



Form I-130 Petition for Alien Relative

Presented by
USCIS Service Center Operations Directorate

Objectives

- **At the end of this presentation you will understand:**
 - What is a Form I-130
 - Who files an I-130
 - Who benefits from an approved I-130
 - How USCIS processes and adjudicates an I-130
 - How approved I-130s are transmitted to DOS for overseas visa issuance

What is a Form I-130?

- **Petition for Alien Relative**

The Form I-130

- ❖ Is an essential document to establish the existence of a familial relationship between someone who is:
 - (a) a US citizen (USC) or
 - (b) a lawful permanent resident (LPR)**and** another person who is an alien.
- ❖ Often the required document than an LPR or USC files to request USCIS's approval for their alien relative to immigrate to the US.
- ❖ Is the first step in a two step immigrant visa issuance process

Who can file a Form I-130?

The Person Who Files An I-130 On Behalf Of An Alien Relative Is:

- ✓ A USC or an LPR

For Whom Can I-130 be filed?

- The key purpose of I-130 petition is to promote family reunification – so both the petitioner and the named beneficiary on an I-130 benefits when the petition is approved.

A petitioner may file for:

- ✓ **Spouse**
- ✓ **Unmarried children (under 21 years old)**
- ✓ **Siblings**
- ✓ **Married son or daughter (not available for LPRs)**
- ✓ **Unmarried son or daughter (21 years old or older)**
- ✓ **Parents**

But----

For Whom Can I-130 be filed? (cont.)

---- **Remember**, USC's and LPRs are restricted as to who they can file for ----

USCs **must be 21** years of age or older *when filing for a parent or siblings*
and

LPRs **cannot** file for their parents, siblings, or married sons or daughters

- ✓ **No one can file an I-130 on behalf of an aunt, uncle, cousin, niece, nephew, in-law relative or grandparent.**

For Whom Can I-130 be filed? (cont.)

- **Family reunification and legislative restriction on US immigration have resulted in the creation of a two-tiered family-based immigrant visa system.**

Family Reunification = Immediate Relative Category (IRs)

Legislative Numerical Limits = Family Preference Visa Categories

For Whom Can I-130 be filed? (cont.)

❑ The Visa Classes

❖ IRs:

Are not subject to numerical visa limitations

- Are the Spouse of USCs
- Are the children (who are unmarried and under age 21)

❖ Family Preferences:

Are subject to numerical visa limitations

First preference (F1)

Unmarried sons and daughters of USCs (INA §203(a)(1))

Second preference (F2)

Spouses, children, and unmarried sons and daughters of LPRs (INA §203(a)(2))

Third preference (F3)

Married sons and daughters of USCs (INA §203 (a)(3))

Fourth preference (F4)

Brothers and sisters of USCs (INA §203 (a)(4))

USCIS Process Adjudicating I-130 Petitions

- Filing an I-130
 - ✓ The Form I-130 is filed according to the filing instructions on the form.
 - ✓ The Form is sent to a Lockbox facility for intake. The Lockbox facility does not adjudicate petitions, rather the lockbox determines whether the petitions meet the acceptance criteria
 - if **YES** (criteria met) – lockbox routes the form I-130 to the appropriate field office or service center to be adjudicated.
 - if **NO** (criteria not met) – lock box will reject the form I-130
 - ✓ When the beneficiary is already in the United States, the petitioner may file an I-130 with a Form I-485, *Application to Register Permanent Residence or Adjust Status*. **This is known as a concurrent filing.** Concurrently filed I-130s/I-485s are sent to a specific Lockbox facility and are adjudicated by USCIS field offices.

USCIS Process

Adjudicating I-130 Petitions (cont.)

- A properly filed I-130 is one that is received with:
 - the petitioner's signature and
 - the appropriate filing fee.

(8 CFR §103.2(a))

The Lockbox facility will reject petitions that are not properly filed.

Rejected petitions are returned to the petitioners and are not given a "receipt date."

USCIS Process

Adjudicating I-130 Petitions (cont.)

What is a priority date and why is it important?

The priority date is:

- ❑ the date the visa petition was properly filed with USCIS
- ❑ also the key date for family preference petitions that are subject to annual numerical limits
- ❑ used as the cut off date to determine visa availability

USCIS Process

Adjudicating I-130 Petitions (cont.)

- Two-fold purposes of the adjudications process are to determine:

Whether the petitioner is eligible to file the petition

and

Whether the beneficiary has the requisite familial relationship to qualify for the classification being sought

- Petitions that are not rejected by the lockboxes are “accepted.” Accepted petitions are receipted and routed to the appropriate USCIS service center or office for processing.
- Cases received at the appropriate service center or office are assigned to Immigration Service Officers (ISOs) for initial review and adjudication.

USCIS Process

Adjudicating I-130 Petitions (cont.)

● Reviewing an I-130

The ISO's review involves looking at whether:

- The petitioner is eligible to file the Form I-130 (status i.e., Is the petitioner an LPR, USC?- age of petitioner – old enough to file?).
- The relationship that the petitioner states on the I-130 is a “qualifying relationship” for which an I-130 may be filed (who is petitioner filing for?).
- The petitioner has submitted required information to prove the existence of the specific relationship being claimed (i.e., Alien number, proof of USC citizenship, marriage certificate, children's birth certificates, divorce documents?).
- Additional information or evidence is needed for the petitioner to prove the existence and *bona fides* of the claimed qualifying relationship (missing documents, lack of English language translations?).
- There are inconsistencies or material misrepresentations that pose potential fraud concerns.

USCIS Process

Adjudicating I-130 Petitions (cont.)

Burden of Proof:

- The adjudication of visa petitions is an administrative proceeding. In administrative proceedings, the petitioner bears the burden of proof to establish eligibility for the benefit sought.

Matter of Brantigan, 11 I & N Dec. 45 (BIA 1966)

USCIS Process

Adjudicating I-130 Petitions (cont.)

- What happens if the documentary evidence that the petitioner provided is not sufficient to prove the qualifying relationship?
- ❖ USCIS will send the petitioner a Request for Evidence (RFE)

The RFE will:

- tell the petitioner what is deficient
- request specific documents or information
- provide the petitioner with a set timeframe within which to respond to the RFE and consequences of a failure to timely respond

USCIS Process

Adjudicating I-130 Petitions (cont.)

- Most standalone I-130 petitions will be completed without the need of a personal interview; however, the facts of an individual case may indicate that a personal interview is appropriate.
- USCIS Service Centers are not set up to conduct interviews on standalone I-130s. Generally, the interview will take place upon adjustment in the United States or during consular processing overseas.
- When an I-130 has been filed concurrently with an I-485, the interview takes place at a USCIS field office.

Interview Waived I-130 adjudications

- ❖ Normally, USCIS's National Benefits Center (NBC) processes incoming family-based I-485's (standalone or filed concurrently with an I-130)

- ❖ The following family-based categories are interview waived and are adjudicated by the CSC:
 - Unmarried minor child or and stepchild of US Citizens
 - Parent of US Citizen
 - K1/K2 entrant— Fiancé(e) of US Citizen and children of Fiancé(e)
 - Native/Citizen of Cuba filing under 11/2/66 Act, or the spouse or child of such an alien, regardless of their citizenship or place of birth
 - Child of an LPR (unmarried and under 14 years old)

Interview Waived I-130 adjudications (cont.)

USCIS waives the I-485 interview for concurrently filed I-130/I-485 cases where:

- Evidence within the case file indicates that the alien applicant was inspected, paroled or interviewed previously by an immigration officer;
- Where the alien's status can be determined by reviewing information in the case file or by requesting additional evidence from the applicant;
- Where the routine background checks on the alien applicant do not indicate violations beyond immigration violations that can be resolved by waivers; and
- Where a review of the case file does not indicate possible fraud.

Decision

- ✓ If the I-130 petition is approved:
 - USCIS notifies the petitioner of the approval;
and
 - forwards the petition to the appropriate USCIS repository;
or
 - forwards the petition to the DOS for overseas processing.
- ✓ **USCIS uses the Form I-797, Notice of Action to notify the petitioner or any recognized representative of the approval and disposition of the petition.**
- ✓ If the I-130 petition is denied, USCIS sends the petitioner and any recognized representative a denial letter which informs him or her of his/her appeal rights.

Questions? Thank You!

