



U.S. Citizenship and Immigration Services

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(I) of the Immigration and Nationality Act
 - Humanitarian Reinstatement



Conversion to I-360 for Surviving Spouses



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AILA InfoNet Doc. No. 11081831. (Posted 9/27/11)

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.



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.



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.



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.



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.



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.



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 before 10/28/09
 - Form I-360 must be filed on or before 10/28/11



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.



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.



Questions?



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Section 204(I)



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Background of 204(1)

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



Who Can Receive Benefits Under 204(1)?

- 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(I) is not limited to I-130 cases, this presentation will focus on I-130 cases.



Who Can Receive Benefits Under 204(1)? (Cont'd)

- In the context of family-based petitions, the following surviving beneficiaries are potentially eligible for benefits under INA 204(I):
 - 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



Who Can Receive Benefits Under 204(1)? (Cont'd)

- Further, to qualify for 204(I) 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.



Who Can Receive Benefits Under 204(1)? (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.



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



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



How is 204(1) Requested?

- For pending petitions:
 - Send your request for 204(I) 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.



How is 204(1) Requested? (Cont'd)

- For petitions that were denied or where USCIS sent a notice of automatic revocation, 204(1) 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



How is 204(1) 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.



Service Centers' Decision and Notification

- 204(I) determinations on pending petitions, or approvals returned from the Department of State:
 - When 204(I) eligibility is established:
 - Service Centers will send the beneficiary an electronically-generated approval/reaffirmation notice.
 - If 204(I) 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.



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



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



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



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



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



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



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



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.



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



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(I) 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(I) when the principal passed away if they meet the residence requirements



What are the Differences Between INA 204(1) and 8 CFR 205.1 Reinstatement?

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

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



What are the Differences Between INA 204(1) 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)



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.



Only INA 204(1) is Available ...

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



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.



Questions?



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**USCIS Service Center Stakeholder Meeting
Humanitarian Reinstatement - September 27, 2011**

I-360 Conversion for Surviving Spouse

▪ **Questions**

- About notifying USCIS of death, if it is a consular processing case, do we notify USCIS wherever the case is? E.g. Consulate? NVC?
 - Answer: You should contact the NVC or consular post as a first step – whatever office has jurisdiction at the time of the event. The State Dept has made corresponding changes to the Foreign Affairs Manual to handle the automatic conversion process. 9 FAM 42.42 Note 5.1, A – B, effective 10/4/2010.

- Is there a memorandum between DOS and USCIS to allow for the I-130 to be converted to I-360 at the consulate?
 - Answer: It was USCIS' intent to have the consular post be able to handle the conversion to the I-360 instead of having the petition be sent back to USCIS for revocation and then conversion. This is why the FAM was amended to include 9 FAM 42.42 Note 5.1. It was recently brought to USCIS' attention that not all consulates are aware that they can do this automatic conversion at post.

- When the I-360 is initially filed after the death of spouse, is a psychological report helpful to show PTSD/emotional harm of the widow?
 - Answer: Question is confusing automatic conversion and VAWA. For automatic conversion, eligibility requirements are only based on the bona fides of the marriage and contingent upon not being legally separated when petitioner died and not remarrying.

- Question about need for substitute sponsor.
 - Answer: No need for a substitute sponsor for the I-864 with the automatic conversion I-360.

Section 204(l) of the Immigration and Nationality Act

▪ **Questions**

- If someone has an I-485 pending based on approved I-130, and during the I-485 adjudication process the petitioner dies, what is the appropriate next step?

- Answer: You can do the following:
 - Notify the USCIS office that has the I-485 of the death by making an Infopass appointment.
 - You can also attend the interview with the death certificate and other necessary documents for 204(I).
- When do you need to file the I-290B?
 - Answer: When the petition was denied/revoked pre-enactment, prior to 10/28/09.
- Question regarding adjudication of I-601 waivers for unlawful presence, etc, when the petitioner has died and the beneficiary can benefit from 204(I). Are there special procedures being implemented for the waiver process if one is required?
 - Answer: No special procedures being implemented, and the timeframe for adjudication is unchanged. If there is a genuine emergency that would fall under the established expedite procedures, USCIS would be willing to expedite.
- Question about the requirement that the principal beneficiary must be residing in the U.S. to benefit from 204(I) -- what if the beneficiary is undocumented? What if the beneficiary habitually lives in the U.S., but is traveling abroad temporarily when the petitioner dies? What if the beneficiary habitually lives abroad, but is in the U.S. on the day petitioner dies?
 - Answer:
 - Person does not necessarily have to be here in lawful status.
 - Eligibility will come down to the facts of each case. The only question is: where is the person's place of residence? This is defined by statute as the person's actual principal dwelling place. If the person's actual principal dwelling place is in the U.S. and they were abroad at the time of the petitioner's death, then they could still show that they were 'residing' in the U.S. in spite of a temporary trip abroad.
- Question regarding derivative beneficiaries who meet residency requirements, but others derivatives who do not – can you provide an example of this to clarify?

- Answer: Example - LPR files I-130 for unmarried son or daughter and the son or daughter has 4 children. The 4 children are the derivative beneficiaries. Let's say that two of the children live in the U.S. with the principal beneficiary, and two of the children live abroad. Either the petitioner or the principal beneficiary passes away. All of the derivative children can benefit. The children living in the US can adjust, and the children who are living abroad can follow to join.
- Under 204(I), if the primary beneficiary qualifies and all of her kids are living abroad, do the kids qualify?
 - Answer: Yes. If they are admissible and still children, they can consular process.
- When do you make the request for 204(I) when the priority date is not yet current?
 - Answer: Notify NVC of the death ahead of time. They will add it to the file.
- How long is it taking for 204(I) cases to be adjudicated? What is the approval rate?
 - Answer:
 - Processing Times: These cases do not arise with such regularity that there is a standard processing time; USCIS tries to process as quickly as possible. You can always make request for expedited processing if it falls within expedite criteria.
 - No statistics on approval rates.

Humanitarian Reinstatement (HR) and Requests for Expedious Adjudication

- **Questions**
 - If the primary beneficiary is alive and has derivatives and applies for HR, are the derivatives included?
 - Answer: Yes.
 - For HR, if the case is at NVC or a consular post, where do you send request?
 - Answer: Send to NVC or to the USCIS office that has jurisdiction over the original petition.

- Are there any specific deadlines for 204(l) and HR?
 - Answer: Only deadline is for widow petition when an I-130 was never filed -
 - If spouse died before 10/28/09, you need to file the I-360 petition within 2 years of enactment. In other words, the deadline is 10/28/2011.
 - If the spouse died after 10/28/09, the I-360 petition must be filed within 2 years of citizen's death.

- Can CSPA be applied to 204(l) and HR?
 - Answer: Same calculations are applied under the CSPA. 204(l) does not change CSPA analysis. Go to Q&A on website from late June 2011 national stakeholder engagement for more information.



Meeting Invitation

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Service Center Operations Monthly Stakeholder Teleconference

The USCIS Service Center Operations Directorate invites interested stakeholders to participate in the next Monthly Stakeholder Teleconference scheduled for **Tuesday, September 27, 2011 from 2:00pm to 3:30pm Eastern Time**. These engagements present an opportunity for stakeholders to receive current information from service center officials on particular topics of interest. The California Service Center will host the September teleconference with assistance from the Vermont Service Center.

The topic for this teleconference will be **Form I-130, Petition for Alien Relative (Humanitarian Relief)** and we will address issues including I-360 Conversion for Surviving Spouse, Section 204(l) of the Immigration and Nationality Act, Humanitarian Reinstatement and Requests for Expedious Adjudication.

Engagement Date	Topic	Deadline to Submit Agenda Items
September 27, 2011	I-130 Humanitarian Relief	Friday, September 2, 2011

Agenda Items: Please submit agenda items to California Service Center Community Engagement Officer Ana Rili at ana.rili@dhs.gov by **COB Friday, September 2nd**.

RSVP: If you would like to participate in the September teleconference, please provide your full name and the organization you represent to Ana Rili at ana.rili@dhs.gov by **COB Tuesday, September 20th** and reference “**September 27th Teleconference**” in the subject line.

For additional information, please contact Ana Rili by email.

We look forward to engaging with you!