date of death as on or after September 11, 2001, accompanied by other documents attributing the death to the attacks of September 11.
- b. Interim death certificate issued by the State of New York listing the date of death as on or after September 11, 2001.
- c. Flight records, for deceased passengers on one of the four planes used in the attacks.
- d. Public records listing the deceased as a victim of the September 11 attacks.

e. Other official or non-official documents.

33. Disability: a licensed medical doctor or licensed psychiatrist must provide U.S. documentation that the physical or mental impairment of the principal applicant meets the definition of the term disability in section 12102(a)(2) of the Americans with Disability Act. Disability is therein defined as a physical or mental impairment that substantially limits one or more of the major life activities of such individual.

34. Loss of employment: the following U.S. documents may be used to demonstrate loss of employment due to the physical damage to, or destruction of, a business, which directly resulted from the terrorist attacks of September 11, 2001.

a. letter from the employer.

b. official records indicating that the business was completely destroyed.

c. other documentation showing the complete destruction of the business.

35. The Patriot Act notes that if the principal alien is able to continue in the employ of the business at a different location, after destruction on September 11, such an alien is not considered to have lost employment as a result of the September 11 attacks.

Conclusion

36. This lengthy cable outlines processing for what is expected to be a very limited number of applicants. For assistance, contact your regional officer in VO/F/P by e-mail.

37. Minimize considered.

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