

Guide to Form I-751, Petition to Remove the Conditions on Residence

by: Gary Chodorow



FREDERICK W. HONG
— LAW OFFICES —

www.fwhonglaw.com

Rev'd: October 11, 2011

Frederick W. Hong Law Offices

Frederick W. Hong Law Offices has a proven track record advising companies and individuals on China and U.S. business law, intellectual property, and immigration law.

The firm was founded in 1977 in Los Angeles. After developing business in China in the 1980s, we became in 1993 the first U.S. law firm licensed by China's Ministry of Justice to open an office in Guangzhou. In 2002, the firm was authorized to open another office in Beijing.

We make an effort to understand each client's business and goals. Our attorneys are savvy, innovative, and focused on getting results that meet our clients' needs. That's how we establish lasting client relationships.

Gary Chodorow



The author, Gary Chodorow, is chief representative for the Beijing office of Frederick W. Hong Law Offices. His practice has focused on U.S. immigration and nationality law since 1993. He is a frequent author and speaker on related issues, and a member of the American Immigration Lawyers Association.

Beijing Office

Tel.: +86.10.6506.1180

Email: gary@fwhonglaw.com

Web: www.fwhonglaw.com

Blog: www.LawAndBorder.com

Table of Contents

1. Introduction.....	1
2. Requirements for Removal of the Conditions on Residency	1
3. Procedures for the I-751	2
Filing.....	2
Considerations for Persons Living Abroad Temporarily.....	2
Evidence of a Valid Marriage.....	3
Dependent Children	3
Receipt Notice and Tracking Case Status.....	4
Biometrics	4
Interview.....	4
Travel Abroad while the I-751 Is Pending.....	5
Change of Address while the I-751 is Pending.....	5
Eligibility for Naturalization Before Approval of the I-751	5
Decision.....	5
Issuance of the New Permanent Resident Card.....	6
4. Conclusion.....	7

1. Introduction

A spouse who immigrates based on marriage to a U.S. citizen or lawful permanent resident will be granted conditional resident (CR) status if, at the time of admission as an immigrant, the marriage is less than two years old.

A child may also become a conditional resident if they immigrate on the basis of an immigrant petition by a U.S. citizen stepparent. If the child immigrates to the U.S. while the marriage is less than two years old, USCIS will grant the child conditional resident status.

If you are a conditional resident, you should file a Form I-751, Petition to Remove Conditions on Residence, during the 90-day period before your two-year “anniversary” of being granted conditional resident status.¹ In other words, file during the 90-day window before your Form I-551, Permanent Resident Card, expires.

This is a guide to the I-751 process. Part 2 describes the requirements. And Part 3 describes the procedures.

2. Requirements for Removal of the Conditions on Residency

A conditional resident’s status is, in effect, probationary. Conditional residents, while having the same rights and responsibilities of a permanent resident, obtain residency for only two years and must file an I-751 at the end of that two-year period in order to retain residency. Specifically, the I-751 must be filed during the 90-day window immediately before the second anniversary of the date you were granted conditional resident status.

The purpose of the I-751 is to reconfirm that the marriage was valid at its inception. The I-751 is accompanied by evidence of the validity of the marriage. If upon reviewing the I-751 USCIS agrees that the marriage was valid, USCIS may then remove the conditions so that the conditional resident becomes a full permanent resident.² Conversely, if: (a) the marriage has ended in annulment or divorce, (b) USCIS believes that the marriage was fraudulent from its inception, or (c) the conditional resident fails to comply with the proper procedures to file the I-751, then USCIS may terminate the conditional resident’s legal status.

Note that if the conditional resident’s relationship with the petitioning spouse has failed during the two-year conditional period, the conditional resident may nonetheless petition USCIS to grant full permanent residency if: (a) the petitioning spouse has died; (b) the marriage was entered into in good faith but has ended in divorce or annulment; (c) extreme hardship would otherwise result due to factors which arose subsequent to the conditional resident’s immigration; or (d) the couple

¹8 C.F.R. § 216.4(a)(1).

² More specifically, USCIS shall determine whether:

- a. The marriage was entered into in accordance with the laws of the place where the marriage took place.
- b. The qualifying marriage has been annulled or terminated (other than through death of the spouse).
- c. The marriage was entered into for the purpose of procuring permanent resident status for the alien.
- d. A fee or other consideration was provided (other than to an attorney) in connection with the petition through which the alien obtained conditional permanent residency.

INA § 216(d)(1); 8 C.F.R. § 216.4(c).

married in good faith but the petitioning spouse physically abused the conditional resident or a child or subjected them to extreme mental cruelty. Detailed discussion of these exceptions to the joint petition process is beyond the scope of this *Guide*.

3. Procedures for the I-751

Filing

The I-751 is filed by mail with the USCIS Service Center with jurisdiction over the conditional permanent resident's place of residence.³

A jointly filed I-751 must be filed within the mandated time period, signed by the CR and spouse, and accompanied by supporting documentation confirming the validity of the marriage.⁴

Upon proper filing, CR status is extended automatically until such time as USCIS adjudicates the I-751.⁵

If the joint petition is not filed timely, the CR will accrue unlawful presence in the U.S. until such time as the petition is filed and USCIS accepts the filing.⁶ Such unlawful presence may make the former CR inadmissible if he or she departs the U.S. prior to the filing and acceptance by USCIS.⁷

Considerations for Persons Living Abroad Temporarily

Even if you are living abroad temporarily, you must still file the I-751 with the Service Center having jurisdiction over your last place of residence in the U.S.

There is no requirement that you be physically present in the U.S. at the time the I-751 is filed.⁸

³ The regulations are silent about which USCIS office has jurisdiction. But see I-751 Instructions at 3 (rev. Dec. 30, 2009) (I-751 should be filed with the Vermont or California Service Center, depending on where the conditional resident "live[s]."); AFM 25.1(c)(1) (file with Service Center with jurisdiction over the "alien's place of residence.")

⁴ 8 C.F.R. § 216.4(a)(1).

⁵ 8 C.F.R. § 216.4(a)(1).

⁶ INS Memorandum, P. Virtue, "Section 212(a)(9)(b) Relating to Unlawful Presence" (Sept. 19, 1997), published on AILA InfoNet at Doc. No. 97092240 (posted Sept. 19, 1997).

⁷ *Id.*

⁸ USCIS, *Removing Conditions on Permanent Residence Based on Marriage*, <http://snipurl.com/1t5tuast>, last visited Nov. 5, 2007; 8 CFR §216.4(a)(4) Physical presence at time of filing: "A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and dependent children, to comply with the interview requirements contained in the Act. Furthermore, if the documentation submitted in support of the petition includes affidavits of third parties having knowledge of the bona fides of the marital relationship, the petitioner must arrange for the affiants to be present at the interview, at no expense to the government. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien and the petitioning spouse comply with the interview requirements described in § 216.4(b). An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter [re: admission of CRs]."

But if your I-751 lists a foreign address, your case will be held by USCIS until you report that you have notified USCIS that you have moved back to the U.S. and a U.S. address is put into the system, at which point it will be moved into the processing queue.⁹ The USCIS rationale for the “overseas hold” is that it may not be feasible for a CR living abroad to attend the required biometrics appointment and interview.¹⁰

To avoid the overseas hold, an applicant should be sure to list a U.S. address. It may be also be important for the I-751 to explain the reason the CR is overseas, demonstrate that CR status has not been abandoned,¹¹ state that the CR will attend the scheduled biometrics interview and appointment, and request that the case not be subject to the overseas hold.

Evidence of a Valid Marriage

The joint petition should be accompanied by supporting evidence that the marriage was not entered into for the purpose of evading the immigration laws of the United States. Documents which may be submitted include but are not limited to: (1) joint ownership of property, (2) joint tenancy of a common residence, (3) commingling of financial resources, (4) birth certificates for children born of the marriage, and (5) affidavits of persons having knowledge of the bona fide marital relationship.

Dependent Children

Dependent children who became permanent residents within 90 days of the parent may be included in the joint petition. However, all dependents included in the petition must pay a separate biometrics fee. Dependent children who cannot be included in the joint petition because they did not immigrate within 90 days of the parent or because of the death of the parent may file a separate petition.¹²

Receipt Notice and Tracking Case Status

In recognition of the lengthy delays in obtaining a decision on an Form I-751, Petition to Remove the Conditions on Residence, USCIS issues a filing receipt that extends a conditional resident's

⁹ AFM 25.1(g)(4)(C). For military cases, there is an exception to the “overseas hold.” You must have a valid APO or FPO address. See also AILA-SCOPS Q & A September 17, 2008; Report of ISD Teleconference, AILA InfoNet Doc. No. 00101702 (posted Oct. 17, 2000) (“ In response to our question regarding I-751 cases where a foreign address is provided by the petitioner and beneficiary and the petition is automatically placed on an overseas hold, INS has stated that if a U.S. address is listed on the form (c/o another party), INS will be able to adjudicate the I-751. Therefore, members are advised to file all I-751 petitions that they don't want placed on an overseas hold with a U.S. address.”).

¹⁰ USCIS American Immigration Lawyers Association (AILA) Meeting, March 19, 2009 at p.6-7. (“Petitions that indicate that the CR is temporarily overseas, but not on government/military orders, are reviewed for information concerning the reason they are overseas and when they intend to return to the U.S. I-751 petitions require ten-print fingerprints as well as biometrics and identity verification. Once the biometric requirement is met, an officer will review the application for eligibility. If the CR is deemed eligible for removal of conditions, an I-551 card will be issued; all I-551 cards must be mailed to a U.S. address provided by the CR. If the CR does not comply with the biometric requirement, the petition will be denied in accordance with 8 CFR §103.2(b)(13)(ii)).

¹¹ A reentry permit may be helpful in this regard.

¹² 8 C.F.R. § 216.4(a)(2), (4); Form I-751 Instructions (Rev. Dec. 30, 2009).

status for a full year beyond the date shown on the I-551. The receipt (accompanied by the I-551 and an unexpired foreign passport) is valid for entry to the U.S. following travel abroad. Also, the receipt (accompanied by the I-551 and an identity document such as a state driver's license, ID card, or passport) is evidence of employment authorization in the United States which can be provided to an employer for purposes of proving eligibility to work. If USCIS does not adjudicate the I-751 within that year, USCIS is supposed to expedite adjudication of the case.

The status of an I-751 can be tracked online at www.uscis.gov. You also have an option to sign up for email or SMS status updates. Please note that for I-751s, USCIS tracks cases by the "application number" shown on the biometrics appointment notice, not by the "receipt number" shown on the receipt notice (which if tracked just shows "your case cannot be found"). Also please note that the I-751 will be shown in the system as a "CRI89 Petition to Remove Conditions of Permanent Residence."

Biometrics

You will receive an appointment notice to visit a USCIS Application Support Center after you have filed Form I-751 to have your biometrics (photo, signature, fingerprints) electronically captured.¹³

The photograph, signature and index finger print will later be used to generate the new I-551 when the Form I-751 is approved.

The ten fingerprints are taken for the purpose of conducting a criminal background check for applicants between the ages of 14 to 79.

Interview

The USCIS regional center where the I-751 is filed may in its discretion waive the interview. USCIS will do so if satisfied based on the evidence filed with your I-751 that your marriage was entered into in good faith.¹⁴ (This is especially true for spouses of active U.S. military personnel stationed overseas). This is an important reason to file a complete and well-prepared I-751 package.

Otherwise, your I-751 will be forwarded to a local USCIS office and you will receive a notice requiring appearance at a local USCIS office for an interview. (It's technically possible for the local office to decide to waive the interview too.¹⁵) Failure to attend the interview may result in termination of the conditional resident's status and the commencement of removal (i.e., deportation) proceedings.

Travel Abroad while the I-751 Is Pending

To be admitted to the U.S. during the period after the I-551 has expired and before the I-751 is adjudicated, you should carry your passport, expired I-551, and the I-751 receipt issued by USCIS.

¹³ USCIS, *Update: New Biometrics Process for Conditional Permanent Residents*, Feb. 28, 2007, AILA Infonet Doc. No. 07030261.

¹⁴8 C.F.R. § 216.4(b)(1) (2007); USCIS, *Removing Conditions on Permanent Residence Based on Marriage*, <http://snipurl.com/1t5tuast>, last visited Nov. 5, 2007.

¹⁵8 C.F.R. § 216.4(b)(1).

If you are living abroad temporarily, you should consider the utility of applying for a reentry permit to avoid a determination by the U.S. Customs and Border Protection inspecting officer at the port of entry that you are inadmissible on the basis of having abandoned your CR status.

What If the I-751 Is Still Pending More Than One Year After Your I-551 Has Expired?

As mentioned above, in recognition of the lengthy delays in obtaining a decision on a Form I-751, USCIS issues a Form I-797 filing receipt that extends a conditional resident's status for a full year beyond the date shown on the I-551. If the I-751 is still pending after that year has passed, then the applicant should obtain additional evidence of CR status.

Take the I-797 receipt, the I-551 card, and an unexpired passport to the local USCIS district office to request a new stamp in the passport to indicate extension of conditional resident status for an additional year.¹⁶ An appointment may be required.

Change of Address while the I-751 is Pending

If you move prior to receiving the I-551, please tell our firm so we can notify USCIS of your new address. (USCIS does not allow the Post Office to forward the I-551 from your old address to a new address).

Eligibility for Naturalization Before Approval of the I-751

You may file a Form N-400, Application for Naturalization, notwithstanding the fact that your I-751 filing period has not started and notwithstanding the fact that your I-751 has not yet been filed or is pending.¹⁷ If you have already filed your I-751, notify the USCIS office handling your naturalization case so that the I-751 can be adjudicated at the same time as the naturalization application.¹⁸

A key requirement for naturalization is the continuous residence requirement. For most naturalization applicants, the requirement is that you have resided in the U.S. continuously for 4 years and 9 months after gaining CR or LPR status. However, that requirement is reduced to 2 years and 9 months if during that period you have lived in the U.S. with your citizen spouse. There is also a special provision allowing expedited naturalization with no continuous residence requirement for spouses of U.S. citizens employed abroad by U.S. companies or their subsidiaries.

Decision

¹⁶ William R. Yates, Acting Assoc. Director for Operations, BCIS, Extension of Status for Conditional Residents with Pending Forms I-751, Petition to Remove Conditions on Residence, Dec. 2, 2003, AILA Infonet Doc. No. 03120940; Questions and Answers: USCIS Field Operations Directorate-AILA Liaison Meeting, October 25, 2011, AILA Infonet Doc No. 12011061.

¹⁷ 8 C.F.R. § 216.1.

¹⁸ USCIS Honolulu, *Naturalization FAQ Sheet for Spouse of a U.S. Citizen Regularly Stationed Abroad: The Honolulu Process* (May 10, 2004), <http://tokyo.usembassy.gov/pdfs/wwwf319b.pdf>.

If USCIS approves the I-751, it will send the conditional resident notice of that fact. In the alternative, the Service Center or local USCIS office may issue a written request for additional evidence.¹⁹ Failure to respond would lead to a denial due to abandonment.

In the event that USCIS intends to deny a jointly filed I-751, USCIS must first inform the conditional resident of its intention and of any derogatory evidence upon which its negative conclusions are based. The couple may then submit rebuttal evidence, which USCIS must consider. If USCIS ultimately denies the I-751, it will give the conditional resident written notice of the grounds for the denial, with instructions to surrender their permanent resident card. USCIS may then initiate removal proceedings. In such proceedings, the Department of Homeland Security bears the burden of proof that the marriage was not entered into in good faith, but the noncitizen bears the burden of showing eligibility for a waiver or other discretionary relief.^{20,21}

Issuance of the New Permanent Resident Card

Upon approval of the I-751, the conditional resident becomes a full permanent resident. USCIS will manufacture the I-551 (i.e., “green card”). It will be mailed to you at the address shown on the I-751. This must be a U.S. address.²²

When you get the new card, review it carefully to ensure all data on the card is accurate. In particular, please note:

¹⁹ AILA National—VSC Liaison Conference Call, May 30, 2007, AILA Infonet Doc. No. 07061171; I-751 Instructions (Rev. 07/30/07) at 4 (“We may request more information or evidence.”)

²⁰ See Opinion by Grover Joseph Rees III, INS General Counsel (Dec. 3, 1991), *reproduced in* 69 Interpreter Releases 627 (May 18, 1992).

²¹ There is no administrative appeal of an I-751 denial. Still, it may be possible to ask USCIS to certify the case to the Administrative Appeals Unit. *See, e.g.*, Matter of ___, File No.A40-418-687, 13 Immigr.Rep. B2-102 (AAU June 20, 1994); Matter of ___, File No.A42-135-845, 11 Immigr.Rep. B2-54 (AAU Dec. 29, 1992).

²² AILA-SCOPS Q & A September 17, 2008.

