I-130 Petition for Alien Relative

I-130 National SOP Introduction      Over time, the service centers have developed their own procedures for processing the various applications and petitions they receive. The goal of this Standard Operating Procedure (SOP) is to minimize the differences in the procedures used at the centers to process the I-130, Petition for Alien Relative. To support this goal, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, Data Entry, U.S. CIS Review, File Room, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually as training and daily reference documents. Each module describes a stage in the processing of an I-130 petition. Below is a brief description of each module:

· Mailroom- The process by which the service center receives I-130 petitions, reviews them for acceptability, and assembles them for data entry.

· Data Entry- The process by which fees are receipted and case information is keyed into CLAIMS.

· U.S. CIS Review- The process by which the U.S. CIS verifies reasons for rejection cited by the contractor with the exception of fee and signature discrepancies.

· File Room- The process by which files are sorted and staged. Workload distribution is the process of staging, routing and distributing files.

· Adjudications- The process by which a petition is examined for determination of whether the petition is approvable or deniable.

· Post-Adjudications-The procedure to be followed after an officer makes a determination on an I-130 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-130 visa petition cases. This SOP is essentially just a guide for the consistent processing of Form I-130 visa petition cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-130 Table of Contents      The following is a table of contents, which serves as a guide for all six modules of the I-130 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow.  However, this does not invalidate all local requirements and procedures.  Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center.

I-130 NATIONAL SOP: SECTION 1: MAILROOM

Description    "Mailroom" is the process by which the service center receives incoming mail, which includes I-130 petitions.  Here, all petitions must be stamped with the date that they arrive in the service center, and all remittances must be identified and endorsed.  Cases are also initially reviewed for acceptability and assembled into Record of Proceeding (ROP) order in the mailroom.

Part 1: Slit and Peek

When to Perform        Upon arrival in the mailroom, all mail is opened and sorted, remittances are endorsed, and cases are batched according to date of arrival and form type.

Procedure      Complete the steps below for all mail arriving in the mailroom.

Step    Action: Contractor

1.1    Slit the envelope open to determine if it contains an I-130.

IF…    THEN…
The envelope contains one I-130        Proceed to step 1.3
The envelope contains multiple I-130s        Proceed to step 1.2
The envelope does not contain an I-130        Identify and sort according to the form type.

1.2    Keep family petitions together
IF…    THEN…
The envelope contains multiple I-130s from one family        Keep these grouped together and proceed to step 1.3

The envelope contains multiple I-130s from different families
Separate the forms and proceed to step 1.3

1.3    Find all remittances.  Check to make sure that each remittance is one of the following: Bank Check, Cashiers Check, Draft (BC), Commercial Money Order (CMO), International Money Order (IMO), Personal Check (PC), Postal Money Order (PMO), or Treasury Check (TC).  Endorse each remittance on its back.  Return the contents to the envelope.
IF…    THEN…
The envelope contains cash OR the payee either is not U.S. CIS or is left blank,  Immediately take it to your supervisor.
No remittance is present,        Continue to Step 1.4

1.4    Bundle envelopes by form type.  Place a batch sheet on top of each bundle.  Write the received date, your employee ID number and total number of each form type included in the batch.

Reminder: Concurrently filed applications/petitions should be kept together.
1.5    Place batches WITH THE SAME RECEIVED DATE into storage containers by form type.  Label the outside of these containers with the form type, received date, and number of forms included in the container.
1.6    Route for assembly.

Part 2: Assembly


When to Perform    Once the mail has been opened, sorted and batched, it is routed for assembly.  According to local policy, a case may receive priority processing based on its classification, a customer-initiated request, or a Congressional request.  Follow locally issued guidelines when processing these cases.

Description    Assembly is the process of reviewing the petition for completeness and assembling it into Record of Proceeding (ROP) order.


Procedure    The following are the steps for assembly.

Note: A petition will not be routed to U.S. CIS Review for the following reasons: incorrect fee amount, unsigned or missing remittance, or unsigned petition.

Step    Action: Contractor
2.1    Slit the envelope on the remaining unopened sides and remove all contents.
2.2    Retain the envelope as a part of the file.  If the mailing package is too large, retain the postmark, mailing and return address of the mailing package, as well as the certified or registered mail sticker, and assemble it into the packet.
2.3    Date-stamp the petition on the front page using the date the petition was received by the service center.  The date stamp must be legible and include the date stamp number or employee ID number.  Do not encroach upon the "For U.S. CIS Use Only" or "Do Not Write" section on the front page of the petition.


2.4    Review Part A of the I-130 to ensure that at least one box has been checked.
         IF…    THEN…
         Only one box is checked        Proceed to step 2.5.
         If no box is checked or multiple boxes are checked   Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition. Proceed to step 2.5.

2.5    Review Part B of the I-130 for the presence of a name, an address, and a Date of Birth.
         IF…    THEN…
         Part B contains a name, address and date of birth     Proceed to step 2.6.

         Part B is left blank or is missing any information (i.e. A-number, country of birth, etc.)   Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition. Go to Step 2.6.

2.6    Review Part C of the I-130 for the presence of a name and an address.

         IF…    THEN…
         Part C contains a name and address   Proceed to step 2.7.
         Part C is left blank or is missing any information    Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition. Proceed to Step 2.7.

2.7     Review Part B of the I-130 petition for jurisdiction.

A)

IF…    THEN…

The petitioner's place of residence is in your center's jurisdiction (see jurisdiction table below)     Go to Step 2.8.

The petitioner's place of residence is located outside of the United States     Proceed to part B below.

The petitioner's place of residence is outside of your center's jurisdiction and the petitioner's place of residence is NOT located outside of the United States     Annotate the processing worksheet. Go to Step 2.8.

B)

IF…    THEN…

The address is located in one of the designated countries (see list of designated countries below)   The petition must be filed with the service office located in that country. Annotate the processing worksheet. Go to Step 2.8.

The address is NOT located in one of the designated countries.     Go to Step 2.8


STANDARD JURISDICTION


State/Territory
Service Center
AZ, CA, Guam, HI, NV          CSC
AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, SD, UT, WI, WA, WY, OR, Canada     NSC
AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX TSC
DC, CT, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VI, VT, WV   VSC



Designated Countries
Austria, Germany, Greece, Hong Kong, India, Italy, Singapore, Thailand, United Kingdom, Northern Ireland, Korea, Kenya, Mexico, Philippines, Great Britain


2.8     Review Part D of the I-130: Verify that the petitioner has properly signed the petition (i.e., an original signature in the designated location on the petition).  All forms of original signature are acceptable, including an "X," thumbprint, or an original facsimile signature stamp.  A TYPEWRITTEN NAME IS NOT A SIGNATURE.

Note: The petition is NOT properly signed if the signature is not in Part D (i.e., it is not properly attested to).

IF the petition is…     THEN…
Properly signed          Go to Step 2.9.
Not properly signed
Annotate the processing worksheet and go to Step 2.9.


2.9     Review the file for fee waiver documentation.


IF…     THEN…
There is fee waiver documentation     Annotate on the processing worksheet the evidence and go to Step 2.10
There is no fee waiver documentation          Proceed to Step 2.10


2.10     Ensure that the remittance(s) meet(s) the requirements specified in the Fee Remittance SOP.  Check that the remittance amount is $130.
IF…     THEN…
The fee amount is correct or the case is Fee Receipted Elsewhere (FRE), Go to Step 2.11.
There is no remittance, no fee waiver and the fee is not FRE, Annotate the processing worksheet and go to Step 2.11.
The fee amount is incorrect,   Annotate the processing worksheet and go to Step 2.11.
Any remittance does not meet acceptability criteria, Annotate the processing worksheet and go to Step 2.11.
*Note: It is acceptable to submit one remittance for multiple cases within the same family. However, if that one remittance is deficient, all cases must be rejected.



2.11     Determine if there is a G-28 present.
IF…     THEN…
A G-28 is present and contains all of the following:
·      Block 2-Petitioner's name
·      Block 3-A box checked and representative's original signature (original facsimile stamp is acceptable)
·      Block 4- Name and original signature of person consenting (an original facsimile stamp is acceptable)   The G-28 is acceptable.  Go to Step 2.12.
A G-28 is present but lacks any of the above information     The G-28 is unacceptable.  Go to Step 2.12.
A G-28 is not present  Go to Step 2.12.

Note:  If multiple filings are submitted, where the petitioner is the same in each case, and only one copy of the G-28 is submitted, make a copy of the original G-28, and attach it to the additional file(s).  Annotate the copy of the G-28 with your employee ID number, which indicates that the original has been seen.

Note: If the G-28 is unacceptable, refer to Step 2.13 for assembly instructions.

2.12   Look to see that something has been marked in Part B fields 13 and 14 on the I-130.  The petitioner must provide U.S. CIS with the proper proof of status required for adjudication of the case. This may include the following:
·        A U.S. Birth Certificate
·        A Naturalization Certificate/Certificate of Citizenship
·        A Form I-551, Resident Alien Card
·        A U.S. or foreign passport
·        A State Department Form FS-240, Report of Birth Abroad

                        IF…     THEN…
                        You are able to locate the petitioner's proof of status         Go to Step 2.13

                        You are NOT able to locate the petitioner's proof of status   Annotate the processing worksheet as appropriate that the petitioner has not provided proof of status. Go to Step 2.13.

Note: If the petitioner submits original documentation to demonstrate proof status (e.g., U.S. passports, Resident Alien Card, or Naturalization certificate, etc.), an alert should be attached to the file that there are original documents attached.  These will be returned after adjudication.


2.13   Staple all remittances to the lower-left corner of the top page of the record-side ROP (on the left-hand side of the file).
2-14   If photos are supplied, place them in a glassine envelope back-to-back so that you can see both pictures and staple them to the lower left-hand corner of the G-325A.  Do not staple through the pictures.  Proceed to Step 2.15.

                        IF…     THEN…
                        The pictures have already been glued to the G-325A,         Leave the photos affixed as received. Proceed to Step 2.15.
                        The pictures have already been stapled to the G-325A,         Remove the photo and follow the procedures above.
                        Note: Staple loose photos to a separate (blank) piece of paper when the G-325 is not available.
2.15   Establish the ROP by securely fastening the submitted documents into a blank standard receipt file folder in the following order:
Record/Left-Hand Side of File ROP (Top to Bottom)
1.        Fee Remittance
2.        Acceptable G-28 (if present)
3.        I-130 Petition
4.        Other supporting documentation
5.        Envelope or portion of the envelope showing address and postmark, face-up.
Non-Record/Right-Hand Side of File ROP (Top to Bottom)
1.        I-130 Processing Worksheet

2.      Unacceptable G-28 (if present)

Note: You do not need to fasten the petition and supporting documents in a receipt file folder if the petition is to be rejected.

Note: If an I-130 and an I-765 are received together without an I-485, they can be separated and processed as individually filed cases.   However, I-485s concurrently filed with an I-130 should remain together.  To determine the proper Record of Proceeding for I-130s concurrently filed with the I-485, see the I-485 SOP then continue to Step 2.16.

Record of Proceeding Order
Record-Side ROP OrderNew I-130 Petition File
Non-Record-Side ROP Order

I-130


Supporting Documents
Envelope w/ postmark
Fee
Remittance
Acceptable
G-28
Note: For the Record of Proceeding for I-130s concurrently filed with the I-485, see the I-485 SOP.
Unacceptable
G-28
Processing Worksheet


  2.16   Group like cases by the beneficiary's relationship to the petitioner and place a batch sheet when you have:
a)      a batch size of no more than 25;
b)      completed all the work for a particular received date; or
c)      reached the end of your shift.

Cases should be batched into the following groups according to the beneficiary's relationship. Multiple cases submitted by one family should be kept together:
·       Spouse of a USC
·       Unmarried child (age 21 or over) of a USC
·       Parents
·       Spouse of a LPR
·       Unmarried child (under 21) of a USC

·        Married Children

Exceptions:
            IF the case…   THEN…
            The case is only deficient for reason of incorrect fee amount, unsigned or missing remittance, and/or unsigned petition Batch it with other such cases, refer it for secondary review and then route it for system rejection.
            The case is deficient for any other reason      Batch it with other such cases and route it to U.S. CIS Review.
            The case includes a fee waiver request        Batch it with other such cases and route for U.S. CIS Review.
            The case is concurrently filed with an I-485  Batch it with other such cases and route them for CIS check.  See I-485 SOP for further instructions.
            One check is received for multiple cases involving a family and one case is not properly filed    Route for U.S. CIS review.
2.17    Route for data entry.


Part 3: Processing Manual Rejects


Description    A manual reject is a petition rejected for reasons other than incorrect fee amount, unsigned or missing remittance, or unsigned petition.


Procedure for Processing Manual Reject Notices    To process a reject notice for reasons other than fee and/or signature, complete the following steps:


Step    Action: Contractor
3.1     Using the reason(s) indicated on the I-130 processing worksheet, prepare an appropriate manual reject notice.
3.2     Cancel the bank endorsement stamp on the remittance.
3.3     Remove and discard the processing worksheet.
3.4     Remove the contents of the file from the folder, if necessary, and staple the manual reject letter to the front of the application.
3.5     Place the file contents with the letter in an envelope.  Follow outgoing mail procedures.

I-130 NATIONAL SOP: SECTION 2: DATA ENTRY MODULE


Introduction    Data Entry is the process by which fees are receipted and case information is keyed into the Computer Linked Application Information Management System (CLAIMS).

Section 2: Table of Contents Page

Part 1: Processing Acceptable Cases

When to Perform         This procedure is performed when the I-130 petition arrives at
Data Entry from Assembly or U.S. CIS Review prior to entering the petitioner's
information into CLAIMS 3.

Procedure for New Cases      Use the <Enter> or arrow keys to move from field to field.
Unless otherwise specified, "key what you see." Thus, if a field is blank on the petition,
leave it blank on the screen.  Also, do not use punctuation, except for the ampersand (&)
and forward slash (/).

Use the Standard Data Entry and Abbreviations Guide for all data entry.  Abbreviate
where appropriate; if there is an abbreviation for the word in the guide, use it instead of
writing out the word.

Procedure for Processing Acceptable Cases  Follow this procedure to review and process
acceptable cases.

Note: A petition will not be routed to U.S. CIS Review if it is only deficient for one or
more of the following reasons: incorrect fee amount, unsigned or missing remittance, or
unsigned petition.

Part 1a: Reviewing and Keying Parts A and B

 Parts A and B Use the steps below to review and key Parts A and B of the petition.

Step    Action: Contractor
1a.1    Access the CLAIMS 3 Data Entry module to receipt a new case.

1a.2    Type "I130" at the "Enter a receipt or form number" prompt for a new case and press <Enter>.  The CLAIMS 3 data entry screen will appear.  See Figure 2.1 below.

Note: If it was previously receipted (i.e. a reject) wand the bar code in at the "Enter a receipt or form number" prompt.

Figure 2.1

 1a.3    Type the mail received date from the date-stamp of the I-130 petition (MM/DD/YYYY).  The system will default to today's date.
Press <F4> to save.
Note: If the petition has not already been date-stamped, do so now.

IF the case was…         THEN…
Received prior to today          Type over the default date with the date-stamp date.
Received by another U.S. CIS office  Enter the date from that office's date-stamp.
Received today          Take no action.
Previously a system reject        Press <Alt-F9> and change the date to the new received date.

 1a.4    Review Part B of the I-130 for the presence of a name and an address.  If an incomplete address is provided annotate the processing work sheet.

1a.5    In the "Information about you (petitioner)" section of the CLAIMS screen, enter the petitioner's name from Part B of the Petition in the following format: Last, First, Middle.

1a.6    Type the address from Part B of the petition and press <Enter>.

IF…     THEN…
A PO Box AND a physical address are listedEnter the PO Box address.

The petitioner's address AND the representative's address are both listed Enter the petitioner's address.

The address is too long for the field and an APT or STE is includedType the APT and/or STE in the C/O line.

Part B is left blank or is missing any information     Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.

 1a.7    Type the Zip Code and press <Enter>.

Note: The zip code will pre-populate the city and state fields.  You MUST verify the city for accuracy.  IF the city does not match, override the entry with the city listed on the petition.

1a.8     Type the Social Security Number (SSN) if nine digits are provided on the form. If there are more or less than nine digits, or multiple SSNs listed, leave the field blank.

1a.9     Type the A-number from line 10 of the petition IF one is provided.  The A-number is eight digits long.

| IF… | THEN… |
| --- | --- |
| It is more or less than eight digits | Do not enter it. |
| An A-number is not provided | Leave the field blank. |
| The A-number is an 100 million, 80-89 million number | Do not enter it. |

1a.10   Type the Naturalization Certificate Number from question 13 of the petition (if provided).  If a Naturalization number is not provided, leave the field blank.

1a.11   Review Part A of the I-130 to determine the petitioner's relationship to the beneficiary. Look to see that only one box has been checked and that the beneficiary has a qualifying relationship with the petitioner. In order to be eligible, the alien relative must be one of the following:
·        Husband/Wife
·        Parent/Step-Parent
·        Brother/Sister
·        Step-Brother/Step-Sister
·        Child/Step-Child

| IF… | THEN… |
| --- | --- |
| Only one box is checked | Proceed to Step 1a.12. |
| No box is checked or multiple boxes are checked | Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition. Proceed to Step 1a.12 |

Note: If an unacceptable relationship is written on the form, such as niece, grandmother, or uncle, forward to U.S. CIS Review for resolution after reviewing the rest of the petition.

1a.12   Review questions 13 and 14 of Part B of the petition to determine the petitioner's status.

| IF… | THEN… |
| --- | --- |
| Question 13 is marked | The petitioner is a U.S. citizen. Proceed to Step 1a.13 |
| Question 14 is marked | The petitioner is a lawful permanent resident alien. Proceed to Step 1a.13 |

Neither question is marked   Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition. Proceed to Step 1a.13

1a.13  Type "Petition Type" in Part 2 and press <Enter>.  Use the options below to determine the appropriate phrase (based on your determination from Steps 1.11 and 1.12):

| IF the beneficiary is a(an)… | THEN enter… |
|---|---|
| Spouse of a U.S.C. | A |
| Unmarried child (under age 21) of a U.S.C. | B |
| Unmarried child (age 21 or older) of a U.S.C. | C |
| Married son or daughter of a U.S.C. | D |
| Parent of a U.S.C. | E |
| Sister or brother of a U.S.C. | F |
| Fiancé or Fiancée of a U.S.C. | G |
| Orphan (single-step petition) | H |
| Orphan (advance processing - first step) | I |
| Orphan based on advance processing (second step) | J |
| Husband or wife of LPR | K |
| Unmarried child (under age 21) of LPR | L |
| Unmarried child (age 21or older) of LPR | M |

Note: If the petition type determined from information gathered in Steps 1.11 and 1.12 does not correspond exactly to the selections listed above, select the option that most closely matches the data provided by the petitioner.

Part 1b: Reviewing and Keying Parts C and D

Parts C and D  Use the steps below to review and key Parts C and D of the petition.

| Step | Action |
|---|---|
| 1b.1 | Review Part C of the I-130 for the presence of a name and an address. |
| 1b.2 | Type the beneficiary's name from Part C of the petition in the following format: Last, First, Middle. |
| 1b.3 | Type the address from Part C of the petition. |

| IF… | THEN… |
|---|---|
| A PO Box AND a physical address are listed | Key the PO Box. |
| The address is too long for the field | Key as much as the field allows. |
| The address is a foreign address | Key in the City, Province, Postal Code, and Country. |

Note: Key in the Province ONLY if it is a Mexico, Canada, or Philippine address.

1b.4    Type in the Zip Code and press <Enter>.  US Addresses ONLY!!!
1b.5    Type the Date of Birth.  (MM/DD/YYYY)
1b.6    Type the Country of Birth using the 5-letter country code.
1b.7    Type the SSN if nine digits are provided on the form.  If there are more or less than nine digits, leave the field blank.
1b.8    Type the A-number from the petition IF provided.  A-numbers are eight digits long.

IF…    THEN…
The A-number is more or less than eight digits        Do not enter it.

An A-number is not provided Leave the field blank.
The A-number is an 100 million, 80-89 million number        Do not enter it.

Note: A preceding zero must not be entered into the A-number field in CLAIMS.

1b.9    Type the Date of Arrival, if provided (MM/DD/YYYY).  If only the month and year are provided, key "01" for the day.
1b.10   Type the I-94 Number, if provided.  I-94 numbers are 11 digits long.  If more or less than 11 digits are provided on the application, leave the field blank.
1b.11   Type the current status, if provided.  Current status will be a letter/number combination or just a letter combination.  Example – B2, H1B, PAR, EWI, WI
1b.12   Type the Expires on Date, if provided (MM/DD/YYYY).  If only the month and year are provided, key "01" for the day.
1b.13   Review Part D of the petition for a signature.

IF…    THEN…
The petition was properly signed        Type "Y" over the default "N" at the signature field.
The petition is NOT properly signed (i.e. it is not properly attested to)
Press <Enter> twice.  Annotate the deficiency on the processing worksheet.

Part 1c: Reviewing and Keying the G-28

 G-28   Use the steps below to review and key in the G-28, if applicable.
(See figure 2.2 below)

 Step   Action
1c.1    Review the G-28 (if applicable) for acceptability.

The G-28 must have two original signatures: One from the attorney and one from the petitioner.

1c.2    Type "Y" in the G-28 attached field if a VALID G-28 has been submitted.  Do not populate the U.S. CIS Attorney #, ATTY State License #, or VOLAG # fields.

1c.3    Type the attorney's name including titles, if provided.

(Last, First, Middle)

1c.4    Type the Firm Name/VOLAG (ONLY if different from attorney's name).  If there is no firm name listed, leave this field blank.

1c.5    Type the address.  Enter the street address and any other physical address information provided (e.g., building name, suite number) in these fields.  The first street field cannot be left blank.

1c.6    Type in the Zip Code and press <Enter>.  The zip code will pre-populate the city and state fields.  You MUST verify the city for accuracy.  IF the city does not match, override the entry with the city listed on the petition.

1c.7    Type the appearance.

| IF… | THEN… |
|---|---|
| Block 1 of the G-28 is checked | Key A |
| Block 2 of the G-28 is checked | Key B |
| Block 3 or 4 of the G-28 is checked | Key C |
| Nothing is checked on the G-28 | Default to "A" |

1c.8    Press <F4>.  At the "Save Changes" prompt, press <Enter>.

Figure 2.2

Part 1d:  Reviewing and Keying the Remittance

Remittance    Use the steps below to review and key the remittance information.

Step    Action

1d.1    Review the remittance(s) for acceptability as specified in the Fee Remittance SOP.  The fee for an I-130 is $130 U.S. Dollars.

| IF… | THEN… |
|---|---|
| There is a fee but it is not acceptable | Process the case as a system reject ONLY if no other discrepancies exist.  See Part 2: Processing System Rejects. |
| There is NO fee but it can be determined by reviewing the case that the application was accepted at another U.S. CIS office [Fee Receipted Elsewhere (FRE)] | Proceed with processing.  Go to step 1d.10. |
| There is NO fee but there is a fee waiver request | Route the file to U.S. CIS Review after completing the review. |
| There is NO fee but there is a fee waiver authorization | Proceed with processing.  Go to step 1d.11. |

There is no fee, no fee waiver request or authorization, and no evidence that the case is FRE    Process the case as a system reject ONLY if no other discrepancies exist.  See Part 2: Processing System Rejects.

Fee is acceptable    Continue with processing.

Remittance does not meet other criteria in accordance the Fee Remittance SOP    Annotate the processing worksheet and route to U.S. CIS review.

1d.2    Type "A" or press <Enter> twice in the Fee Info Field.

The Remittance screen will "pop up".  (See figure 2.3)

1d.3    Type "Y" in the "Is the check signed?" field.
1d.4    Type the code for the type of remittance:

BC – Bank Check, Cashier's Check, Draft
CMO – Commercial Money Order
IMO – International Money Order
PC – Personal Check
PMO – Postal Money Order
TC – Treasury Check

Note: Although the system has options for "Cash," "No fee collected" and "Fee in suspense," NEVER USE ANY OF THESE OPTIONS.
1d.5    Type the amount received, unless the amount received was incorrect.  In that case, enter $1.00.
1d.6    Type remitter's name (Last, First)

Note: If the remitter is a business, enter as much of the business name in the last name field as possible.
1d.7    Type <F4> to save.
1d.8    Select "Yes" and press <Enter>.
1d.9    Press <Esc>.
1d.10    When a case is fee receipted elsewhere, do the following:
·        In the "Fee Info" field, type "B" and press <Enter> (contact your supervisor for a Supervisor's Code).
·        Press <F4> to save and create a new receipt number.
·        Select "Yes" and press <Enter>.
·        Press <Esc>.
1d.11    When a case if fee waived, do the following:
In the "Fee Info" field, type "D" and press <Enter>.  At the error message that appears, contact your supervisor for the "release" code.  Press <Enter>.

Figure 2.3

1d.12  Press <F4> to save.  CLAIMS will assign a receipt number and print labels.
          IF…     THEN…
          No deficiencies were noted during review     Proceed to Step 1d.13.

          A deficiency was noted only because the remittance was omitted, unsigned or for the wrong amount, and/or the petition was improperly signed     Follow the steps for a system reject ("Processing System Rejects," step 2.3).
          Any other deficiencies were noted     Proceed to Step 1e.6.


1d.13   Remove the remittance(s) from the top page of the ROP and write the following information on the upper-front portion of each in red pen:
·       Receipt Number
·       Date
·       Your Employee ID#
1d.14  Place the fee in the lock-box.


Part 1e: File Assembly and Routing


 File Assembly        Use the steps below to assemble and route the file.


 Step    Action
1e.1    Place the human readable barcode label on the file.
1e.2    Place a machine-readable barcode label on the opposite side of the file.
1e.3    Place a machine-readable barcode label on the petition in the Fee Stamp box.

Note: BE CAREFUL NOT TO COVER any U.S. CIS stamps or notations that may be in the receipt box area.
1e.4    Staple the remaining barcode labels to the upper right hand corner of the petition, making sure not to staple through the barcode labels.
1e.5    Sort the files into the following categories:

·       I-130 Other (8) (L,M,F,D,C)
·       I-130 Other (12) (adopted or born in Jamai, Cambo, Laos, Nigia, Tibet, Vietn, Yemen)
·       I-130 IR (B,E)
·       Route to WD
·       Route to WD (all Yemen and Nigeria must go to WD for "A" file request)
·       I-130 Spouse (K – Family stays together)
·       I-130 Spouse USC (A – Family stays together)

1e.6     Route the file appropriately by placing it in the appropriate drop-off location:

IF…    THEN…
Deficiencies were noted during review other than those for system
rejection     Route the file for U.S. CIS Review.
No deficiencies were noted
Route to the File Room* for file maintenance and workload distribution.

*Note: The File Room function is referred to by different names depending on the service center:
·     CSC- Just in Time 1/ Just in Time 2 (JIT 1/ JIT 2)
·     VSC- File Coordination Unit (FCU)
·     TSC- Work Distribution Unit (WDU) and File Maintenance Unit (FMU)
·     NSC- Work Distribution Unit (WDU)

Part 2: Processing System Rejects

When to Perform     Petitions are forwarded from Mailroom or continued on from initial data entry for system reject processing in Data Entry.

Description     A system reject is a petition rejected for incorrect fee, unsigned or missing remittance, or unsigned or improperly signed petition.  These rejections are processed in CLAIMS.

Processing System Rejects     Use the steps below to process system rejects:
Step     Action: Contractor
2.1     Access CLAIMS.
2.2     Enter the data from the I-130 as if it were an I-130 for receipting (Data Entry, Step 1a).  Press <F4> to save.
2.3     A prompt stating the deficiency(ies) should appear, as well as a dialog box asking: "Reject this case?" Enter "Y."
2.4     A barcode label will print, and the following dialog box will appear: "Print an address label?" Enter "Y."
2.5     Affix the barcode to the petition in the receipt box and mark the barcode label to designate the case as a reject.  Do so by marking with a red "R" though the bar code.
2.6    ·    Retrieve the reject letter generated by CLAIMS and verify that it is correct.
·     Draw a line through any existing date-stamp and fee amount on the petition.
·     Cancel the bank endorsement stamp on the remittance.
·     Remove and discard the processing worksheet.
·     Staple the reject letter to the front of the petition.
2.7     Follow the manual reject procedures for any riding applications included in the petition, except in the event that the riding application has a fee discrepancy, as this would be a system reject.

2.8     Affix the address label to an envelope and follow outgoing mail procedures.

Part 3: Processing Manual Rejects

Description     A manual reject is a petition rejected for reasons other than incorrect fee amount, unsigned or missing remittance, or unsigned petition.

Processing Manual Reject Notices     To process a reject notice for reasons other than fee and/or signature, complete the following steps:

Step     Action: Contractor
3.1     Using the reason(s) indicated on the I-130 processing worksheet, prepare an appropriate manual reject notice.
3.2     Cancel the bank endorsement stamp on the remittance.
3.3     Remove and discard the processing worksheet.
3.4     Remove the contents of the file from the folder, if necessary, and staple the manual reject letter to the front of the application.
3.5     Place the file contents with the letter in an envelope.  Follow outgoing mail procedures.

I-130 NATIONAL SOP: SECTION 3: U.S. CIS REVIEW MODULE

Introduction     After the Mailroom or Data Entry has reviewed the I-130 acceptability, U.S. CIS must verify the reasons for rejection cited by the Mailroom or Data Entry personnel for preparation of the reject notice, with the exception of reasons involving a remittance that is missing, unsigned, or for the wrong amount, or involving an improperly signed petition.  This stage in the process is referred to as U.S. CIS Review.

U.S. CIS Personnel     The selection of the U.S. CIS personnel that will be assigned to U.S. CIS Review will be the responsibility of Management at each service center.  Keep in mind that U.S. CIS Review does not necessarily have to be completed by an officer.

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Part 1: Reviewing for Reject Criteria

When to Perform        After the Mailroom or Data Entry has reviewed the I-130 acceptability, U.S. CIS must verify the reasons for rejection cited by the Mailroom or Data Entry personnel for preparation of the reject notice, with the exception of reasons involving a remittance that is missing, unsigned, or for the wrong amount, or involving an improperly signed petition.

Procedure       To review the petition for reject criteria, perform the following steps:

Step    Action: U.S. CIS
1.1      Identify the reason(s) for rejection annotated by the Mailroom or Data Entry personnel on the processing worksheet.

1.2      Verify that the reason(s) for rejection is valid using the corresponding instructions below.  Instructions for reject criteria are posted in the following order:

1.      Fee Remittance Acceptability
2.      Completeness of Petition (i.e., presence of name, address, jurisdiction, classification, signature, etc.)

            IF…    THEN…
            The Mailroom or Data Entry personnel correctly identified a reject criterion        Initial the notation on the processing worksheet, and route the file for production of a reject notice.
            The Mailroom or Data Entry personnel incorrectly identified a reject criterion, and the case is acceptable   Modify, initial, and date the notation on the processing worksheet.  Return the file to continue processing.

 Step    Action: U.S. CIS
1.2              IF…    THEN…
(cont.)          The Mailroom or Data Entry personnel incorrectly identified a reject criterion, but other reject criteria are correctly identified      Modify, initial, and date the notation on the processing worksheet, and route the file for production of a reject notice.

Reminders      ·        Check to see if the case requires priority processing or special handling.

- · Cases riding together should remain together.
- · Multiple filings for the same alien should remain together.

Part 1a: Reviewing for Fee Remittance

Review for Correct Fee    In Reviewing for Fee Remittance, you will be checking any remittance rejected for reasons other than because the remittance is unsigned or for the wrong amount.

Procedure    If the Mailroom or Data Entry personnel has identified the petition as having the incorrect fee, U.S. CIS must review the petition to determine whether it should be rejected.  Please refer to your Fee Remittance SOP for guidelines.

Step    Action: U.S. CIS
1a.1    Ensure that all applicable fees are present, amount is correct and remittance meets acceptability criteria.  The fee for the I-130 is $130.

IF…    THEN…
A request to waive the fee is submitted    Annotate the processing worksheet and refer to local fee waiver procedures.
Only one payment is submitted for the I-130 and all concurrent files, and the fee payment is incorrect    Reject.
The fee for the I-130 is correct and the fee for the concurrent filings is incorrect AND separate checks were submitted    Accept the I-130 and reject the concurrent filings.
The fee for the I-130 is incorrect and the fee for the concurrent filings is correct AND separate checks were submitted    Reject all applicable files.
The remittance does not otherwise meet acceptability criteria as established by the Fee Remittance SOP    Reject (all forms submitted).

Part 1b: Reviewing for Relationship

Review for Relationship    For the I-130, eligibility is determined both by the petitioner's status (i.e., whether he/she is a U.S. citizen or a lawful permanent resident). It is necessary that only one block be checked.

Step    Action: U.S. CIS
1b.1    Review Part A of the I-130 to determine the petitioner's relationship to the beneficiary.  Look to see that only one box has been checked.

IF… THEN…

An appropriate box is checked    Proceed to Step 1b.2.

An inappropriate box is checked, multiple boxes are checked or no box is checked, and the classification CAN be identified from supporting documents    Mark the appropriate box in red ink and initial it.  Proceed to Step 1b.3

An inappropriate box is checked, multiple boxes are checked or no box is checked, and the classification CANNOT be identified from supporting documents    Proceed to Step 1b.3

1b.2    Determine the petitioner's status by examining lines 13 and 14 of Part B of the I-130 petition.

IF… THEN…

Line 13 in Part B of the petition has been completed    The petitioner is a U.S. citizen. Proceed to Step 1b.3.

Line 14 in Part B of the petition has been completed    The petitioner is a lawful permanent resident alien. Proceed to Step 1b.3

If neither line 13 nor line 14 has been completed by the petitioner    Proceed to Step 1b.3.

1c.3    Determine the basis of eligibility.

IF… THEN…

The petitioner and beneficiary data from Part A and Part B is acceptable (based on your determination in Steps 1b.1 and 1b.2)    Annotate, initial, and date the processing worksheet.

The petitioner and beneficiary data from Part A and Part B is deficient (based on your determination in Steps 1b.1 and 1b.2) and CANNOT be identified from supporting documents    Annotate and initial the processing worksheet and forward for rejection after review of all reject criteria.

Part 1c: Reviewing for Jurisdiction

Review for Jurisdiction    Jurisdiction is the area over which a service center has the authority to adjudicate a case.  If the service center does not have jurisdiction over a particular I-130, the service center cannot adjudicate it.  The following criteria will be used to check for jurisdiction.

Procedure    To check for jurisdiction, complete the following steps:

Step    Action: U.S. CIS
1c1    Review Part B of the I-130 petition for jurisdiction.
A)

IF…    THEN…

The petitioner's place of residence is in your center's jurisdiction (see jurisdiction table below)    Accept the petition.

The petitioner's place of residence is outside of your center's jurisdiction and the petitioner's place of residence is located outside of the United States    Proceed to part B below.

The petitioner's place of residence is outside of your center's jurisdiction and the petitioner's place of residence is NOT located outside of the United States Reject the petition

B)

IF…    THEN…

The address is located in one of the designated countries (see list of designated countries below)   The petition must be filed with the service office located in that country. Reject the petition.

The address is NOT located in one of the designated countries.    Accept the petition.


STANDARD JURISDICTION


State/Territory
Service Center
AZ, CA, Guam, HI, NV        CSC
AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, SD, UT, WI, WA, WY, OR, Canada    NSC
AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX TSC
DC, CT, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VI, VT, WV   VSC



Designated Countries
Austria, Germany, Greece, Hong Kong, India, Italy, Singapore, Thailand, United Kingdom, Northern Ireland, Korea, Kenya, Mexico, Philippines, Great Britain

Part 2: Reviewing the Fee Waiver Request

When to Perform    Some applicants, such as missionaries of charity cases, may submit a fee waiver request with their I-130 applications.  To request a fee waiver, an applicant must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the application, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay [8 CFR 103.7(c)(1)].  When a fee waiver request is

received in either the Mailroom or Data Entry, the file will be forwarded to U.S. CIS Review to review the request for acceptability.

Procedure    Follow the steps below to review a fee waiver request:

Step    Action
2.1    Review the applicant's affidavit or unsworn declaration as per Headquarters' directives.
2.2    Review any additional evidence that the applicant may have submitted for consideration, such as financial evidence.
2.3    Determine whether or not the fee waiver request is valid.
        IF the request is…
THEN…
        Valid    Annotate the request at the top to indicate that it was approved. Issue a fee waiver approval notice and place a copy in the file.  Return the file for continued processing.
        Invalid Notate the application at the top to indicate fee waiver denied and send a letter to the applicant to let him or her know that the fee waiver request was denied (to include the reasons for denial and a note to resubmit with the correct fee) and place a copy in the file.  Return the file to be rejected for a fee deficiency.

2.4    Collect the fee waiver request data for the monthly "Fee Waiver Report" to Headquarters.

I-130 NATIONAL SOP: SECTION 4: FILE ROOM MODULE

 Introduction   Two processes may take place in the File Room*.  File maintenance is the process by which files are staged and sorted by date received and classification. Workload distribution is the process of staging, routing, updating, and distributing files. During workload distribution, files may be staged one of four ways:
·       Ready for adjudication;
·       Awaiting a response from a Request for Evidence;
·       Awaiting a response from an Intent to Deny or an Intent to Revoke; and
·       Denied or revoked petition awaiting a possible notice of appeal.

*Note: The File Room function is referred to by different names depending on the service center:

·       CSC- Just in Time (JIT 1/ JIT 2)
·       VSC- File Coordination Unit (FCU)
·       TSC- Work Distribution Unit (WDU) and File Maintenance Unit (FMU)

· NSC- Work Distribution Unit (WDU)


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Part 1: File Maintenance

When to Perform       Once files have been received in the File Room, they are routed for file maintenance to be staged and sorted.


Procedure for File Maintenance        The process for file maintenance is as follows:
Step    Action: Contractor
1.1     Cases are received and RAFACSed to the File Room.
1.2     Cases are sorted by date received.
1.3     Cases are then sorted by I-130 classification.
1.4     Cases are then routed for workload distribution.


Part 2: Workload Distribution

When to Perform       Once files have gone through file maintenance, they must go through the process of workload distribution.  Workload distribution involves staging, updating, routing and distributing files.

Note: Any time a file is moved, it MUST be updated in RAFACS to the designated responsible party code.


Procedure for Workload Distribution Files are staged by received date and I-130 classification and updated in RAFACS to the designated responsible party location.

U.S. CIS supervisors regularly advise both the adjudicators and CPAU staff of current operating priorities.  When U.S. CIS personnel make a request for work, File Room personnel fill and distribute the request based upon priorities and the amount of work requested.

To stage and distribute files, complete the following steps:

Step    Action: Contractor
2.1      Stage the files by received date and I-130 classification.  Update the file in RAFACS to the designated responsible party location.
2.2      Work requests are received.
2.3      Fill the work requests and update RAFACS with the appropriate responsible party code.
2.4      Route to requester.

Part 3: Staging and Distributing Requests for Evidence (RFEs)

Procedure for Staging and Distributing Requests for Evidence    File Room personnel stage files awaiting a response for a Request for Evidence (RFE).  These files are shelved under a separate RAFACS code.  A petitioner has 87 days to respond to a RFE.  When evidence is received, file room staff will update CLAIMS, retrieve files, connect responses with the file, and route the file to the adjudicator who initiated the RFE.  If the petitioner does not respond within 87 days, the application is considered "abandoned" and is routed for abandonment processing.

 Step    Action: Contractor
3.1      Stage files for which a RFE has been issued on the RFE hold shelf by call-up date.  The call-up date is 87 days from the date the RFE is sent to the petitioner.  Stage these files for 87 days.
3.2      Determine the next appropriate action.

          IF a response is…        THEN…
          Received
1.        The response is updated in CLAIMS
2.        Match to file
3.         Route to the appropriate Adjudicator
          Not received within 87 days   The file is pulled and routed for abandonment processing.

Note: Before pulling the file, verify all mail for that call-up date has been processed and that file connections for responses to RFEs are current."

Part 4: Staging and Distributing Intents to Deny (ITD) or Intents to Revoke (ITR)

Procedure for Staging and Distributing Intents to Deny or Intents to Revoke        File room personnel may stage files awaiting response to an Intent to Deny (ITD) or Intent to Revoke (ITR).  These files are shelved under a separate RAFACS code.  A petitioner has 33 days to respond to an Intent to Deny or Intent to Revoke.  After the petitioner responds to the Intent to Deny or Intent to Revoke, file room staff file-connect the evidence with the appropriate case and forward it to the adjudicator who originated the ITD or ITR.  If the petitioner does not respond within 33 days, the petition is deniable and is routed to the adjudicator who originated the Intent to Deny or Intent to Revoke.

Step      Action: Contractor
4.1       Stage files for which an Intent to Deny or Intent to Revoke has been issued on the ITD or ITR hold shelf, as appropriate.  Stage these files for 33 days.
4.2       Determine the next appropriate action.

|          | IF a response is… | THEN… |
|----------|-------------------|-------|
|          | Received | 1.      The response is updated in CLAIMS |
| 2.       | Match to file | |
| 3.       | Route to the appropriate Adjudicator | |
|          | Not received within 33 days | The file is pulled and routed to the appropriate adjudicator. |

Note: Before pulling the file, verify all mail for that call-up date has been processed.

Part 5: Staging and Distributing Denied Petitions

Procedure for Staging and Distributing Denied Petitions      File room personnel must stage denied cases for a period of 33 days, allowing for a notice of appeal.

Step      Action: Contractor
5.1       Stage the denied petitioner file for a period of 33 days.
5.2       Determine the next appropriate action.

|          | IF | THEN… |
|----------|----|-------|
|          | An appeal IS received | The appeal is matched and consolidated into the denied case file and routed to the appropriate adjudicator. |
|          | An appeal is NOT received within 33 days | The file is pulled and routed to the appropriate file room location. |

Note: Before pulling the file, verify all mail for that call-up date has been processed.

An appeal is not received in 33 days and the file contains a pending I-485
The A-file should be pulled and routed to the appropriate U.S. CIS unit for the adjudication of the I-485.

Part 6: Staging and Distributing Revoked Petitions

Procedure for Staging and Distributing Revoked Petitions    File room personnel must stage revoked cases for a period of 18 days, allowing for a notice of appeal.

Step    Action: Contractor
6.1    Stage the revoked petitioner file for a period of 18 days.
6.2    Determine the next appropriate action.
        IF        THEN…
        An appeal IS received The appeal is matched to the file and routed to the appropriate adjudicator.
        An appeal is NOT received within 18 days    The file is pulled and routed to the appropriate file room location.

Note: Before pulling the file, verify all mail for that call-up date has been processed.

        An appeal is not received in 18 days and the file contains a pending I-485
The A-file should be pulled and routed to the appropriate U.S. CIS unit for the adjudication of the I-485.

I-130 NATIONAL SOP: SECTION 5: ADJUDICATIONS MODULE

 Description    "Adjudications" is the process by which an I-130 petition is examined for determination of whether it is approvable or deniable.

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Part 1: Overview

I-130 Classifications The Form I-130, Petition for Alien Relative, is a petition filed by United States Citizens (USC's) and Lawful Permanent Residents (LPR's) to establish the relationship to certain alien relatives who wish to immigrate to the United States. See the chart below.

Beneficiary Classifications and Sections of Law

| Petitioner | Beneficiary | Class | Section of Law/ Immigration and Nationality Act (INA) |
|---|---|---|---|
| USC | Spouse | IR1 | 201(b) |
| USC | Child | IR2 | 201(b) |
| USC | Parent | IR5 | 201(b) |
| USC | Unmarried son/daughter | F11 | 203(a)(1) |
| USC | Married son/daughter | F31 | 203(a)(3) |
| USC | Sibling | F41 | 203(a)(4) |
| LPR | Spouse | F21 | 203(a)(2) |
| LPR | Child | F22 | 203(a)(2)(A) |
| LPR | Unmarried son/daughter | F24 | 203(a)(2)(B) |

Part 2: General Requirements

 Adjudication  The following list is an overview of items to review and issues to consider in adjudicating an I-130 petition.  Elaboration on these topics is provided in the pages that follow.

GENERAL REQUIREMENTS
1.              Determine that the Form I-130 is properly filed (i.e. petitioner is eligible to file, petition is filed in the proper jurisdiction and petition is properly signed).

2.              If there is a G-28, you should also review it to confirm that it is acceptable.
3.              Determine the proper priority date (see table in Figure 6.1).

4.              Determine the requested classification by reviewing Part 2 of the I-130 petition.
5.              Determine there is evidence that the petitioner meets all requirements under the requested classification.

6.              Determine there is evidence that the relationship meets all requirements under the requested classification.

7.              Be aware that all petitions must be eligible at the time of filing except in the case of an LPR filing for their parents and naturalizing while the application is still pending.  In this case, the petition must be eligible at the time of adjudications.

Note: During the course of adjudications, various deficiencies may be apparent.  In regards to this SOP, "note the deficiency" does not necessarily mean to make a written note.

Procedure      The adjudicator must review the I-130 petition for general requirements. Follow the procedure as outlined below.

Step    Action
2.1     Perform an initial review of the I-130 petition.
·        The Form I-130 is issued in a three parts. Discard the instruction sheet and I-130A.
·        Place all documents in record of proceeding order.
·        G-28
·        Petition
·        I-797 Reject Notice

- ·     Evidence of Status: Passport, Natz. Certificate
- ·     Primary documents of relationship: Birth Certificates
- ·     Marriage Certificates
- ·     Marriage Termination documentation
- ·     G-325A and photos
- ·     Bona Fide parent-child relationship documents

Note: Translations must be attached to the relating foreign documents.

2.2     Verify that the petitioner's Date of Birth is marked in Part B, number 4.

| IF the Date of Birth is… | THEN… |
| --- | --- |
| Complete | Go to Step 2.3. |
| Missing | Note the deficiency. Go to Step 2.3. |

2.3     Verify that there is a proper and original signature in Part 8. All forms of original signature are acceptable, including an "X," thumbprint, or an original facsimile signature stamp. A TYPEWRITTEN NAME IS NOT A SIGNATURE.

Note: The legal representative cannot sign the petition in Section D.

| IF the signature is… | THEN… |
| --- | --- |
| Complete and correct | Go to Step 2.4. |
| Incorrect, missing or signed by the wrong petitioner | Note the deficiency. Go to Step 2.4. |

2.4     Review Part B of the I-130 petition for jurisdiction.

A)

| IF… | THEN… |
| --- | --- |
| The petitioner's place of residence is in your center's jurisdiction (see jurisdiction table below) | Go to Step 2.5. |
| The petitioner's place of residence is located outside of the United States (U.S.) | Proceed to part B below. |
| The petitioner's place of residence is outside of your center's jurisdiction but NOT outside of the U.S. | Note the deficiency. Go to Step 2.5. |

B)

| IF… | THEN… |
| --- | --- |
| The address is located in one of the designated countries (see list of designated countries below) | The petition must be filed with the service office located in that country. Note the deficiency. Go to Step 2.5. |
| The address is NOT located in one of the designated countries. | See 8 CFR 204.1(e)(3). Go to Step 2.5. |

STANDARD JURISDICTION

| State/Territory | Service Center |
| --- | --- |
| AZ, CA, Guam, HI, NV | CSC |

AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, SD, UT, WI, WA, WY, OR, Canada    NSC
AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX TSC
DC, CT, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VI, VT, WV   VSC


Designated Countries
Austria, Germany, Greece, Hong Kong, India, Italy, Singapore, Thailand, United Kingdom, Northern Ireland, Korea, Kenya, Mexico, Philippines, Great Britain


2.5     Determine if there is a G-28 present.
        IF…    THEN…
        A G-28 is present and contains all of the following:
·       Block 2-Petitioner's name
·       Block 3-A box checked and representative's original signature
·       Block 4- Name and original signature of petitioner (an original facsimile stamp is acceptable)    The G-28 is acceptable.  Go to Step 2.6.
        A G-28 is present but lacks any of the above information     The G-28 is unacceptable.  Move the G-28 off the ROP according to local procedure.  Go to Step 2.6.

        A G-28 is not present   Go to Step 2.6.
        Note:  If multiple filings are submitted, where the petitioner is the same in each case, and only one copy of the G-28 is submitted, make a copy of the original G-28, and attach it to the additional file(s).  Annotate the copy of the G-28 with your employee ID number, which indicates that the original has been seen.  See 8 CFR 204.1(c).
Note: An original signature from the beneficiary is not acceptable.
2.6     Determine the priority date. The priority date is the earliest date- stamp.
        IF…    THEN…
        The priority date can be established   Go to Step 2.7.
        The priority date CANNOT be established    Note the deficiency. Go to Step 2.7.
        Note: 204.1(c) The filing date of the petition shall be the date that it is properly filed under paragraph (d) of this section and shall constitute the priority date.
Note: 204.1(d) The petition shall be filed properly if (1) it is signed by the petitioner and (2) a fee has been received by the Service office or U.S. Consular office having jurisdiction.


2.7     Locate the petitioner's proof of status. The petitioner must provide U.S. CIS with the proper proof of status required for adjudication of the case. This may include the following:
·       An U.S. Birth Certificate issued by a civil authority and establishes the petitioner's birth in the U.S
·       An unexpired U.S. Passport
·       A Naturalization Certificate/Certificate of Citizenship

·        A Form I-551, Resident Alien Card

·        A foreign passport with a temporary I-551 stamp showing LPR status

·        A State Department Form FS-240, Report of Birth Abroad

Note: See requirements following Step 2.7 for more instructions on acceptable documentation.  Also see 8 CFR 204.1(g).

IF…    THEN…

You are able to locate the petitioner's proof of status        Go to Step 2.8.

You are NOT able to locate the petitioner's proof of status   Note as appropriate that the petitioner has not provided proof of status. Go to Step 2.8.

Note: If the petitioner submits original documentation to demonstrate proof status (e.g., U.S. passports, Resident Alien Card, or Naturalization certificate, etc.), the original documentation should be photocopied on both sides, and returned to the petitioner following your center's out-going mail procedures.

2.8    Evaluate the petitioner's proof of status using the appropriate criteria below.

IF…    THEN…

The petitioner's proof of status is valid      Go to Step 2.9.

The petitioner's proof of status cannot be confirmed by the petitioner's submitted documentation BUT can be confirmed by Service records        Perform a search of Service records for petitioner's status. If the petitioner's status still cannot be determined, note the deficiency. Go to Step 2.9.

The petitioner's proof of status cannot be confirmed by the petitioner's submitted documentation AND CANNOT be confirmed by Service records        Note the deficiency. Go to Step 2.9.

Note: Close attention should be given to the petitioner's original class of admission/adjustment.  This information will be vital to the proper adjudication of many I-130 relationships. –A prior IR1 classification would indicate a prior marriage, but no prior spouses are named on the petition.

Note: See CIS Addendum for more information on searches.

Petitioner is a U.S. Citizen     1) Acceptable proof of U.S. citizenship may be any one of the following:

a)       A birth certificate that was issued by a civil authority, which shows the petitioner's birth in the U.S.; or

b)       An unexpired U.S. passport (these do not need to bear the petitioner's signature in order to be acceptable); or

c)       The petitioner's Certificate of Naturalization or Certificate of Citizenship:

§        Must include:

Ø        Commissioner's signature

Ø        Petitioner's signature

§        RFE or search other Service records to verify petitioner's status.

d)	Department of State Form FS-240, Report of Birth Abroad of a Citizen of the U.S., relating to the petitioner; or

e)	A statement executed by a U.S. consular officer certifying the petitioner is the U.S. citizen and the bearer of a U.S. passport; or

f)	Verification using CIS or other electronic Service records. The following notations should be made on the petition in red ink:

·	Write or stamp "status verified in CIS by U.S. CIS on DATE by CAO#" on line 13.

2) Check off the following information contained in Section B of the petition:

·	Any discrepancies found in the names listed on lines 1 and 7

·	The date and country of birth

·	The A-number – write in if necessary

·	U.S. citizen: Certificate of Naturalization number with date and place of issuance, if appropriate

·	If a naturalized citizen confirm the date and class of adjustment or admission if it can impact the petition's adjudication.

Petitioner is a Lawful Permanent Resident	1) Acceptable proof of lawful permanent resident status may be any one of the following:

a)	Form I-551, Alien Registration Receipt Card

b)	Form I-151, Alien Registration Card. Although this form is obsolete, and no longer valid, the individual's status may be verified in CIS or other Service records.

c)	Other Service documentation evidencing lawful permanent residence status.

d)	Copies of the petitioner's passport, containing an admission stamp showing entry as a lawful permanent resident, as well as the pages identifying the passport as the petitioner's; or,

e)	Verification using CIS or other Service records. The following notations should be made on the petition in red ink:

·	Write or stamp "status verified in CIS by U.S. CIS on DATE by CAO#" on line 13.

2) Check off the following information contained in Section B of the petition:

·	Any discrepancies found in the names listed on lines 1 and 7

·	The date and country of birth

·	The A-number -  write in if necessary

·	For LPR: The date and place of admission or adjustment and class of admission,

Note: If petitioner is classified as Conditional Resident (CR), verify that his/her status has not expired.  If CR status has expired, check MFAS to see if an I-751 is pending.  If yes, work to completion.  If status is expired and no I-751 is pending, deny the petition.  See 8 CFR 216.1.

Evaluating Name Change Evidence   Sufficient evidence of name changes for the petitioner and/or beneficiary may include:

- Marriage Certificate
- Court Documents
- Evidence of a legal name change

2.9     Review Part A of the I-130 to determine the petitioner's relationship to the beneficiary. Look to see that only one box has been checked and that the beneficiary has a qualifying relationship with the petitioner. In order to be eligible, the alien relative must be one of the following:

- Husband/Wife
- Parent/Step-Parent
- Brother/Sister
- Step-Brother/Step-Sister
- Child/Step-Child/Adopted

        IF…    THEN…

        Only one box is checked and the beneficiary has a qualifying relationship with the petitioner     Proceed to Step 2.10.

        The beneficiary does NOT have a qualifying relationship with the petitioner (i.e., Parent of LPR, married child of LPR, grandchild, etc.)     Note the deficiency. Proceed to Step 2.10.

        No box is checked or multiple boxes are checked     Search the supporting documentation to see if you can determine the petitioner-beneficiary relationship. If the relationship cannot be determined, note deficiency and proceed to Step 2.10. If the relationship can be determined, make the proper notation and proceed to Step 2.10.

2.10     After you determine the petitioner's relationship to the beneficiary, identify the applicable section of INA/Visa Category. Indicate on the petition one of the following phrases:

- 201 (b) Spouse – IR-1/CR-1
- 201 (b) Child – IR-2/CR-2
- 201 (b) Parent – IR-5
- 203 (a)(1) Unmarried Son or Daughter – F1-1
- 203 (a)(2)(A) Spouse – F2-1
- 203 (a)(2)(A) Child – F2-2
- 203 (a)(2)(B) Unmarried Son or Daughter – F2-4
- 203 (a)(3) Married Son or Daughter – F3-1
- 203 (a)(4) Sibling – F4-1

Mark your selection next to the appropriate box in the upper-left hand corner of the I-130 petition

        IF there is a… THEN…

Spousal relationship    Go to Step 3.1
Parent-child relationship        Go to Step 4.1
Step relationship        Go to Step 5.1
Adoptive parent-child relationship    Go to Step 6.1
Sibling relationship    Go to Step 7.1


Part 3: Spousal Relationships

Introduction    A spousal relationship is created when a marriage is performed in accordance with the laws and requirements in the jurisdiction where the marriage took place.


Statutory Basis        Immigration and Nationality Act (INA).  Sections 201, 203, 204, 205


Regulatory Basis        8 CFR 103, 104, 204, 205.2, 245.1(a) or (b)


Required Evidence    1)        Status of the petitioner: USC or LPR
2)        Evidence of all relevant name changes
3)        Marriage certificate
4)        Evidence of legal termination of all prior marriages
5)        G-325A for petitioner and beneficiary
6)        Adit photos of petitioner and beneficiary
7)        Evidence to overcome sections 204(c), 204(g), 204(a)(2)(A)  (if applicable)


Step    Action: U.S. CIS
3.1    Review for general requirements. See Part 2 of this module.
3.2    Evaluate the required evidence of marriage. Locate the proof of marriage. This may be a civilly recognized marriage certificate or religious marriage certificates from selected countries and jurisdictions. Determine the validity of the proof of marriage using the criteria listed below.
                IF…    THEN…
                The proof of marriage is valid        Proceed to Step 3.3
                The proof of marriage is NOT valid    Note the deficiency. Proceed to Step
3.3
        Note: Use (Foreign Affairs Manual) FAM to review the required evidence.

Marriage Certificates Requirements 1) Marriage certificate issued by a local or federal civil authority. There may be exceptions, such as:

a) Justices of the Peace
b) Clerks of the Court
c) Magistrates
d) City/Town Clerks
e) Judges
2) The marriage certificate must be signed by a civil authority
3) A license to marry is unacceptable

The marriage certificate must show that the marriage actually occurred, and was filed with the appropriate civil authority.


Common-law Marriages 1) Must be recognized by the state of residence.
2) Dependent on state requirements; individuals need only to hold themselves out to the public as being married.
3) An informal marriage certificate may be required, check the state's requirements.
4) A religious marriage certificate may be issued when a state recognizes common-law marriages –even if a civil certificate cannot be issued.
5) A religious, marriage document is exceptionally good evidence when verifying the legality of a common-law marriage.
6) Termination of prior marriages may be required, investigate state requirements.


States Recognizing Common Law Marriages

Alabama, Colorado, District of Columbia, Georgia, Idaho
Iowa, Kansas, Montana, Ohio, Oklahoma, Pennsylvania,
Rhode Island, South Carolina, Texas


Marriage by Proxy 1) In order to be recognized under immigration law, the marriage must have been consummated subsequent to the marriage.
2) Acceptable evidence to indicate that the marriage was consummated:
· A child's birth certificate.
· Passport, airline tickets showing that the petitioner and beneficiary were in the same place at the same time.
· Evidence of residence together.
· Check Part C, Line 20 of the I-130 petition.


 3.3 Review for evidence of termination of a previous marriage. Acceptable evidence of the termination of a previous marriage might include the following:
· Final decree of divorce

·      Death certificate

·      Decree of annulment

·      Foreign divorce documents are generally acceptable if they are confirmed to be final orders.

Note: Refer to the Foreign Affairs Manual for information regarding the legality or existence of divorce or annulment in various countries.

| IF… | THEN… |
| --- | --- |
| The evidence is acceptable | Proceed to Step 3.4 |
| The evidence is NOT acceptable | Note the deficiency. Proceed to Step 3.4 |

3.4     Review for special consideration when adjudicating spousal relationships.

Retroactive Divorces   1)     A marriage is void if either party was previously married and the prior marriage has not been dissolved.

2)     The marriage is valid if the parties live together as husband and wife and represent themselves to others as being married.

3)     The marriage becomes valid when the prior marriage is dissolved.

4)     The I-130 will be approved when all of the following conditions are present:

a)     Retroactive divorces are recognized in the state where the current marriage was performed.

b)     The dissolution of the prior marriage must be finalized prior to filing of the I-130, unless the petitioner is a U.S. Citizen.  See Matter of Bardouille, 18 I. & N. Dec. 114 (BIA 1981).

c)     The divorce of a prior marriage of a U.S. Citizen may be subsequent to the I-130 filing, but must be finalized prior to the final adjudication of the I-130.

d)     The petitioner and beneficiary continue to hold themselves out as husband and wife.

5)     Massachusetts, Texas, Illinois, Wisconsin, and New York recognize retroactive divorces

6)     Matter of Arenas, Dec. 174 provides for a valid marriage during the period of time when a prior marriage is still in existence.

Foreign Divorce     Foreign divorces are generally acceptable as termination of a marriage; however, there are certain exceptions.

1)     Foreign divorces may be recognized if the divorce:

a)     Complies with Federal law in the United States.

b)     Complies with the law in the country or jurisdiction where it occurs.

2)     Foreign divorces may not be recognized for immigration purposes if:

a)     Granted by foreign consulates/consular officers that do not have jurisdiction or authority to grant divorces in the U.S.

b)     Divorces, although valid in the consulate's home country are not valid if granted in the U.S.

c)      The foreign divorce is not recognized in the United States.  Refer to Matter of Luna 18 I&N Dec 385.


INA Section 204(g)     Section 204(g) applies when all of the following are present:
a)      The petition is filed on behalf of a spouse
b)      The marriage creating the relationship occurred after November 10, 1986.
c)      The marriage took place while the beneficiary was in deportation, exclusion, removal, or judicial proceedings.
d)      The marriage was not entered into in good faith.
e)      The beneficiary has not resided outside the U.S. for 2 years following the date of the marriage.

Section 204(g) does not apply when:

a)      The beneficiary has been outside the United States for a two-year period which began after the marriage, or
b)      The proceedings have been terminated or other exemptions apply, or
c)      The petitioner provides "clear and convincing" evidence that a bona fide marital relationship exists.
§      Amendment to the Immigration Act of 1990, effective November 29, 1990.
§      The petitioner will be afforded the opportunity to submit evidence that "clearly and convincingly" establishes that the current marriage is bona fide.
§      When in CIS, use the Proceeding Received date, not the Charge Document date, to determine the initiation of judicial proceedings.
Example: A birth certificate of a child born to the petitioner and beneficiary.


Determining if the beneficiary is subject to Section 204 (g) of the Act      Part 1: Review block #16 to determine if the beneficiary is in proceedings, and where and when the proceedings commenced.

Part 2: The proceedings occurred after the petitioner and beneficiary were married:
a)      The beneficiary is not subject to the provisions of Section 204(g) –no intent to marry existed.
b)      Adjudicate the petition as if the beneficiary was not under proceedings.
Part 3:  The proceedings occurred before the petitioner and the beneficiary were married. The petition may still be approved if:
a)      The proceedings have been terminated.
b)      The beneficiary has resided outside the United States for a period of two years after the date of the marriage.
c)      The "clear and convincing" evidence submitted shows that the marriage was entered without intent to circumvent Immigration law.

5-year spouse-INA 204(a)(2)(A)     1)     Section 204(a)(2)(A) applies when all the following conditions exist:

a)     The petition is pending on or after November 10, 1986.
b)     The petition is for the spouse of an LPR (F21).
c)     Petitioner obtained LPR status through a prior marriage to either a USC or LPR.
d)     The petition was filed less than five years after the petitioner's admission or adjustment, as in IR1, FR1, and IB1.
        e) Divorce or annulment terminated the petitioner's prior marriage.


When are "5-year spouse" cases approvable?     2)     The I-130 will not be approved unless:

a)     The petitioner provides clear and convincing evidence of the bona fides of the prior marriage by which he/she attained status.
b)     Evidence must show that the prior marriage was not entered into for the purpose of obtaining an immigration benefit or otherwise evading immigration laws.
c)     204(a)(2)(A) does not apply if the prior marriage was terminated through death.


If the "5-year spouse" case is approved     The block labeled "204(a)(2)(A) resolved" will be marked in the box below the priority date line.


Matter of Pazandeh, 19 I&N Dec. 884     a)     The BIA will not review petitions denied under Section 204(a)(2)(A) if the petitioner is:

i.     Within six months of completing the five-year period after admission or adjustment.

b)     204(a)(2(A) can be resolved through the passage of time.

c)     "Matter of Pazandeh" will be written in the "Remarks" section of the I-130.


Matter of Aldecoaotalora     Matter of Aldecoaotalora:
1)     BIA decision 18 I&N Dec. 430

a)     A divorce would be considered a sham if it were done:
§     Solely to allow one party to qualify for a visa or obtain status as a child or unmarried son or daughter.

2)     Indications of fraud –per Matter of Aldecoaotalora 18 I&N Dec. 430
§     The petitioner and beneficiary were:

a) Previously married

b) Divorced

c) Then remarried shortly after the petitioner adjusted or was admitted into the United States as an LPR.

3) Disposition

a) Petitioner and beneficiary are currently living in the United States:

i. Prepare a memo to go to the district office.

ii. Forward the petition to the appropriate district office.

b) The beneficiary is living abroad:

i. The districts cannot interview both parties –both parties cannot provide potential contrary evidence.

ii. Adjudicate the petition as if there was no possibility of a sham divorce.

iii. Make a notation in the "Remarks Block" to alert the consulate to the probability of a sham marriage.

Fraudulent Marriages-INA 204(c)     A-Files or T-files will be created when a beneficiary is found to be subject to Section 204(c) of the Act.

1) I-130s filed on or after November 10, 1986:

a) No petition may be approved for a beneficiary who has

i. Received or sought to receive:

§ Status as the spouse of either a USC or LPR based on a fraudulent marriage determined by the attorney general.

b) The marriage was determined by the Service to be fraudulent

c) The beneficiary conspired to enter or attempted to enter into a fraudulent marriage for the purpose of evading the immigration laws.

2) I-130s filed prior to November 10, 1986:

a) The beneficiary had adjusted as an LPR

b) The beneficiary was issued an immigrant visa

c) The beneficiary actually received immigration status and not simply sought to receive it.

d) The marriage was determined to be fraudulent.

Inquiries into 204(c) a)     A finding by an immigration officer has the effect of barring the beneficiary from obtaining future immigration benefits indefinitely.

b)      The BIA has determined that the petitioner has a "heavy burden" in establishing that the marriage was not:
i.      Fraudulent
Entered into or attempted to be entered into for the purpose of evading immigration law.


Overcoming the restrictions of Section 204(c)      "Clear and convincing" evidence is required when establishing that the prior marriage was not fraudulent.

a)      The beneficiary's A-File must be obtained before discussing issues of 204(c) with the petitioner.
b)      Probative and substantial evidence of such an attempt or conspiracy to enter in a fraudulent relationship must be obtained.
c)      Evidence must be obtained from the beneficiary's Service record.
d)      Prepare an order of intent-to-deny.
e)      Avoid any fishing expeditions.

Notes:
1.  Section 204(c) does not apply to a subsequent petition filed by the same petitioner. It was concluded in Matter of Isber, 20 I&N Dec. 676 (BIA 1993) that:  "Section 204(c) of the Immigration and Nationality Act does not preclude approval of a second marital visa petition filed by a petitioner on behalf of the same beneficiary."
2.      Section 204(c) is not restricted to petitions for a spouse.
3.      All beneficiaries of an I130 are subject to the provisions of Section 204(c) if they ever participated in a fraudulent marriage with the intent to evade immigration laws.
4.      With all subsequent petitions for immigrant classification, the beneficiary will be subject to the provisions of Section 204(c) of the Act.


Acceptability guidelines for the petitioner's G-325A The petitioner's G-325A must:
·      Contain the name of the petitioner.
·      Contain the petitioner's signature.

Note: Other information already contained on Form I-130 does not need to be repeated on the G-325A.


Acceptability guidelines for the beneficiary's G-325A      The beneficiary's G-325A must:
·      Contain the name of the beneficiary.
·      Contain the beneficiary's signature

Notes: Other information already contained on Form I-130 does not need to be repeated on the G-325A.

3.5 An ADIT-style photo for both the petitioner and the beneficiary are required. Evaluate photographs submitted by the petitioner and the beneficiary using the acceptability criteria specified below.

IF… THEN…

The petitioner and beneficiary have both submitted acceptable photos Proceed to Step 3.6

Either the petitioner or the beneficiary have submitted unacceptable photos Note the deficiency. Proceed to Step 3.6

ADIT-style photographs · One photo of the petitioner and one for the beneficiary are required.

· Photographs that do not meet the specifications but present a clear identifiable image of the subject are acceptable.

· If both parties are in one photo, the photo may be cut so that each photo can be stapled to its corresponding G-325A.

· Only one photo for each party is necessary.

· All non-ADIT style photographs will be waived.

3.6 After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements.

IF… THEN…

The beneficiary qualifies under all guidelines for the specified classification Go to Step 8a.1 and follow instructions for processing approvals.

Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification Go to Step 8b.1 and follow instructions for processing Requests for Evidence.

Adverse or derogatory information about the petitioner is made known to the Service Go to Step 8c.1 and follow instructions for processing Intents to Deny.

The beneficiary clearly does not qualify under classification requested and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible Go to Step 8d.1and follow instructions for processing denials.

The case involves an unusually complex or novel issue of law or fact The case may be certified as either approval or denial to BIA. Go to Step 8e.1 and follow instructions for processing a certification.

Part 4: Parents and Children

Introduction    The INA recognizes three forms of parent and child relationships:
- Biological
- Step
- Adoptive

Statutory Basis        INA Sections 101(b), 201, 203, 204, 205

Regulatory Basis       8 CFR 103, 104, 204, 205.2, 216

Parent/Child Relationships    Parent/child relationships are "bi-directional." Petitions may be filed by the:
a)      "Mother or Father" or
b)      "Son or daughter"

Child   Unmarried and under the age of 21

Son or Daughter        Child over the age of 21.
Child married of any age.

Restrictions    ·       Sons or daughters petitioning for their parents must be U.S. citizens 21 years of age or older. (INA Section 204.2(f)(1))
·       Only United States citizens may petition for their married sons and daughters.

Required Evidence for Mother petitioning for a child/son/
Daughter        ·       Petition is filed by the biological mother
·       Status of the petitioner: USC or LPR
·       Beneficiary's birth certificate
·       Evidence of all relevant name changes

Required Evidence for Father petitioning for a child/son/
daughter        ·       Petition is filed by the biological father
·       Status of the petitioner: USC or LPR
·       Beneficiary's birth certificate
·       Marriage certificate of the child's biological parents (if applicable)
·       Evidence of legitimation laws if marriage to natural mother did not exist
·       Evidence to establish a bona fide parent/child relationship (if applicable)

·        Evidence of all relevant name changes


Required Evidence for Son or daughter petitioning for a parent     ·       Petition is filed by the USC son or daughter
·        Petitioner is at least 21 years of age
·        Petitioner's birth certificate
·        Marriage certificate of the petitioner's biological parents (if applicable for father)
·        Evidence of legitimation laws (if applicable for father)
·        Evidence to establish a bona fide parent/child relationship (if applicable for father)
·        Evidence of all relevant name change


| Step | Action: U.S. CIS |
|------|------------------|
| 4.1 | Review for general requirements. See Part 2 of this module. |
| 4.2 | Determine the relationship between the petitioner and the beneficiary. |

IF…    THEN…

The petitioner is a mother petitioning for a child     Go to Step 4.3.

The petitioner is a father petitioning for a child     Go to Step 4.6.

The petitioner is a child petitioning for a parent     Go to Step 4.10.


4.3    In order to prove biological maternal relationship with the beneficiary, the petitioner must submit a timely, civil-registered birth certificate. Locate and evaluate the birth certificate using the guidelines discussed in the Birth Certificate Acceptability information below.

IF…    THEN…

The birth certificate has been submitted and is acceptable     Proceed to Step 4.5

The birth certificate has not been submitted     Proceed to Step 4.4.

The birth certificate has been submitted and is NOT acceptable     Note the deficiency. Proceed to Step 4.4.


Birth Certificate Acceptability     A birth certificate is acceptable if the following criteria are met:
·        There is proof that a civil authority has issued the birth certificate.
·        There is evidence that the birth certificate has been registered timely with a civil authority.

·       The mother and child's name appear both appear on the birth certificate as they are displayed on the petition.
·       The document appears to be valid and sufficient.

4.4     If a petitioner has not submitted an acceptable birth certificate, secondary evidence of the biological maternal relationship may be sometimes acceptable. Determine whether the petitioner has submitted valid secondary evidence. Evaluate the secondary evidence using the acceptability guidelines listed below.

IF…    THEN…
The secondary evidence submitted is acceptable       Proceed to Step 4.5.

The secondary evidence submitted is not acceptable Note the deficiency. Proceed to Step 4.5.

Note: See 8 CFR 204.2(d)(v).  Secondary Evidence: When it is established that primary evidence is not available, secondary evidence may be accepted.  To determine the availability of primary documents, refer to FAM.  When the FAM shows that the primary documents are generally available in the country at issue but the petitioner's claims his or her document is unavailable, then a letter from the appropriate registrar stating such will be required before the secondary evidence is accepted.
Note: Refer to Evaluating Evidence addendum for more information on secondary evidence.
4.5     Evaluate evidence of pertinent name changes for the petitioner and/or beneficiary.
IF…    THEN…
There is sufficient evidence of name changes          Proceed to Step 4.17.

There is NOT sufficient evidence of name changes   Note the deficiency. Proceed to Step 4.17.
Note: Refer to CIS Addendum for more information on researching name changes.

4.6     In order to prove biological paternal relationship with the beneficiary, the petitioner must submit a timely, civil-registered birth certificate.  Locate and evaluate the birth certificate using the guidelines listed below.
IF…    THEN…
The birth certificate has been submitted and is acceptable    Proceed to Step 4.8.
The birth certificate has not been submitted   Proceed to Step 4.7.
The birth certificate has been submitted and is NOT acceptable      Note the deficiency. Proceed to Step 4.7.

Birth Certificate Acceptability        A birth certificate is acceptable if the following criteria are met:

·        There is proof that a civil authority has issued the birth certificate.
·        There is evidence that the birth certificate has been registered timely with a civil authority.
·        The father, mother, and child's name appear both appear on the birth certificate as they are displayed on the petition.
·        The document appears to be valid and sufficient.
·        Check FAM/BENDERs for each country for guidelines on what documents are acceptable.

 4.7      If a petitioner has not submitted an acceptable birth certificate, secondary evidence of the biological paternal relationship may be sometimes acceptable.  Determine whether the petitioner has submitted valid secondary evidence. Evaluate the secondary evidence using the acceptability guidelines listed in the table below.

| IF… | THEN… |
| --- | --- |
| The secondary evidence submitted is acceptable | Proceed to Step 4.8. |
| The secondary evidence submitted is not acceptable | Note the deficiency. Proceed to Step 4.8. |

Note: Refer to Evaluating Evidence addendum for more information on secondary evidence.

 4.8      Evaluate evidence of pertinent name changes for the petitioner and/or beneficiary.

| IF… | THEN… |
| --- | --- |
| There is sufficient evidence of name changes | Proceed to Step 4.9. |
| There is NOT sufficient evidence of name changes | Note the deficiency. Proceed to Step 4.9. |

Note: Refer to CIS addendum for more information regarding name changes.

 4.9      The father petitioner must also establish a legal relationship with the child beneficiary. To determine if the petitioner's relationship with the beneficiary is legitimate see guidelines below.

| IF… | THEN… |
| --- | --- |
| The father's relationship with the child is legitimate | Go to Step 4.17. |
| The father's relationship with the child is NOT legitimate | Note the deficiency. Go to Step 4.17. |

Legitimacy     A child is legitimate if one or more of the following is true:

· He/she is born to parents who were married prior to the child's date of birth.

· He/she is born in a country, which had eliminated all distinctions between those children born in or out of wedlock, prior to the child's birth.

· His/her parents are married prior to the child's 18th birthday.

Acceptable proof of legitimacy if established through marriage     ·     The parent's marriage certificate showing their marriage prior to the child's birth.

· The child's parents do not have to be married at the time of the filing of the petition (they may have become divorced) but the marriage must have occurred prior to the child's birth.

· Notation of the parent's marriage on a child's birth certificate is not adequate proof that the parents were married prior to a child's 18th birthday.

· Evidence of the legal termination of all prior marriages of the child's parents.

· Evidence of any other pertinent name changes for all parties concerned: those that are different than stated on the petition or marriage certificate.

Residency     Place of residency is defined as:

1) The country the child resided in at the time of his/her birth.
2) The country the father resided in at the time of the child's birth.
3) The state the father has resided in prior to the child's 18th birthday.
4) The country or state the child has resided in prior to the child's 18th birthday.

Acceptable proof of legitimacy if established through place of residence     ·     A petition filed by, or for a father.

· The child or father, at the time of birth, lived in a jurisdiction that had eliminated the differences between children born in and out of wedlock. The state's or country's legitimation laws were effective at the time of the child's birth.

· If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday.

· If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided, while the child was under eighteen years of age, in the country or state whose law the child has been legitimated.

· The child's parents do not have to be married in order for a child to be legitimate, at birth, if the child or the father resided in a country or state that had eliminated the legal differences in birth status.

Legitimation Standards     Note: Effective Dates

1) The bottom number is the date the legitimation law became effective.

2)      The top number is the effective date minus 18 years. Any child who was under the age of 18 at the time a legitimation law was amended may qualify as legitimate(d).


 COUNTRY    LEGITIMATION
LAWS EFFECTIVE
DATES

Argentina      Marriage, Judicial Decision or acknowledgement by the father.
10-23-67
10-23-85

Antigua
Marriage *If father is domiciled in the Colony at the time of the marriage.
-----

Austria
Marriage or Order by the President
-----

Barbados
Eliminated
1-01-62
1-01-80

Belize
Marriage
-----

Bermuda
Marriage *If father is domiciled in Bermuda at the time of the marriage.      -----

Bolivia
Eliminated      -----

Brazil
Marriage      -----

British Guiana
(Births after 05-26-66 see Guyana)
Marriage
-----
Burma
Aka Myanmar

Marriage
-----

Cambodia
Acknowledgement
2-25-02
2-25-20

Cameroon
Acknowledgement
8-01-63
8-01-81

Canada –See separation of provinces below.

Cape Verde
Eliminated
10-01-58
10-01-76

Chile
Marriage, or Voluntary Legitimation in a public instrument or record with the Civil
Registry
-----

COUNTRY    LEGITIMATION
LAWS EFFECTIVE
DATES

China (PRC) –Mainland
Eliminated

05-01-32
05-01-50

China – Taiwan          Marriage, or Acknowledgement

-----

Colombia
Eliminated
03-09-64
03-09-82

Costa Rica
Marriage, Acknowledgment, or Judicial Assignment (1)
05-21-34
05-21-52

Cuba
Eliminated
03-08-57
03-08-75

Curacao
Marriage (subsequent marriage also requires Acknowledgment) (2)
-----

Dominica
Marriage          -----

Dominican Republic
Acknowledgment (3)
01-01-77
01-01-95

Ecuador
Acknowledgment (4)
08-07-52
08-07-70

El Salvador
Eliminated
Marriage or Acknowledgment (5)(prior 12-16-65)
12-16-65
12-16-83

England
Marriage
-----

Ethiopia
Marriage
-----

France
Marriage Plus Acknowledgment if the Marriage is Subsequent to Birth (6)
-----

Germany

Marriage or Court Order
-----

Ghana
Marriage
-----

Greece
Marriage, or Judicial Decree
-----

COUNTRY    LEGITIMATION
LAWS EFFECTIVE
DATES

Grenada
Marriage if the father is domiciled in Grenada at the time of the marriage, unless either parent was married to a third party when the child was born; or Court Decree.(8)
-----

Guatemala
Eliminated
09-14-27
09-14-45

Guinea –Republic of
Marriage and Recognition by Both Parents. (9)
-----

Guyana
(Births prior to 05-26-66 see British Guiana)
Eliminated
05-18-65
05-18-63

Haiti    Prior to 01-27-59: Marriage

After 01-27-59: Acknowledgement by the natural father, if the child is not born of an incestuous or adulterous relationship.(10)

01-27-41
01-27-59

Honduras
Eliminated
12-21-39
12-21-56

Hong Kong
Marriage, or Child of Chinese Male (11)

10-07-53
10-07-71

Hungary
Eliminated
01-01-35
01-01-53

India
Marriage
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Indonesia
Marriage, or Acknowledgement with a Declaration by Governor-General after
Consultation with the Supreme Court (12)


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Iran
Marriage
-----

Italy
Marriage
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COUNTRY    LEGITIMATION
LAWS EFFECTIVE
DATES

Jamaica
Establishment of Paternity, or Acknowledgment. (13)
10-19-58
10-19-76

Japan
Marriage. If Subsequent to Birth, Marriage plus Acknowledgment. (14)
-----

Korea
Marriage. If Subsequent to Birth, Marriage plus Acknowledgment. (15)
-----

Liberia
Court Order of Legitimation
-----

Mexico
Marriage
-----

Montserrat
Marriage
-----

Myanmar –see Burma
Marriage
-----

Netherlands Antilles
Marriage. If Subsequent to Birth, Marriage plus Acknowledgment. (16)
-----

Netherlands
Marriage. If Subsequent to Birth, Marriage plus Acknowledgment. (17)
-----


 COUNTRY    LEGITIMATION
LAWS EFFECTIVE
DATES

Nicaragua
Marriage
-----

Nigeria
Marriage or Acknowledgement
-----

Panama
Acknowledgment (18)
09-30-28
09-30-46


Paraguay
Acknowledgement via Civil Registry, Notary, Judge or Will. (19)
08-25-49
08-25-67

Peru
Recognition via Public Document (20)
11-14-66
11-14-84

Philippines
Marriage. If subsequent to birth neither parent could be married to a third party at time of birth, the natural parents must marry one another plus publicly acknowledge the child. (21)
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Poland
Civil Registry Acknowledgment (22)
1928
1946

Portugal
Marriage plus Acknowledgment (23)
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Puerto Rico
Establishment of  Paternity (24)          1924
1942

St. Christopher Nevis
Marriage or Establishment of Paternity (25)
11-08-65
11-08-83

St. Vincent
Eliminated
07-01-62
07-01-80


Spain

Marriage

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Surinam
Marriage

-----

Switzerland
Prior to 1959: Marriage Prior to Birth
1959 & After: Marriage Prior to Child's 18th Birthday (26)

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Thailand
Marriage, or Registration, or Court Order

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 COUNTRY   LEGITIMATION
LAWS EFFECTIVE
DATES

Trinidad & Tobago
Eliminated
03-01-65
03-01-83

Uruguay
Marriage

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Venezuela
Acknowledgement in a Public Document (27)
07-26-64
07-26-82

Vietnam
Marriage. If Subsequent to Birth, Marriage plus Acknowledgment (28)

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Yemen
Marriage

-----

Yugoslavia

Eliminated
01-31-28
01-31-46

Zaire
Marriage, or Acknowledgement or Court Order. May not be based on an incestuous or adulterous relationship (29)


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CANADIAN
PROVINCE    LEGITIMATION
LAWS EFFECTIVE
DATES

Alberta
Marriage

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British Columbia
Eliminated
1961
1979

Manitoba
Eliminated
1961
1979

New Brunswick
Eliminated
09-01-63
09-01-81

Newfoundland
Eliminated
1961
1979

Nova Scotia
Marriage


-----

Ontario
Eliminated
03-31-60
03-31-78

Prince Edward Island
Eliminated
1961
1979

Quebec
Eliminated
04-02-63
04-02-81

Saskatchewan
Marriage
-----

U.S. STATE    LEGITIMATION
LAWS EFFECTIVE
DATES

Alabama
Marriage and Acknowledgement or, Judicial Decree
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Alaska
Marriage and Acknowledgement or, Judicial Decree
01-01-44
01-01-62

Arizona
Eliminated
01-01-57
01-01-75

Arkansas
Marriage and Acknowledgement or, Court Order
01-01-51
01-01-69

California

Marriage or Public Acknowledgement
1854
1872

Colorado
Marriage, or Acknowledgement

07-01-73
07-01-91

Connecticut
Eliminated
06-06-62
06-06-80

Delaware
Eliminated
07-05-76
07-05-94

District of Columbia
Eliminated
12-24-45
12-24-63

Florida
Marriage

Georgia
Marriage and Recognition or, Court Order     01-01-52
01-01-70
01-01-63

Guam
Eliminated with Acknowledgement of Paternity By Both Parents (30)

02-24-68
02-24-86

 U.S. STATE  LEGITIMATION
LAWS EFFECTIVE
DATES

Hawaii
Marriage, or Acknowledgement, or Father/child Relationship
01-01-58
01-01-76

Idaho
Marriage

Illinois
Marriage

Indiana
Marriage, Court Order, or Marriage Plus Acknowledgement if Subsequent to Birth.(31)

01-01-79
01-01-97

Iowa
Marriage

Kansas
Marriage.  If Subsequent to Birth, Marriage plus Acknowledgment (32)

07-01-76
07-01-94

Kentucky
Eliminated
06-16-54
06-16-72

Louisiana
Marriage.  If Subsequent to Birth, Marriage plus Acknowledgment (33)

Maine
Marriage even if void, Notary Acknowledgement, Judicial Determination, or Open
Recognition (34)

01-01-63
01-01-81

Maryland
Marriage, or Acknowledgement, or Judicial Determination, or Open Recognition
1908

1926

Massachusetts
Marriage, & Acknowledgment of Paternity, or Judicial Declaration of Paternity


Michigan
Marriage, or Registered Acknowledgement (35)
1933
1951


U.S. STATE  LEGITIMATION
LAWS EFFECTIVE
DATES

Minnesota
Eliminated
01-01-76
01-01-94


Mississippi
Eliminated
07-01-44
07-01-62


Missouri
Eliminated
07-15-69
07-15-62


Montana
Marriage


Nebraska
Marriage Prior to Child's Birth (36)

Nevada
Marriage

New Hampshire
Marriage, or Court Declaration

08-14-59
08-14-77

New Jersey
Eliminated
05-21-65
05-21-83


New Mexico
Eliminated
01-01-68
01-01-86


New York
Marriage

North Carolina
Marriage or Court Order
01-01-59
01-01-77


North Dakota
Marriage

Ohio
Eliminated with Establishment of Paternity or Probate Court Order (37)
01-01-35
01-01-53


 U.S. STATE  LEGITIMATION
LAWS EFFECTIVE
DATES

Oklahoma
Eliminated with Acknowledgment, or Judicial Declaration
10-01-59

10-01-77

Oregon
Eliminated
01-01-65
01-01-83


Pennsylvania
Marriage, Recognition with Clear & Convincing Evidence, or Judicial Determination
(38)

06-17-53
06-17-71


Puerto Rico
Marriage or Paternity

1924
1942


Rhode Island
Marriage

South Carolina
Marriage

South Dakota
Marriage If Subsequent to Birth, Marriage plus affidavit filed with Civil Registrar (39)


Tennessee
Eliminated
06-13-79
06-13-97

Texas
Eliminated
04-20-77
04-20-95


Utah
Eliminated with Declaration of Paternity
05-02-76

05-02-94


U.S. STATE  LEGITIMATION
LAWS EFFECTIVE
DATES


Vermont
Marriage


Virgin Island
Eliminated with Paternity
12-15-58
12-15-76


Virginia
Eliminated with Acknowledgment of Paternity by Both Parents (40)


Washington
Eliminated with Acknowledgement
01-01-57
01-01-75


West Virginia
Marriage


Wisconsin
Marriage or Acknowledgment by Both Parents (41)
1967
1985


Wyoming
Eliminated
01-01-59
01-01-77


 (1)    Under current Costa Rican law, the former categories of legitimate and
illegitimate children were abolished by Law No. 1443 on May 21, 1952.  Children born
in wedlock and children born out of wedlock have no distinction regarding correlative

rights and duties. The key element of parentage, specifically paternity, is its legal presumption for those born either in wedlock and voluntarily acknowledged or the judicial assignment of paternity for those born out of wedlock.

(2)     It was concluded in Matter of Mourillon, 18 I. & N. Dec 122 (BIA 1981) that under the law of Curacao, Netherlands Antilles, legitimation of a child born out o f wedlock is effected by the subsequent marriage of the natural parents together with their prior or contemporaneous acknowledgment of the child.

(3)     It was held in Matter of Cabrera, Interim Decision 3294 (BIA 1996) that :

A child born out of wedlock in the Dominican Republic is placed in the same legal position as one born in wedlock once the child has been acknowledged by the father in accordance with Dominican law and hence qualifies as a "legitimated" child under Section 101(b)(1)(C) of the Immigration and nationality Act….
Section 101(b)(1)(C) I&N Act defines child as:

…. A child legitimated…. Before the child reaches the age of eighteen years….

The date of the enactment of the applicable changes to Dominican law, Article 14 of the Code for the Protection of Children, is January 1, 1995.  Prior to this enactment, legitimation was accomplished only through the acknowledgment of the natural offspring followed by the marriage of the parties.  It follows, therefore, that a child must have been born on or after January 2, 1977, to be eligible to derive legitimation by this Act.

(4)     It was concluded in Matter of Campuzano, 18 I. & N. Dec. 390 (BIA 1983) that:

…a child who was born in Ecuador on or after August 7, 1970, or who was under 18 years of age on that date and who was acknowledged prior to his 18th birthday may be a legitimate or legitimated "child" as set forth in Section 101(b)(1) of the Act….

(5)     Under the law of El Salvador, if a child has been acknowledged, the subsequent marriage of the parents legitimates the child, unless the child was conceived in an adulterous relationship.  Matter of Ramirez, 16 I. & N. Dec. 222 (BIA 1977).

In Matter of Moraga, 23 I & N, 195 (BIA 2001), it was determined that children born in and out of wedlock have the same legal status as those born in wedlock once paternity has been established.

The Political Constitution of the Republic of El Salvador, 1983, Article 32 is paraphrased as follows:

Children born in or out-of-wedlock and adopted children shall have equality of rights in regard to their parents. It is the parents' obligation to provide their children with protection, assistance, education and security. No mention shall be entered in the records of the Civil Registry of qualifications on the nature of parentage. Birth certificates may not mention the marital status of the parents…

Only those children born on or after December 16, 1965 are to be regarded as legitimate, despite the marital status of their parents.

(6)     It was determined in Matter of J, 7 I. & N. Dec. 338 (BIA 1956) that under French Civil Code, a child born out of wedlock is legitimated by the subsequent marriage of his natural parents plus acknowledgement before or at the time of marriage.

(7)     Matter of Lauer, 12 I. & N. Dec. 210 (BIA 1967) held that paternity acknowledgment alone by a father does not constitute legitimation in Germany.  Based on German Civil Code, Section 1719, legitimation is accomplished either by the subsequent marriage of the natural parents or upon application by the natural father that the child be declared legitimate by order of the court or state.

(8)     Legitimation in Grenada was discussed in Matter of Bullen, 16 I. & N. Dec. 378 (BIA 1977).  That decision holds that a child born out of wedlock may be legitimated either:  by the marriage of the parents, if the father is domiciled in Grenada at the time of the marriage and neither parent was married to a third person at the time of the child's birth; or by a Supreme Court decree holding that the person is a legitimated person.

(9)     According to an advisory opinion from the Library of Congress in July 1997, a child born outside of marriage in the Republic of Guinea is legitimized by the subsequent marriage of the father and mother.  Both parents must offer recognition of the child in front of a civil status registration officer before such child can enjoy the same rights as a child born within a marriage. Prior to 1959, the sole method to effect legitimation in Haiti was the marriage of the natural parents.  See Matter of Remy, 14 I. & N. Dec. 183 (BIA 1972).

(10)    It was concluded in the Matter of Mesias, 18 I. & N. Dec. 298 (BIA 1982), that the Presidential Decree of January 27, 1959, amended the Civil Code of Haiti to provide for the legitimation of a child born out of wedlock after acknowledgement by the natural father, if the child is not born of an incestuous or adulterous relationship.
The Matter of Cherismo, 19 I. & N. Dec. 25 (BIA 1984), expands our understanding of the Presidential Decree to include a child born out of wedlock after January 28, 1941, who is acknowledged by the natural father before his/her eighteenth birthday if the child is not born of an incestuous or adulterous relationship.

(11)    The Hong Kong Births and Deaths Registration Act was discussed in Matter of Chin, 15 I. & N. Dec. 100 (BIA 1974).  Pertinent sections of the Act state that:

For the purposes of this ordinance every child of every Chinese male shall be deemed to be a legitimate child (Section 12).  The effective date of this Act is October 7, 1971.

(12)    Under the law of Indonesia acknowledgment alone by the natural father of a child born out of wedlock does not constitute legitimation; Article 275 of the Civil Code of April 30, 1947, requires a declaration of the Governor-General (and at present, the President of the Republic of Indonesia) after a consultation with the Supreme Court, for the legitimation of a legally acknowledged child.  This was finding was affirmed in Matter of The, 10 I. & N. Dec. 744 (BIA 1964).

(13)    It was stated in the Matter of Clahar, 18 I. & N. Dec. 1 (BIA 1981) that:

(2) A child within the scope of The Jamaican Status of Children Act, 1976, may be included within the definition of a legitimate or legitimated "child" as set forth in Section 101(b)(1) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1), so long as the requisite family ties are established and the status arose within the time requirements of Section 101(b)(1).  (cite omitted)

(3) To meet the definitional requirements of a "child" as set forth in Section 101(b)(1) of the Act, the person must be under 21 years of age and any legitimation must have taken place before the child reached the age of 18 years.

The date of enactment of The Jamaican Status of Children Act of 1976 is October 19, 1976.  Prior to this enactment legitimation was accomplished only through the marriage of the natural parents.  It follows, therefore, that a child must have been born on or after October 19, 1958, to be eligible to derive legitimation by this Act.
The Jamaican Status of Children Act, 1976, states in pertinent part...the relationship of father and child, ...shall, ... be recognized only if-

(a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or

(b) paternity has been admitted by or established during the lifetime of the father (whether by one or more of the types of evidence specified by Section 8 or otherwise):

Provided that, if the purpose aforesaid is for the benefit of the father, there shall be the additional requirement that paternity has been so admitted or established during the lifetime of the child or prior to its birth. ...
(14)    It was held in Matter of Monma, 12 I. & N. Dec. 265 (BIA 1967) that:

...under Japanese law a child born out of wedlock can only be legitimated by the subsequent marriage of the parents and the acknowledgement of parentage, with the entry of both the marriage and the acknowledgement into the official family register.
(15)    When addressing legitimation in Korea; Matter of Kim, 14 I. & N. Dec. 561 (BIA 1974) held that:

An illegitimate child may be legitimated by recognition combined with the marriage of the parents.  Recognition is accomplished by registration with the Family Registrar...

This decision was effectively reaffirmed in Matter of Reyes, 17 I. & N. Dec. 512 (BIA 1980).
(16)    It was concluded in Matter of Mourillon, 18 I. & N. Dec. 122 (BIA 1981) that under the law of Curacao, Netherlands Antilles, legitimation of a child born out of

wedlock is effected by the subsequent marriage of the natural parents together with their prior or contemporaneous acknowledgment of the child.

(17)    Article 327 of the Civil Code of The Netherlands provided that a child born out of wedlock who has been acknowledged is automatically legitimated by the subsequent marriage of its natural parents.This interpretation was restated in Matter of Van Pamelen, 12 I. & N. Dec. 1678 (BIA 1966).

(18)    It was held in Matter of Sinclair, 13 I. & N. Dec. 613 (BIA 1970) that:

Parents have the same duties with respect to their children born out of wedlock as they do toward children born in wedlock.  All children are equal before the law and have the same rights of inheritance in interstate succession.

This opinion was later reaffirmed in Matter of Maloney, 16 I. & N. Dec. 650 (BIA 1978) which reads:

Under the Constitution of Panama of March 1, 1946, and its implementing law of September 30, 1946, all acknowledged children are to be treated equally and considered legitimate, regardless of whether or not the natural parents ever marry.  The right of legitimation extends to those born before March 2, 1946.

(19)    The national Constitution of Paraguay, effective August 25, 1967, eliminated all legal distinctions between children born in and out of wedlock.  The only requirement for equality of children is that parentage is established through acknowledgement.  Such acknowledgement may be accomplished before an officer of the civil registry, a notary public, a judge or in a will.  For United States immigration purposes, a child must have been born on or after August 25, 1949, to derive legitimation from the Constitution of Paraguay.

(20)    It was concluded in Matter of Torres, Interim Decision #3347 (BIA 1998) that:

A change in Peruvian law on November 14, 1984, served to place children born out of wedlock in the same legal position as children born in wedlock in all respects once "extramarital filiation" is established according to the legal procedures of Peru.

Thus, a child born out of wedlock who was under 18 years of age on November 14, 1984, or who was born on or after that date, may qualify as the legitimated child of his or her father, if the requirements...of "extramarital filiation" are met before the child's 18th birthday.  Therefore, a child must have been born on or after November 14, 1966, to be eligible to derive legitimation status from this Act.

Article 387 of the Civil Code states that "[r]ecognition and the ruling declaring paternity or maternity are the only methods of proof of extramarital filiation."  With regard to recognition, Article 390 of the Civil Code provides that "[r]ecognition is recorded in the registry of births, in a public legal document or in a will."

Prior to the change in Peruvian law on November 14, 1984, legitimation of a child born out of wedlock required either the marriage of the natural parents or judicial declaration after a petition had been filed by the legitimating parent. In consideration of the change in the laws of Peru, these requirements now apply only to children born prior to November 14, 1966. (Matter of Quispe, 16 I. & N. Dec. 174 (BIA 1977), Matter of Breninzon, 19 I. & N. Dec. 40 (BIA 1984), and Matter of Torres, Interim Decision #3347 (BIA 1998).

(21)    ) It was held in Matter of Espiritu, 16 I. & N. Dec. 426 (BIA 1977) that:

Under the law of the Philippines (Civil Code of 1950), to effect the legitimation of a child born out of wedlock the following primary conditions must be met: (1) the child must qualify as a 'natural' child (a child born out of wedlock to parents who were free to marry each other at the time of conception); (2) the child must be acknowledged or recognized by its parents; and (3) the parents of the child must marry one another. Since the concept of "common law" marriage, as understood in the United States, is not recognized in the Philippines, a 'common law' relationship between the parents of a child born out of wedlock in the Philippines does not qualify as a marriage of the parents under Article 270 of the Civil Code for the purpose of legitimation of the child.

(22)    It was concluded in Matter of Kubicka, 14 I. & N. Dec. 303 (BIA 1972), that under the law of Poland, a child born in that country of a bigamous marriage was legitimated by the act of recognition of the child by the father in a report of the child's birth to the Civil Registry Office.

It states under the Family Law of Poland of 1946, Article 68, that only a child born out of wedlock who was acknowledged by the father enjoyed the full legal status of that of a child born in wedlock. In Matter of Chojnowski, 11 I. & N. Dec. 1499, it was indicated that:

...under Polish law, and since acknowledgment by the natural father of a child born out of wedlock in Poland constitutes legitimation...

(23)    It was held in Matter of F-, 7 I. & N. Dec. 448 (BIA 1957) that under Portuguese law, a child born out of wedlock is legitimated only upon marriage of the natural parents, provided there has also been recognition or affiliation of the child. It was later affirmed in Matter of C-, 9 I. & N. Dec. 242 (BIA 1961) that mere acknowledgement by the natural father is insufficient to constitute legitimation in Portugal.

(24)    Title 31, Laws of Puerto Rico, annotated, Sections 442, 482, 501, and 506 which had gone into effect in 1942 concluded that marriage of the natural parents was required for legitimation.

The United States District Court for Puerto Rico later reexamined Puerto Rico's law on legitimation and it was declared by the Board of Immigration Appeals in Matter of Bautista, 17 I. & N. Dec. 122 (BIA 1979), that:

1.      All men are equal before the law.  No discrimination shall be made on account of race, color, sex, birth, social origin or condition or political or religious ideas.

2.      No person in Puerto Rico shall be denied the equal protection of the laws.

3.      All children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children.

Consequently, all children born on or after 1924 will be deemed the legitimate children of their fathers, once paternity has been established.  (Effective date 1942).

(25)     The Status of Children Act, 1983, of St. Christopher and Nevis eliminated distinctions between children born in and out of wedlock.  The relationship of father and child is established either through marriage of the parents prior to or subsequent to conception, or through the establishment of paternity during the lifetime of the father.

The enactment date of the Status of Children Act is November 8, 1983.  Prior to this legislation, legitimation was accomplished only through the marriage of the natural parents.  Therefore, for immigration purposes, a child must have been born on or after November 8, 1965, to be eligible to be considered legitimate or legitimated by this Act.

(26)     Based on an opinion from the Library of Congress, The Swiss Civil Code (1977), Article 259 states that in Switzerland, legitimation of a non-marital child is possible only by the subsequent marriage of the parents.  Therefore, a child must have been born on or after 1959 to derive legitimation as a result of this Code.

(27)     The United States Library of Congress provides the following statement regarding legitimation in Venezuela:

a child who has been born out of wedlock and has been acknowledged by any of the parents, enjoys the same legal status as a child born in wedlock with regard to that parent and the blood relatives of the parent, according to Article 234 of the new Civil Code in force since July 26, 1982...Acknowledgment may be effected voluntarily in a birth record or a marginal notation to a birth record issued by the Civil Registry; by a recording in the marriage certificate of the parents; in a will or by an acknowledgment executed before a notary public; or, in any other public document as long as the acknowledgment statement is clear and unequivocal, as required by Article 217 and 218 of the Code. A child may also be acknowledged by a judicial decision under the provisions of Article 226.

(28)     The Library of Congress rendered an opinion in January 1978 regarding legitimation in Vietnam.  They held that   the 1964 Decree Law as well as Article 221 of their 1972 Civil Code of Vietnam stipulates:

...that a natural child is legitimated only by the marriage of its parents.  A natural child who had been acknowledged by its mother and father was automatically legitimated at the time of the parents' marriage to each other.  If the acknowledgement was made at the time of the parents' marriage, the legitimation had to be effected by means of a separate certificate, drawn up by the Registrar celebrating the marriage, confirming both the

recognition and the legitimation, in accordance with Article 131 of the Decree-Law [Article 243 of the Civil Code]...

Article 131 of the Decree-Law further stated that an illegitimate child could be acknowledged after the marriage of the parents; in which case the legitimation had to be effected by a judgement of the court rendered in a public session, confirming that both parties were the parents of the child, thereby pronouncing the legitimation of the child [Article 244 of the Civil Code].

(29)     The personal status of children in Zaire is governed by the provisions of the Civil Code of 1960.  According to   these provisions, the legitimation of children born out of wedlock, but not out of an incestuous or adulterous relationship, can be accomplished by:

1) the subsequent marriage of the natural parents,
2) an official act of acknowledgement (Art. 209), or
3) Judicial decision (Art. 201)

(30)     According to Chapter 4, Article 1 of the Annotated Code of Guam (effective February 24, 1986), the legitimation of a child will occur based upon the following:

(a) A child is considered legitimate for all purposes if:

(1) The parents of the child were married at the conception of the child or at anytime after the conception of the child, and before the child's eighteenth birthday; or
(2) The child is legitimate on the effective date of this Act; Or
(3) The child is legitimate under the laws of the place of his birth; or
(4) If the parents have jointly executed an affidavit before the eighteenth birthday of the child, affirming that the signatories are the natural, biological parents of the child, affirming the paternity of the child, indicating the birthdate of the child, and affirming their desire to legitimate the child.  Any such affidavit shall be conclusive as to the legitimacy of the child.

 (31)    According to Title 29 of the Indiana Code (eff. 1-1-97), a child born out of wedlock shall be treated as if the child's father were married to the child's mother at the time of the child's birth, if:

(1) the paternity of the child has been established by law in a cause of action that is filed;
(A) during the father's lifetime; or
(B) within five (5) months after the father's death; or
(2) the putative father marries the mother of the child and acknowledges the child to be his own.

(32)     According to Kansas Statutes 38-1114 (eff. 7-1-94), a child is presumed to be legitimate if:

(1) The man and the child's mother are, or have been, married to each other and the child is born during the marriage...

(2) Before the child's birth, the man and the child's mother have attempted to marry each other...

(3) After the child's birth, the man and the child's mother have married....., and:

(A) The man has acknowledged paternity of the child in writing;

(B) with the man's consent, the man is named as the child's father on the child's birth certificate; or

(C) the man is obligated to support the child under a written voluntary promise or by a court order.

(4) The man notoriously or in writing recognizes paternity of the child, including but not limited to a voluntary acknowledgment made in accordance with K.S.A. 38-1130 or 65-2409a, and amendments thereto.

(33)    It was held in Matter of Ramirez, 13 I. & N. Dec. 666 that according to Louisiana's Revised Civil Code, Art. 198, illegitimate children are legitimated by the subsequent marriage of their father and mother, whenever the latter have formally or informally acknowledged them as their children, either before or after the marriage.

(34)    Section 2-109 of Maine's Revised Statutes, Title 18-A, Part 2, (eff. 1/1/81) states that:

(1), a person born out of wedlock is a child of the mother; that person is also a child of the father if:

(i) The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(ii) The father adopts the child into his family; or

(iii) The father acknowledges in writing before a notary public that he is the father of the child, or   the paternity is established by an adjudication before the death of the father...

(35)    It was stated in Matter of C-, 9 I. & N. Dec. 268 (BIA 1961) that acknowledgment by the natural father legitimates a child in Michigan.

(2) Under Michigan law, the father may legitimate his child at any time by acknowledging paternity in a written instrument executed in the same manner as provided for deeds of real estate (before two witnesses) and by recording the instrument in the probate office of the county where the father has his legal residence.

The Michigan Statutes Annotated, Section 27-3178(153) was amended by the Public Acts of 1951.

(36)    According to the Nebraska Revised Statutes of 1943, a child's natural parents must marry in order for a child to be legitimate.

"(2) Child born out of wedlock shall mean a child whose parents were not married to each other at the time of its birth, except that a child shall not be considered as born out of wedlock if its parents were married at the time of its conception but divorced at the time of its birth..."

(37)    It was concluded in Matter of W-, 7 I. & N. Dec. 373 (BIA 1956), that under Section 2105.18 of the Revised Code of Ohio (effective 1-1-53) that:

The natural father of a child by a woman unmarried at the time of the birth of such child, may file an application in the probate court of the county wherein he resides or in the county in which such child resides, acknowledging that such child is his, and....

Further, Section 3111.01 of the Ohio Revised Code (effective 7-15-92) states...

(B) The parent and child relationship extends equally to all children and all parents, regardless of the marital status of the parents, once paternity has been established.
(38)    Pennsylvania law 48 P.S. 167, as amended June 17, 1971, provides in pertinent part:

        (a)...all children shall be legitimate irrespective of the marital status of their parents and in any and every case where children are born out of wedlock they shall enjoy all the rights and privileges as if they had been born during the wedlock of such parents, except as otherwise provided in Title 20 Pa.C.S.
        (b)  For purposes of prescribing benefits to children born out of wedlock by, from and through the father, paternity shall be determined by any one of the following ways:
                (1)  If the parents of a child born out of wedlock shall have married each other.
                (2)  If during the lifetime of the child, the father openly holds out the child to be his and received the child into his home, or openly holds the child out to be his and provides support for the child which shall be determined by clear and convincing evidence.
If there is clear and convincing evidence that the man was the father of the child which may include a prior court determination of paternity.
(39)    According to the Codified Laws of South Dakota, Title 34, Chapter 34-25-15, a child will be regarded as legitimate when proof of the parents' marriage, along with an affidavit of paternity and signed by both parents, has been presented to the civil registrar's office.
(40)    Section 20-31.1 of the 1950 Code of Virginia for the State of Virginia, as amended, establishes that the legitimation of a child born out of wedlock is accomplished by the marriage of the natural parents and both parents' recognition of the child as their own.  Such recognition may occur either jointly or separately and may be either before or after marriage.
(41)    According to Chapter 891 of the Wisconsin Statute, a man is presumed to be the natural father of a child in Wisconsin if any of the following applies:

        (1) He and the child's natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce between the parties.

        (2) He and the child's natural mother were married to each other after the child was born but he and the child's natural mother had a relationship with one another during

the period of time within which the child was conceived and no other man has been adjudicated to be the father or presumed to be the father of the child...
A man is also presumed to be the natural father of a child in Wisconsin if he and the mother have acknowledged paternity under 69.15(3)(b)1. or 3. and no other man is presumed to be the father under
s. 891.41.

Acceptable proof of legitimacy if established through bona fide parent-child relationship
        If legitimacy cannot be established through legitimacy of parents or residence, then you should evaluate it through the parent-child relationship.  Evidence relevant to establishing a bona fide parent-child relationship is varied and widespread in nature and may include, but is not limited to:
·        Personal financial records showing the father's support of the child.
·        School, medical, and insurance records listing the father's name and/or place of residence.
·        Notarized affidavits from friends, neighbors, and other knowledgeable individuals who can attest to the relationship.
·        Correspondence between the father and child.
·        Evidence showing that the father has taken responsibility for the child's support, instruction and general welfare.
·        Evidence showing that the father and child actually lived together.
·        Evidence that the father held the child out as being his own.  This could include court documents indicating official "recognition" of the child.
·        Evidence establishing that the father provided for some or all of the child's needs.

 4.10    In order for a child to petition for a parent, the child must be a U.S. citizen. Determine the status of the petitioner's citizenship.
                IF…    THEN…
                The petitioner is a U.S. citizen          Go to Step 4.11.
                The petitioner is NOT a U.S. citizen  Note the deficiency. Proceed to Step
4.11

 4.11   In order for a child to petition for a parent, the child must provide evidence that he/she is at least 21 years old.
                IF…    THEN…
                The petitioner is 21 years or older     Proceed to Step 4.12
                The petitioner is NOT 21 years or older       Note the deficiency. Proceed
to Step 4.12

4.12    In order to prove biological relationship between the petitioner child and the beneficiary parent, the child must submit a timely, civil-registered birth certificate. Locate and evaluate the birth certificate using the guidelines listed below.

IF…    THEN…

The birth certificate has been submitted and is acceptable    Proceed to Step 4.14.

The birth certificate has not been submitted  Proceed to Step 4.13.

The birth certificate has been submitted and is NOT acceptable    Note the deficiency. Proceed to Step 4.13.

Birth Certificate Acceptability    A birth certificate is acceptable if the following criteria are met:

·    There is proof that a civil authority has issued the birth certificate.

·    There is evidence that the birth certificate has been registered timely with a civil authority.

·    The father, mother, and child's name appear both appear on the birth certificate as they are displayed on the petition.

·    The document appears to be valid and sufficient.

 4.13    If a petitioner has not submitted an acceptable birth certificate, secondary evidence of the biological relationship may sometimes be acceptable.  Determine whether the petitioner has submitted valid secondary evidence. Evaluate the secondary evidence using the acceptability guidelines listed is Part 2 of this module.

IF…    THEN…

The secondary evidence submitted is acceptable    Proceed to Step 4.5

The secondary evidence submitted is not acceptable Note the deficiency. Proceed to Step 4.5

 4.14    Evaluate evidence of pertinent name changes for the petitioner and/or beneficiary.

IF…    THEN…

There is sufficient evidence of name changes    Proceed to Step 4.15.

There is NOT sufficient evidence of name changes   Note the deficiency. Proceed to Step 4.15.

4.15    Determine whether child is petitioning for the mother or father.

IF…    THEN…

The beneficiary is the petitioner's mother    Go to Step 4.17.

The beneficiary is the petitioner's father    Go to Step 4.16.

4.16    If the child is petitioning his/her father, the child must also establish a relationship with the father beneficiary. To determine if the petitioner's relationship with the beneficiary is legitimate see guidelines below.

IF…    THEN…

The father's relationship with the child is legitimate Go to Step 4.17.

The father's relationship with the child is NOT legitimate    Note the deficiency. Go to Step 4.17.

Note: Refer to Legitimation Chart in Part 4.

4.17    After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements.

IF…    THEN…

The beneficiary qualifies under all guidelines for the specified classification   Go to Step 8a.1 and follow instructions for processing approvals.

Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification  Go to Step 8b.1 and follow instructions for processing Requests for Evidence.

Adverse or derogatory information about the petitioner is made known to the Service    Go to Step 8c.1 and follow instructions for processing Intents to Deny.

The beneficiary clearly does not qualify under classification requested and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible    Go to Step 8d.1and follow instructions for processing denials.

The case involves an unusually complex or novel issue of law or fact

The case may be certified as either approval or denial to BIA.  Go to Step 8e.1 and follow instructions for processing a certification.

Part 5: Step Relationships

Introduction    ·    A step-relationship is created when the biological parent of a child marries a spouse who is not the child's other biological parent

·    To be recognized for immigration purposes, the marriage creating the step-relationship must take place before the child is 18 years old

·    Any petition filed for a stepson or stepdaughter who was over the age of 18 at the time of the marriage will be statutorily denied.

Statutory Basis    INA Sections 101(b), 101(b)(1)(B), 201, 203, 204, 205

Regulatory Basis      8 CFR 103, 104, 204, 205.2, 216


Required Evidence for Step Relationships      ·      Proof of status by the sponsoring step-parent;
·      A valid, timely birth certificate for the child;
·      Proof of marriage by one of the child's bio-parents to the sponsoring step-parent;
·      Proof of the legal termination of all prior marriages by the bio-parent and/or sponsoring step-parent;
·      Proof that the child was under 18 at the time of the bio-parent's marriage to the sponsoring step-parent.


 Step   Action: U.S. CIS
5.1      Review for general requirements. See Part 2 of this module.


 5.2      In order to prove a step relationship with the beneficiary, the petitioner must submit a timely, civil-registered birth certificate for the stepchild indicating their spouse as the natural parent.  Locate and evaluate the birth certificate using the guidelines listed below.
          IF…    THEN…
          The birth certificate has been submitted and is acceptable    Proceed to Step 5.4.
          The birth certificate has not been submitted  Proceed to Step 5.3.
          The birth certificate has been submitted and is NOT acceptable      Note the deficiency. Proceed to Step 5.3.


Birth Certificate Acceptability      A birth certificate is acceptable if the following criteria are met:
·      There is proof that a civil authority has issued the birth certificate.
·      There is evidence that the birth certificate has been registered timely with a civil authority.
·      The father, mother, and child's name appear on the birth certificate as they are displayed on the petition.
·      The document appears to be valid and sufficient.


 5.3      If a petitioner has not submitted an acceptable birth certificate, secondary evidence of the biological maternal relationship may be sometimes acceptable. Determine whether the petitioner has submitted valid secondary evidence. Evaluate the secondary evidence using the acceptability guidelines listed below.
          IF…    THEN…

The secondary evidence submitted is acceptable    Proceed to Step 5.4.

The secondary evidence submitted is not acceptable Note the deficiency. Proceed to Step 5.4.

5.4     In order to be eligible, the petitioner must submit a valid, civilly registered marriage certificate that demonstrates that the step-parent was married to the natural parent prior by the time the beneficiary reached the age of 18. Use the criteria below to evaluate the certificate.

IF…    THEN…
The proof of marriage is valid         Proceed to Step 5.5.
The proof of marriage is NOT valid   Note the deficiency. Proceed to Step 5.5.

Marriage Certificates Requirements  1)    Marriage certificate issued by a local or federal civil authority (there may be exceptions).
a)    Justices of the Peace
b)    Clerks of the Court
c)    Magistrates
d)    City/Town Clerks
e)    Judges
2)    The marriage certificate must be signed by a civil authority
3)    A license to marry is unacceptable
4)    The marriage certificate must show that the marriage actually occurred, and was filed with the appropriate civil authority.

Common-law Marriages        ·       Must be recognized by the state of residence.
·       Individuals need only to hold themselves out to the public as being married.
·       No official documents are needed.
·       A religious marriage certificate may be issued when a state recognizes common-law marriages –even if a civil certificate cannot be issued.
·       A religious, marriage document is exceptionally good evidence when verifying the legality of a common-law marriage.

Marriage by Proxy      ·       In order to be recognized under immigration law, the marriage must have been consummated subsequent to the marriage.
·       Acceptable evidence to indicate that the marriage was consummated:
·       A child's birth certificate.
·       Passport, airline tickets showing that the petitioner and beneficiary were in the same place at the same time.

·        Evidence of residence together.

INA sections 204(g) 204(a)(2)(A) 204(c)        When determining step-child relationships, take into account from Part 3: Spousal Relationships, the same measure for INA Sections 204(g), 204(a)(2)(A), and 204(c).  Please refer back to Part 3 of this module for more detail regarding these matters.

 5.5        Review for evidence of all termination of a previous marriage. Acceptable evidence of the termination of a previous marriage might include the following:
·        Final decree of divorce
·        Death certificate
·        Decree of annulment
·        Foreign divorce documents are generally acceptable if they are confirmed to be final orders.
Note: Refer to the Foreign Affairs Manual for information regarding the legality or existence of divorce or annulment in various countries.
                IF…    THEN…
                The evidence is acceptable    Proceed to Step 5.6
                The evidence is NOT acceptable        Note the deficiency. Proceed to Step 5.6

When death or divorce has terminated the marriage that created the step relationship
        ·        Evidence of a continuing step-parent/step-child relationship must be established
·        Historical evidence, which indicates that a stepparent/stepchild relationship has existed must be submitted
·        Extensive and detailed documentation may be required (Affidavits may be acceptable).
·        Refer to Matter of Mowrer, 17 I&N Dec. 2846.

 5.6        Evaluate evidence of pertinent name changes for the petitioner and/or beneficiary.
                IF…    THEN…
                There is sufficient evidence of name changes        Proceed to Step 5.7.

                There is NOT sufficient evidence of name changes   Note the deficiency. Proceed to Step 5.7.

5.7

After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements.

IF…    THEN…

The beneficiary qualifies under all guidelines for the specified classification   Go to Step 8a.1 and follow instructions for processing approvals.

Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification  Go to Step 8b.1 and follow instructions for processing Requests for Evidence.

Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service      Go to Step 8c.1 and follow instructions for processing Intents to Deny.

The beneficiary clearly does not qualify under classification requested and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible      Go to Step 8d.1and follow instructions for processing denials.

The case involves an unusually complex or novel issue of law or fact      The case may be certified as either approval or denial to BIA.  Go to Step 8e.1 and follow instructions for processing a certification.


Part 6: Adoptive Parents and Children


 Introduction    ·      The child must be under the age of 16 years at the time of the adoption.

·      The petition will be statutorily denied when the child is over 16 at the time of the adoption.

·      Adoption laws tend to vary widely from country to country. The BIA Precedent Decisions should be referenced, if necessary.

NOTES:

·      Preference petitions: The requirements for legal custody and joint residence must have occurred prior to filing.

·      Immediate relatives (IR) petitions: The requirements for legal custody and joint residence, although not met at the time of filing, must be satisfied prior to a final adjudication. See precedent decisions of the Board of Immigration Appeals (BIA) (Matter of Bardouille).

·      No unfair advantage is given to immediate relatives, as their priority dates are immediately available.


Statutory Basis       INA Sections 101(b), 101(b)1(E), 201, 203, 204, 205


Regulatory Basis      8 CFR 103, 104, 204, 205.2, 216

Required Evidence for Adoptive Parents and Children        ·        Evidence of the petitioner's status: USC or LPR.

·        A court order or decree of the adoption issued by a civil authority with an effective (final) date before the child reaches the age of 16.  This must be a final order, not an interim or guardianship document.

·        Proof that the adoptive parent(s) have had legal custody of the child for at least two years.

·        Proof that the adoptive parent, or the adoptive parent's spouse, has resided with the adopted child for at least two years.

·        The adoption decree shall be deemed to mark the commencement of legal custody if not granted prior to the date of adoption.

Biological Relationship is Severed        ·        Adoption severs the relationships between the adoptive child and his/her biological family.

·        Once an adoption has been recognized for immigration benefits, no recognizable relationship may exist between the adoptive child and his/her biological family.

Biological Relationship is Re-established

        The biological relationship can be reestablished if the petitioner can prove all of the following:

1.        No immigration benefit was obtained or conferred through the adoptive relationship.

2.        A natural, or biological, parent/child relationship under the definitions of INA 101(b) once existed between the adopted child and the individual with whom the relationship is to be re-established.

3.        The adoption has been lawfully terminated under the applicable law/jurisdiction.

4.        The natural relationship has been reestablished under the applicable law/jurisdiction.

Note: At no time can the relationships between an adopted child and his/her adopted family be recognized concurrently with the biological family.

Note: Refer to Matter of Xiu Hong Li, Interim Decision 3244, BIA 1995.

Step   Action: U.S. CIS

6.1     Review for general requirements. See Part 2 of this module.

6.2     The petitioner must submit a court order or decree of the adoption issued by a civil authority with an effective (final) date before the child reaches the age of 16.  This must be a final order, not an interim or guardianship document. See below for additional acceptability guidelines.

                IF…     THEN…

                The adoption order is acceptable      Go to Step 6.3

The adoption order is NOT acceptable    Note the deficiency. Go to Step 6.3

6.3    The adoptive parent(s)must also prove that they have had legal custody of the child for at least two years.  See guidelines below.
IF…    THEN…
The petitioner has submitted acceptable evidence of custody    Go to Step 6.4
The petitioner has NOT submitted acceptable evidence of custody  Note the deficiency. Go to Step 6.4.

Evidence of 2-year custody of an adopted child    ·    The assumption of legal responsibility for a minor by an adult under the laws of the state, or by the approval of a court of law or other appropriate government entity.
·    Legal processes involving the courts or other recognized government entity must have taken place.
·    Custody requirements may be completed before or after the adoption.
·    Legal custody, by the court or recognized governmental entity, prior to the adoption, will be considered in the aggregate.
·    The adoption decree shall be deemed to mark the commencement of legal custody if not granted prior to the date of adoption.
·    Informal custodial or guardianship documents, such as a sworn affidavit signed before a notary public, are insufficient for this purpose.
·    Foster relationships are not considered legal custody, as the state maintains legal custody under these circumstances.

6.4    The petitioner must also submit evidence that they have resided with the adopted child for at least a period of 2 years. See guidelines below.
IF…    THEN…
The petitioner has submitted sufficient evidence    Go to Step 6.5
The petitioner has NOT submitted sufficient evidence    Note the deficiency. Go to Step 6.5.

Adoption Residence Requirements    ·    The residence requirement may have been met before or after the adoption.
·    Residence together, prior to the adoption, will be counted in the aggregate.
·    A break in legal custody or residence will not affect the time already fulfilled.

·      During the period of claimed residence it must be shown that the adoptive parent exercised primary parental control.

·      Careful examination should be given when the child has continued to reside with his/her natural family: mother, father, grandparents, aunts, uncles, etc. during the period of claimed residence.

·      Evidence that the adoptive parents have assumed responsibility of the child must be provided.

·      The listing of the parent's name(s) in school or medical records, or tax and other government records may be satisfactory.

·      For a U.S. Citizen, the 2-year joint residency must be satisfied prior to adjudication.  For an LPR, it must be established prior to filing the petition.

·      Mere visit is not sufficient to fulfill two-year residence requirement.  See Matter of Repuyan I.D. 2971 (BIA 1984).

6.5     After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements.

IF…    THEN…

The beneficiary qualifies under all guidelines for the specified classification   Go to Step 8a.1 and follow instructions for processing approvals.

Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification  Go to Step 8b.1 and follow instructions for processing Requests for Evidence.

Adverse or derogatory information about the petitioner is made known to the Service   Go to Step 8c.1 and follow instructions for processing Intents to Deny.

The beneficiary clearly does not qualify under classification requested and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible   Go to Step 8d.1and follow instructions for processing denials.

The case involves an unusually complex or novel issue of law or fact   The case may be certified as either approval or denial to BIA.  Go to Step 8e.1 and follow instructions for processing a certification.

Part 7: Sibling Relationships

Introduction   ·      Only United States Citizens may petition for their brothers or sisters (siblings).

·      The petitioner must be age 21 or older at the time of filing.

·      The petitioner and the beneficiary must qualify for the benefit at the time of filing (visas are not immediately available).

·      The relationship between siblings must show that both the petitioner and the beneficiary shared a common parent at some time prior to the age of 21.

·        The petitioner and beneficiary at one time qualified as a child under any definition as described in Section 101(b)(1) of the Act.


Statutory Basis        INA Sections 101(b), 201, 203, 204, 205


Regulatory Basis        8 CFR 103, 104, 204, 205.2, 216


Common Parents        A common parent may be any of the following:
·        Mother/child
·        Father/child -legitimate, legitimated, bona fide;
·        Step
·        Adopted


Required Evidence for Siblings with a Common Mother        ·        Evidence of the petitioner's status: USC.
·        The petitioner's timely, civil-registered birth certificate or acceptable secondary evidence identifying the common mother.
·        The beneficiary's timely, civil-registered birth certificate or acceptable secondary evidence identifying the common mother.
·        Evidence of pertinent name changes for the petitioner and/or beneficiary.
·        Evidence of pertinent name changes for the petitioner's and beneficiary's common mother.


Required Evidence for Siblings with a Common Father        ·        Evidence of the petitioner's status: USC
·        The petitioner's timely, civil-registered birth certificate or acceptable secondary evidence identifying the common father.
·        The beneficiary's timely, civil-registered birth certificate or acceptable secondary evidence identifying the common father.
·        Evidence of the petitioner's and the beneficiary's legitimacy, legitimation or bona fide status.
·        Evidence of pertinent name changes for the petitioner and/or beneficiary, or the common father, if applicable.


Step        Action: U.S. CIS
7.1        Review for general requirements. See Part 2 of this module.

7.2     In order for a sibling to petitioner for another sibling, the petitioner must be a U.S. citizen.  Determine status of the petitioner's citizenship.

IF…    THEN…

The petitioner is a U.S. citizen          Go to Step 7.3.

The petitioner is NOT a U.S. citizen  Note the deficiency. Proceed to Step 7.3

7.3     In order to prove biological relationship between the petitioner and the beneficiary, they both must submit timely, civil-registered birth certificates indicating that they share either or both a common father and/or mother.  Locate and evaluate the birth certificates using the guidelines listed below.

IF…    THEN…

Both birth certificates have been submitted and are acceptable         Proceed to Step 7.5.

Petitioner and/or the beneficiary have not submitted a valid birth certificate        Proceed to Step 7.4.

The birth certificate has been submitted and is NOT acceptable        Note the deficiency. Proceed to Step 7.4.

Birth Certificate Acceptability        A birth certificate is acceptable if the following criteria are met:

·        There is proof that a civil authority has issued the birth certificate.

·        There is evidence that the birth certificate has been registered timely with a civil authority.

·        The father, mother, and child's name appear both appear on the birth certificate as they are displayed on the petition.

·        The document appears to be valid and sufficient.

7.4     If either the petitioner or the beneficiary has not submitted an acceptable birth certificate, secondary evidence of the common parental relationship may be sometimes acceptable.  Determine whether the petitioner has submitted valid secondary evidence. Evaluate the secondary evidence using the acceptability guidelines listed below.

IF…    THEN…

The secondary evidence submitted is acceptable      Proceed to Step 7.5.

The secondary evidence submitted is not acceptable Note the deficiency. Proceed to Step 7.5.

7.5 Determine which common parent the petitioning sibling shares with the beneficiary.

IF… THEN…
The common parent is the mother    Go to Step 7.7.
The common parent is the father    Go to Step 7.6.

7.6 If the common parent is the father, the legitimacy of the relationship must be established. See guideline in Part 4 of this module.

IF… THEN…
The father is married to the birth mother    Go to Step 7.7
The father of a legitimate child    Go to Step 7.7
A bona fide child/parent relationship Note the deficiency. Go to Step 7.7

7.7 After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements.

IF… THEN…
The beneficiary qualifies under all guidelines for the specified classification   Go to Step 8a.1 and follow instructions for processing approvals.
Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification  Go to Step 8b.1 and follow instructions for processing Requests for Evidence.
Adverse or derogatory information about the petitioner is made known to the Service    Go to Step 8c.1 and follow instructions for processing Intents to Deny.

The beneficiary clearly does not qualify under classification requested and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible    Go to Step 8d.1and follow instructions for processing denials.
The case involves an unusually complex or novel issue of law or fact
The case may be certified as either approval or denial to BIA.  Go to Step 8e.1 and follow instructions for processing a certification.

Part 8: Post-Decision Processing

Part 8a: Processing Approvals

Procedures for Processing Approvals Follow the steps below to process an I-130 approval.
Step    Action: U.S. CIS
8a.1    Mark and/or verify the box next to the appropriate section of law in the "Classification" block and annotate the petition with the classification code in the U.S. CIS USE ONLY section of the I-130 petition.

8a.2    Assemble petition and supporting documents into Record of Proceeding (ROP) order as described below.

Record of Proceeding 1)    Once a petition has been approved, documents will not remain in chronological order.
2)    Each petition must be able to stand on its own record of proceeding.
3)    I-797 RFE notices that accompany approved petitions, that will be "housed" in A-Files can be placed on the non-record side of the file or, discarded.
4)    I-797 RFE notices that accompany denied petitions and additional documentation provided must remain in chronological order.
5)    Denials must be supported by the sequence of events.

8a.3    Write and/or verify the priority date in the space marked "Priority Date" on the I-130 petition.

8a.4    Determine beneficiary's eligibility to adjust status. See instructions below.
        IF…    THEN…
        The beneficiary is eligible to adjust status    Go to Step 2.6
        The beneficiary is NOT eligible to adjust status    See instructions for routing petitions for National Visa Center (NVC) processing

Adjustment of Status-Petitions filed on or before January 14, 1998  All of the following must apply when the petitioner requests adjustment of status in the U.S.:
·    The petition was filed from October 1, 1994 through January 14, 1998.
·    The I-130 was properly filed on or before January 14, 1998.
·    The beneficiary is physically present in the United States.
·    The beneficiary is immediately eligible to receive a visa (Most IRs or older preference petitions).
·    The beneficiary is in the U.S. and requests adjustment of status in section #21.
·    The beneficiary is in the U.S. (according to the address in Part B) and section #21 has not been completed.
·    Forward the petition to the NVC when the beneficiary is living in the U.S. and requests to go abroad (see chart below).

Adjustment of Status-Petitions filed after January 14, 1998, and on or before April 30, 2001  All of the following must apply when the petitioner requests adjustment of status in the U.S.:

·        The petition was properly filed after January 14, 1998 and on or before April 30, 2001.

·        The beneficiary was physically present in the United States on December 21, 2000.

·        The beneficiary is immediately eligible to receive a visa (Most IR's or older preference petitions).

·        The beneficiary is in the U.S. and requests adjustment of status in section #21:

·        Indicate  "245" on the AM Con Line

·        The beneficiary is in the U.S. (according to the address in Part B) and section #21 has not been completed:

·         Forward the petition to the NVC when the beneficiary is living in the U.S. and requests consular processing abroad (see chart below).


Restricted Aliens                    Ineligible Aliens
        Category              Exceptions              Category                    Exceptions
TWOV          Employment Based, No Labor Cert
Crew Member         J-1 Exchange Visitors Completed or waived INA 212(e) requirement
EWI             A,E,G Nonimmigrants         Waiver completion
Guam Visa Waiver
 8 CFR 212.1(e)               Conditional Residents
 INA 216, 216A
Visa Waiver Pilot Program    IR      K-1 Fiance(e)  Marriage to sponsor within  90 days of arrival
Unauthorized Employment     IR
101(a)(27)(H),(J) Immigration Nursing Relief Act of 1989  S-Witness/
Informant       Law enforcement request.
Provisions of 101(a)(15)(S).
Provisions of 8CFR 245.11.

Violated Terms of Admission IR
101(a)(27)(H),
(I),(J),(K)       Arriving Alien in Removal Proceedings
Not in Status   IR
101(a)(27)(H),
(I),(J)  204(g) Aliens  Bonafide marriage exemption
Failed to Maintain Status       IR
101(a)(27)(H),
(I)(J)    IR, Preference With No Visa

101(a) (27) (H)  Foreign Medical Graduate
        (I)  International Organizations
        (J)  Juveniles Dependent on Courts

8a.5    Stamp petition with the "approval" stamp in the appropriate space on the I-130 petition and sign the stamp.


Stamping    1)    When a petition is approved, an approval stamp will be placed in the area labeled "Action Stamp."
2)    The approval stamp should reflect the current date and the Adjudicator's signature within the stamp. The signature must be legible.
3)    All approval-stamp numbers must be clear and legible.
4)    No signature or remarks will be made in this area until a final decision is made.
5)    All approvals that have been stamped in error will be covered up with adhesive tape or self-sticking labels.


8a.6    Remove the top, colored portion of the SWIP label to expose the transparent label below.
8a.7    Follow post-adjudications procedures as described below.  Refer to Section 6.


Part 8b: Processing Requests for Evidence (RFE)

Procedures for Processing Requests for Evidence (RFE)    Any notations made regarding deficiencies in the record should now be addressed.  Follow the steps below to process a RFE.  If the petitioner does not respond within 87 days, the application is considered "abandoned" and is routed for abandonment processing.
Step    Action: U.S. CIS
8b.1    Compose a RFE letter, citing all noted deficiencies.
8b.2    Place copy of the RFE on top of the Record of Proceeding (ROP).
8b.3    Follow post-adjudications procedures.

Part 8c: Processing Intents to Deny

Introduction    1)    Intents-to-deny are used when the service has adverse information that the petitioner may not be aware of.
2)    Where a RFE is issued to obtain evidence, which is lacking from the record, the intent-to-deny is generally issued when a specific reason for denial has already been established.
3)    The petitioner is issued an intent-to-deny notice in order to allow the petitioner an opportunity to submit evidence, which is authentic and credible.
4)    The intent-to-deny should include a list of the types of evidence, which would overcome the deficiency and satisfy the request of the Service.
5)    This discussion of evidence must be clear, concise, and comprehensive when explaining why the evidence or documentation is insufficient.
6)    Specific recommendations for overcoming the denial grounds may be provided.

7)      If the petitioner does not respond within 33 days, the petition is deniable and is routed to the adjudicator who originated the Intent to Deny.

Procedures for Processing Intents to Deny (ITD)      Follow the steps below to process an I-130 Intent to Deny.
Note: When composing an intent-to-dent letter, make sure it contains a:
·       Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met;
·       Description of the specific reasons for the Service's determination that the areas of eligibility have not been met; and
·       Discussion of evidence that could be submitted to overcome the reasons for denial or revocation.

Step    Action: U.S. CIS
8c.1    Compose Intent to Deny letter, including all bases for denial, as applicable.
8c.2    Place a copy(s) of the Intent to Deny letter on top of the ROP.
8c.3    Follow post-adjudications procedures.

Part 8d: Processing Denials

Introduction    A denial will be issued only after the petitioner has been afforded a reasonable opportunity to remedy deficiencies contained in the record.  If a complete and correct RFE was issued, and the petitioner's response failed to address the stated requirements, a denial is an appropriate action.

Statutory Denials      1)      Statutory denials are prepared when the petitioner files a petition based upon a relationship, which is not provided for under immigration law.
i.      Petitioner filed for a niece or nephew
ii.     Lawful permanent resident petitioning for his/her married sons or daughters.
2)      Petitions that are filed, and are statutorily deniable will be denied upon first review.
3)      No RFE or intent-to-deny will be issued
4)      If the grounds of denial can be overcome by the passage of time, this should be discussed in the denial.

Petitioner is not eligible to file for the beneficiary    Petitions will generally be denied when the petitioner is not eligible to file on the beneficiary's behalf.

Abandonment/Denials for cause

1)	When no response has been received to a RFE, within the given timeframe, the petition will be "purged" from the file shelf request shelf and stamped "No Response".

2)	These petitions will be denied as:

a)	"Abandoned" –No response was ever received to requests for initial evidence.  If a request for additional evidence is not received, the petition will be adjudicated on its merits.

b)	"For cause" -Previous responses have been received but still do not satisfy RFE.

3)	A petitioner's failure to submit evidence after being granted an extension of time will require a denial based on the record.

Abandonment Denials1)	When a petitioner fails to submit evidence in response to a request for initial evidence within the granted time-frame, the petition shall be considered abandoned and the petition shall be denied pursuant to regulations found at 8 CFR 103.2(b)(13).  If there is no response to a request for additional evidence, the petition will be adjudicated and a decision will be made on the merits.

2)	In accordance with Title 8, Code of Federal Regulations, 8 CFR 103.2(b)(13), the petitioner is given 87 days to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond.

3)	Verify the following before preparing the denial order:

a)	That the transfer out was complete, correct, addressed all deficiencies, and was understandable to the petitioner.

b)	That a response has not been received, per CLAIMS check.

4)	There is no appeal from this denial and limited motion rights.

5)	CLAIMS will be updated as "Abandonment Notice Ordered".

Abandonment denials will be facsimile stamped by the clerk. An officer will not review these denials.

Procedures for Processing Denials	If the beneficiary is not eligible for the benefit, or sufficient evidence has not been submitted, then follow the steps below to process an I-130 denial.

Note: When composing a denial letter, the letter should discuss ALL areas of eligibility that have not been met by the petitioner, and include a specific description of the reasons for the Service's determination that the areas of eligibility have not been met.  The letter should also contain information about the appropriate appeal rights.  You should cite the appropriate law.

Keep in mind that there are limited motion rights but no appeal rights for the following denial reasons:

·	Request for withdrawal by the petitioner
·	Abandonment denial

· Refusal to provide an original document requested by the service in order to verify a copy previously submitted [8 CFR 103.2(b)(5)]

Step    Action

8d.1    Compose a 292 in the denial letter citing all bases for denial according to the local procedure.

8d.2    Annotate the "Action" block of the I-130 as "Denied."

8d.3    Once the denial letter is in the file, remove the top, colored portion of the SWIP label to expose the transparent label below.

8d.4    Follow post-adjudications procedures.

Part 8e: Processing Board of Immigration Appeals (BIA) Certifications

Procedures for Processing Administrative Appeals Officer Certifications    Follow the steps below to process an I-130 BIA certification.

Step    Action

8e.1    Compose a decision, either denying or approving the petition, and certify the case to the BIA, using the form I-290C.

8e.2    Place the BIA certification letter on top of the ROP.

8e.3    Follow post-adjudications procedures.

Part 9: Revocations

Revocations    Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 8 CFR 205.1.  [See 8 CFR 205.2(a)]

· A petition may be revoked under Section 204.5(e) of the Act if the beneficiary, upon arrival at a port of entry in the U.S., is found to not be entitled to his or her visa classification.

· A petition may have an automatic revocation as in 205.1 or a revocation for cause as in 205.2.  This does not afford them appeal rights.

A petition may be revoked at any time for good and sufficient cause under Section 205 of the Act.  The revocation takes effect as of the date of the approval.

If the petition is revoked, the Service will notify the petitioner of its decision and explain in writing the specific reasons for revocation.  [See 8 CFR 205.2]  If there has been Department of State involvement in the case, the consulate should be notified as well.

Intents to Revoke    1)    An intent-to-revoke is necessary when there is no provision of law that would allow for an automatic revocation.

2)    The intent-to-revoke should include a list of the types of evidence, which would overcome the deficiency and satisfy the request of the Service.

3)    The intent must explain the specific reasons for issuance of the order.

4)    This discussion of evidence must be clear, concise, and comprehensive when explaining why the evidence or documentation is insufficient.

5)    Specific recommendations for overcoming the revocation grounds may be provided.

6)    If the petitioner does not respond they will be issued a revocation notice.

Procedures for Processing Intents to Revoke Follow the steps below to process an I-130 Intent to Revoke.

Note: When composing an intent-to-revoke letter, make sure it contains a:

·    Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met;

·    Description of the specific reasons for the Service's determination that the areas of eligibility have not been met; and

·    Discussion of evidence that could be submitted to overcome the reasons for denial or revocation.

Step    Action: U.S. CIS
9a.1    Compose Intent to Revoke letter, including all bases for revocation, as applicable.
9a.2    Place a copy of the Intent to Revoke letter on top of the ROP.
9a.3    Follow post-adjudications procedures.

Processing Automatic Revocations and Revocations for Cause    Follow the steps below to process an I-130 revocation.

Step    Action: U.S. CIS
9b.1    Compose a revocation letter citing the basis for revocation.
9b.2    Place and "X" across the approval stamp on the "Action" block of the I-130 and annotate the block with "Revoke."
9b.3    Follow CLAIMS updating procedures and outgoing mail procedures.

Addendum 1: Matters of Law

Addendum 1a: General

Matter of O    8 I&N Dec. 295
Admissibility of beneficiary is not relevant to decision of a visa petition
Matter of C    9 I&N Dec. 433
Retroactive approval - there is no provision for such action

Matter of Arteaga-Goody       14 I&N Dec. 226
Appeal lies solely with the petitioner; the beneficiary cannot appeal a decision rendered in visa petition proceedings
Matter of Kurys       11 I&N Dec. 315
Matter of Brantigan    11 I&N Dec. 493
Burden of proof to establish eligibility for the benefit sought lies with the petitioner.
Matter of Phillis       15 I&N Dec. 385
Matter of Pearson      13 I&N Dec. 152
Failure to prosecute is a valid ground for denial when petitioner fails to comply with a reasonable request to appear for interview.
Matter of Varela       13 I&N Dec. 453
Death of the petitioner terminates relationship; thus petition filed prior to the death may not be approved.
Matter of Pagnerre      13 I&N Dec. 688
Matter of Herrera       13 I&N Dec. 755
Delayed baptismal certificate does not in every case meet the requirement of 8 CFR 204.2(a)(2).
Matter of Serna        16 I&N Dec. 643
Delayed birth certificate is given weight on a case-by-case basis and is not always sufficient to establish U.S. citizenship.
Matter of Ah San       15 I&N Dec. 315
Non-citizen Nationals of the U.S. may file visa petitions pursuant to Section 203(a)(2).
Matter of Nevarez      15 I&N Dec. 550
English translations of foreign language documents are required notwithstanding the documents were entered into evidence by the Service.


Matter of Aviles       15 I&N Dec. 588
Reopening visa petition proceedings on a Service motion after an appeal to the BIA has been taken is prohibited. The District Director loses jurisdiction on such cases once the appeal is filed.
Matter of Dabaase      16 I&N Dec. 720
The beneficiary may not institute reopening of visa petition proceedings; the right lies solely with the petitioner.
Matter of Bardouille    18 I&N Dec. 114
Beneficiary of a visa petition must be fully qualified at the time the visa petition is filed. This only relates to preference cases.
Matter of Ho   I.D. 2887 (BIA 1981)
Certificates issued by notarial offices in the People's Republic of China shall  be accepted as evidence, however, shall not be regarded as conclusive proof.
Matter of May I.D. 2938 (BIA 1983)
Matter of Chu I.D. 2966 (BIA 1984)
Matter of Villanueva  I.D. 2968 (BIA 1984)
Unless void on its face, a valid U.S. passport issued to an individual as a citizen of the U.S. is not subject to collateral attack in administrative immigration Proceedings but constitutes conclusive proof of such person's U.S. citizenship.

Matter of Zaidan       I.D. 2998 (BIA 1985)
Since there is no provision for appellate review when a visa petition is automatically revoked under 8 CFR 205.1 (1985), the Board lacks jurisdiction over appeals dealing with the automatic revocation of a petition.
Matter of Obaigbenga I.D. 3042 (BIA 1988)
Where a petitioner fails to timely and substantively respond to the notice of intention to deny or to make a reasonable request for an extension, the Board will not consider any evidence first proffered on appeal as its review is limited to the record of proceeding before the district director; for further consideration, a new visa petition must be filed.
Matter of Hilaire       3048 (BIA 1988)
Although a petitioner may submit certified copies of I.D. documents, the Service may still require the originals in order to determine authenticity.


Matter of Arias       I. D. 3049 (BIA 1988)
A decision to revoke approval of a visa petition can only be grounded upon,
And the petitioner is only obliged to respond to, the factual allegations specified in the notice of intention to revoke.
Matter of Ramirez-Sanchez    17 I&N Dec. 503 (BIA 1980)
The Board held in deportation proceedings that counsel's comments or arguments are not evidence.  This holding by the Board was extended to visa petition proceedings in Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988).  In Matter of Obaigbena, supra, the Board noted that statements or assertions by counsel are not evidence, Matter of Ramirez-SANCHEZ, supra.


Addendum 1b: Spouse

Matter of B     INA.5 I&N Dec. 698
Proxy marriage must be consummated to be valid for benefits.
Matter of M     8 I&N Dec. 217
Where no bona fide husband-wife relationship was intended, the marriage is deemed invalid for immigration purposes regardless of whether it would be considered valid under the domestic law of the jurisdiction where performed.
Matter of Agoudemos 10 I&N Dec. 444
Marriage, which is voidable but not void without any action to void the marriage, is generally valid for benefits under the INA.
Matter of G     9 I&N Dec. 89
Matter of H     9 I&N Dec. 640
Polygamous marriage, though valid where contracted, is not recognized for immigration purposes
Matter of Zappia       12 I&N Dec. 439
A marriage complying with all the requirements of the state of celebration might nevertheless be deemed invalid if it is invalid under the laws of a state where one of the parties is domiciled at the time of the marriage, and where both intend to make their home afterward, or if it violates a strong public policy of the state of domicile.

Matter of Pearson    13 I&N Dec. 152
The marriage following a divorce can only be considered valid if the divorce is considered valid under the laws of the place where the marriage was contracted.
Matter of Phillis    15 I&N Dec. 385
The facts of an individual case may infer the marriage was entered into solely for the purpose of obtaining immigration benefits.  The mere denial of fraud does not overcome the inference and is insufficient to sustain to the petitioner's burden of proof.
Matter of Weaver    16 I&N Dec. 730
 Validity of marriage is generally governed by the law of the place where celebrated
Matter of McKee    7 I&N Dec. 332
Petition may be denied solely because petitioner and beneficiary are not residing together.
Matter of Lenning    17 I&N Dec. 476
 Petition properly denied where parties entered into a formal, written separation agreement notwithstanding the fact that the marriage had not been finally dissolved by an absolute divorce decree.
Matter of W    8 I&N Dec. 315
Applicant for adjustment of status under Section 245 of the Act has not established claim to non-quota status through California marriage to United States citizen spouse when applicant's prior marriage was terminated by Mexican "mail order" divorce not ordinarily recognized as valid by California courts.
Matter of Kurys    11 I&N Dec. 315
A visa petition filed under compulsion of a court order by a petitioner who stated that a bona fide marital relationship did not exist and that she did not intend to live with her husband is properly denied.  The petition was not submitted in good faith.

Matter of Arena    15 I&N Dec. 174
In determining the validity of a marriage for immigration purposes, the law of the place of celebration of the marriage will generally govern.  Under Section 2.22 of the Texas Family Code, a marriage is void if either party was married and the prior marriage is not dissolved.  However, the marriage becomes valid when the prior marriage is dissolved and the parties continue to reside together as husband and wife and present themselves to others as being married.
Matter of Dasilva    15 I&N Dec. 778
A marriage between uncle and niece is valid for immigration purposes for a couple who resides in New York but who marry in Georgia where marriages between an uncle and a niece are legal. Since the marriage was legally contracted in Georgia and is thus not regulated by New York law nor does it violate New York public policy, the marriage is recognized as valid in New York and is valid for immigration purposes.
Matter of Magana    17 I&N Dec. 111
Where the respondent entered the United States as the spouse of a citizen, concealing the fact of his prior marriage in Mexico, a decree from a Washington state court declaring the

Mexican marriage invalid from its inception will not be given retroactive effect for immigration purposes

Matter of Laureano     I.D. 2951 (BIA 1983)

A marriage entered into for the primary purpose of circumventing the immigration laws, commonly referred to as a fraudulent or sham marriage, is not recognized for the purpose of obtaining immigration benefits.

Matter of Kumah          I.D. 2997 (BIA 1985)

A Ghanaian customary divorce may not be established without evidence of court decree granting or confirming the customary divorce.  A Ghanaian court decree confirming that a customary divorce was validly obtained, however, is not deemed to be conclusive proof of the facts certified therein because of the potential for fraud and error in their issuance.


Addendum 1c: 204(c)


Matter of F     9 I&N Dec. 684

The decision on Section 204(c) applicability must be made on all the evidence.

Matter of Samsen        15 I&N Dec. 28

Matter of Cabeliza       11 I&N Dec. 812

Section 204(c) contains no statute of limitations and applies to any subsequently filed visa petition.

Matter of Rubino        15 I&N Dec. 194

Revocation of a visa petition classifying the beneficiary as the spouse of U.S. citizen because the marriage was entered into solely for the purpose of gaining immigration benefits does not preclude the approval of a subsequent petition when the alien has not been issued a visa or granted adjustment of status through the prior petition.

Matter of Concepcion 16 I&N Dec. 10

The proscription of Section 204(c) is not applicable to a beneficiary who had previously been accorded immediate relative status as the spouse of a United States citizen on a basis of a marriage which never took place but which in fact was a fiction based on a falsified document.

Matter of Anselmo      16 I&N Dec. 152

Matter of Rahmati      16 I&N Dec. 538

A finding that a previous marriage was nonviable does not necessarily indicate it was contracted solely for immigration purposes; therefore, such a finding does not conclusively place an alien within 204(c)

Matter of Adninaoay   16 I&N Dec. 545

A finding of deportability under Section 241(c)(2) provides a basis for determination that Section 204(c) is applicable in subsequent visa petition proceedings.

Matter of Mintah        15 I&N Dec. 540

Matter of Cintron       16 I&N Dec. 9

Petition withdrawn by the petitioner may not be denied.


Matter of Calilao        16 I&N Dec. 104

Petition may be filed for beneficiary who is currently LPR under deportation proceedings

Matter of Tahsir        16 I&N Dec. 56

Decision may not be based on adverse evidence of which the petitioner is not aware

Addendum 1d: Divorce

Matter of Rodriquez    15 I&N Dec 227
Recognition of foreign divorce, remarriage.  See Appendix II, Dominican Republic divorces and foreign divorces.
Matter of Luna          18 I&N Dec 385

Addendum 1e: Child

Matter of Kirby        13 I&N Dec. 173
A child adopted in accordance with requirements of Section 101(b)(1)(E) of the  Act is not entitled to benefits from a petition filed by the natural parents
Matter of Pagnerre      13 I&N Dec. 688
A stepparent-stepchild relationship may continue after the death of the alien's natural parent terminates the marriage, which created the relationship.
Matter of Stultz        15 I&N Dec. 362
Adult children, irrespective of the time of their birth, should be treated like other illegitimate children under Section 101(b)(1)(B) of the Act.
Matter of Cabucana     16 I&N Dec. 217
Jurisdiction of the person, as well as jurisdiction over the subject matter is not necessarily a prerequisite for a valid adoption.
Matter of Cariago       15 I&N Dec. 716
Retroactive adoption decree does not confer benefits under the Act when the actual adoption did not take place prior to limiting age.
Matter of Teng          15 I&N Dec. 516
Where there is a sham marriage and no actual familial relationship between the stepchildren and the United States citizen stepparent has ever existed, the stepchildren are not entitled to be considered the children of the United States citizen stepparent.
Matter of Cho 16 I&N Dec. 188
"Proxy" adoption valid where contracted is generally valid for U.S. CIS purpose.

Matter of M   8 I&N Dec. 118
Residence requirement of Section 101(b)(1)(E) may include residence occurring prior to the formal adoption decree
Matter of Lee  11 I&N Dec. 911

Matter of Moreira      17 I&N Dec. 370
Stepchild relationship through mother may be established notwithstanding beneficiary could not qualify as the "child" of the natural father.
Matter of Mowrer       17 I&N Dec. 613

When the marriage creating the stepparent-stepchild relationship is terminated through divorce, it must be determined whether a family relationship has continued to exist as a matter of fact between the stepparent and stepchild.
Matter of Reyes        17 I&N Dec. 512

To be "legitimated" pursuant to Section 101(b)(1)(C), the legitimating act must have placed the child in all respects on the same footing as if begotten and born in wedlock.
Matter of Clahar        18 I&N Dec. 1

A child within the scope of the Jamaican Status of Children Act of 1976 is included within the definition of a legitimated "child" as set forth in Section 101(b)(1).
Matter of Hernandez   Int. Dec. 2953

To qualify under Section 101(b)(1)(C), a change in law making all children legitimate must occur prior to the child's 18th birthday.
Matter of Au Yeung    16 I&N Dec. 540

An alien, who is admitted to the U.S. as an "eligible orphan" pursuant to Section 101(b)(1)(F) of the Act, and is never, adopted by the petitioning U.S. citizen "parent", and who leaves the U.S., is not eligible for preference status as the "son" of the petitioning U.S. citizen "parent" since the relationship never came into existence.
Matter of Mourillon    18 I&N Dec. 122

In order to qualify as step-sibling, either 1) the marriage which created the step-relationship must continue to exist, or 2) where the parties to that marriage have legally separated or the marriage also has been terminated by death or divorce, a family relationship must continue to exist as a matter of fact between the "step-siblings".
Matter of Richard        18 I&N Dec. 2078

Under the Civil Code of Haiti, as amended by the 1959 Presidential Decree, children born out of wedlock after January 27, 1959 and acknowledged by their natural father have the same rights and obligations as legitimate children.
Matter of Mesias        I.D. 2919 (BIA 1982)


Matter of Fakalata        18 I&N Dec. 213

In order to prove that a customary adoption is valid for immigration purposes, the petitioner must establish that the adoption creates a legal status or relationship that is recognized by the government of the place where it occurred as carrying with it substantial legal rights and obligations.
Matter of Drigo          18 I&N Dec. 223

The beneficiary does not qualify for immigration priority date to which the beneficiary was not entitled at the time of the filing of the visa petition.
Matter of Atembe        I.D. 3023 (BIA 1986)
Matter of Oduro          108 I&N Dec. 421

Under Massachusetts law, legitimation of a person born out of wedlock is affected only by an acknowledgment of paternity (or judicial declaration of paternity) and the marriage of his natural parents.  The LPR petitioner's natural, acknowledged offspring who were born out of wedlock and whose natural parents never married did not qualify as the petitioner's "legitimated children".
Matter of Cardoso        I.D. 2952 (BIA 1983)

Legislation passed on May 21, 1980 in the Republic of Cape Verde resulted in no distinction between legitimate and illegitimate children and all children have equal rights under this law.  Consequently a beneficiary, who is born in Cape Verde on or after October 1, 1976, is deemed the legitimate "child" of his or her natural father under Section 101(b)(1)(A) of the Act, whereas a beneficiary who was under eighteen years of age on that date is deemed the legitimated "child" of his or her natural father under Section 101(b)(1(C) of the Act.

Matter of Repuyan     I.D. 2971 (BIA 1984)
Mere visit is not sufficient to fulfill two-year residence requirement under Section 101(b)(1)(E).

Matter of Li, BIA     (ID # not available)
Establishes criteria for reestablishment of natural or biological relationship after adoption.

Matter of Li    ID #3207
Severs biological relationships of adoptive child for immigration purposes

Matter of Bueno       21 I&N Dec. 1029
A delayed birth certificate does not necessarily offer conclusive evidence of paternity even if it is unrebutted by contradictory evidence; it must instead be evaluated on light of the other evidence of record and the circumstances of the case.


Matter of Awwal       I.D. 3056 (BIA 1988)
Even where there is an ongoing actual family relationship between a stepparent and a stepchild, that relationship cannot be recognized under Section 101(b)(1)(B) of the Act where the marriage creating the step-relationship was a sham.

Matter of Cherismo    19 I&N Dec. 25 (BIA 1984)
The Board held that under the Civil Code of Haiti, as amended by the Presidential Decree of January 27, 1959, children born out of wedlock and acknowledged by the natural father prior to January 27, 1959, have the same rights and obligations as legitimate children.  Matter of Mesias, 18 I&N Dec. 298 (BIA 1982), clarified.

Matter of Man 16 I&N Dec. 543 (BIA 1978)
The Board held that a secondary wife (concubine) cannot bestow immigration benefits upon children born to her husband and his principal wife.  In such instances, the sole relationship between the parties would be through the concubine "marriage" which is polygamous.  The  Board also held that they were satisfied that Congress did not intend to accord preference status on the basis of such relationships in view of the clear disfavor it expressed towards polygamy by excluding polygamists from entry into the United States under section 212(a)(10)(A) of the Act, 8 U.S.C. 1182(a)(11).


Addendum 1f: Son or Daughter


Matter of Coker       14 I&N Dec. 521
To qualify as a son or daughter for preference classification, the beneficiary of a visa petition must once have qualified as a child of the petitioner under Section 101(b)(1) of the Act.

Matter of Wong        16 I&N Dec. 87
The beneficiary of a visa petition classified as an "unmarried son or daughter" who obtains an immigrant visa and enters the U.S. in that classification, but who at the time of entry was married, may be deportable notwithstanding a subsequent annulment is granted abinitio.

Matter of Aldecoatalora        18 I&N Dec 430
Where the beneficiary was divorced for the sole purpose of obtaining immigration benefits and continued to reside with and own property jointly with her former husband in what by all appearances is a marital relationship; such a divorce is considered a sham and is meant for immigration purposes. Sham or fraudulent divorce, for the purpose of obtaining immigration benefits as the married relative of a petitioner, is not recognized for immigration purposes.


Addendum 1g: Parent


Matter of Hassan        16 I&N Dec. 16
In order for a child to confer immediate relative status upon a parent the petitioning child must be a United States citizen at least 21 years of age, and must have qualified as the "child" of the beneficiary as defined in Section 101(b) of the Act.

Matter of Fong        17 I&N Dec. 212
The fact that a petitioner has already successfully petitioned for a natural parent does not preclude approval of a visa petition filed on behalf of a stepparent in the absence of a statutory bar such as that existing in Section 101(b)(1)(E) of the Act with respect to the natural parents of an adopted child.


Addendum 1h: Adoptions


Matter of Li    20 I&N Dec. 700 (BIA 1993)
The Board decided that when a person is adopted, the adoption severs all legal ties between the adoptee and his/her natural family for immigration purposes. Therefore, an adopted person cannot confer any immigration benefits on his/her natural parents of siblings, nor can any member of the natural family confer benefits on the adopted person

Matter of Purewal        14 I&N Dec. 4 (BIA 1972)
The Board held that under the Hindu Adoptions & Maintenance Act of 1956 of India, applicable to all persons who are Sikh by religion, the adoption of a son is invalid if the adoptive father or mother has a son (whether by legitimate blood relationship or by adoption) living at the time of the adoption.

Matter of Cuello        20 I&N Dec. 94 (BIA 1989)
The Board held that where an adoption has been effected and the adopted child continues to reside in the same household with the natural parent(s) during the period in which the adoptive parent seeks to establish his/her compliance with the statutory residence requirement, the petitioner must establish that the adoptive parent(s) exercised primary parental control during that period of residence.  Parental control may be demonstrated by documentary evidence that the adoptive parent owns or maintains the property where the

child resides, provides financial support and day-to-day care, and assumes responsibility for important decisions in the child's life. The evidence must clearly establish the physical living arrangements of the adopted child, adoptive parents, and the child's natural parents during the period of time in which the adoptive parent seeks to establish compliance with the residence requirement and during any period following the adoption

Matter of Dhillon     16 I&N Dec. 373 (BIA 1977)

The Board held that under the Hindu Adoptions and Maintenance Act of 1956, a wife has no authority to effect an adoption while validly married to a Hindu husband of sound mind. She has no authority to do so even with her husband's consent. Moreover, the board saw no authority in the law for accomplishment of an adoption by a wife through the means of a power of attorney from her husband. The Board also noted, that even though the "adoption deed" referenced a general power of attorney from the husband, the petitioner's wife did not attempt to sign the "deed" in his name. Instead, she signed the "deed", and accomplished the purported adoption in her own name. Under such circumstances, the Board concluded that the petitioner had failed to establish both the applicable foreign law, and the validity of the adoption under that law.

Matter of Marquez     19 I&N Dec. 160 (BIA 1990)

(1) The Board rejected a strict statutory interpretation of Section 101(b)(1)(E) of the Immigration & Nationality Act, 8 U.S.C. 1101(b)(1)(E) (1982), thereby relying upon the legislative history of the statute which indicates that Congress did not intend to recognize ad hoc adoptions designed to circumvent the immigration laws. (2) The Board found the adoptive relationship is more akin to marital relationships than to steprelationships, and thus, in Visa petitions involving the specter of sham adoptions which generally arise in adoptions by a close relative where the relationship between the natural parent and the adopted child does not appear to change subsequent to the adoption will be analyzed under the standards set fort in Matter of Cuello, 20 I&N Dec. 94 (BIA 1989).

Matter of Repuyan     19 I&N Dec. 119 (BIA 1984)

The Board held that the 2-year residence requirement for a familial adopted child relationship is not satisfied by mere visits. A petitioner does not meet the burden of proof in visa petition proceedings by showing visits to the home of the adopted child by the adoptive parent

Matter of Mozeb     15 I&N Dec. 430

A petition should not be approved on a claimed adoptive relationship where it is alleged the person was adopted in Yemen.

Addendum 1i: Revocations

Matter of Ho   19 I&N Dec. 582 (BIA 1988)

The Board held that the petitioner bears the burden in visa petition revocation proceedings of establishing that the beneficiary qualifies for the benefit sought under the immigration laws

Matter of Ho   19 I&N Dec. 582 (BIA 1988)

The Board held that the realization by the district director that he made an error in judgement in initially approving a visa petition may, in and of itself, be good and sufficient cause for revoking the approval, providing the district director's revised opinion is supported by the record.

Matter of Arias        19 I&N Dec. 568 (BIA 1988)

The Board held that a decision to revoke approval of a visa petition can only be grounded upon, and the petitioner is only obliged to respond to, the factual allegations specified in the notice of intention to revoke.

Matter of Arias        19 I&N Dec. 568 (BIA 1988)

The Board held that observations of the consular officer that are conclusory, speculative, equivocal, or irrelevant to the bona fides of the claimed relationship between the petitioner and the beneficiary do not provide "good and sufficient cause" for the issuance of a notice of intention to revoke approval of a visa petition and cannot serve as the basis for revocation, notwithstanding the petitioner's failure to timely respond to the notice of intention to revoke.

Matter of Estime        19 I&N Dec. 450 (BIA 1987)

The Board held that a notice of intention to revoke approval of a visa petition is not properly issued unless there is "good and sufficient cause". The Board also held that "good and sufficient cause" for issuing such a notice exists when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial.

Addendum 2: Evaluating Evidence

Foreign Language Documents        Refer to 8 CFR 204.1(f)(3).

All translations must be accompanied by the original foreign language document when submitting a translation.

Secondary Evidence   Refer to 8 CFR 204.1(g)(2).

Examples of secondary evidence may include but are not limited to:
· Baptismal Certificates
· Properly executed affidavits
· Medical and School records
· Blood Tests

Baptismal Certificates (or other religious documents)        · Some countries view a child's baptism to be a much more important matter than the registration of the child's birth.

· Birth certificates from countries with highly religious influence may be more reliable than a civilly registered birth certificate.

· The Department of State has confirmed that baptismal certificates from Colombia are more reliable than civil documents.

·        The child's age at the time of the baptism is an important factor when considering the reliability of the document in lieu of primary evidence.


Medical/School Records        ·        Consideration must be given to the child's age at the time the school was attended or the medical services given when determining the credibility of the document.

·        Consideration should be given in regards to how the significant parent was involved in these events and when such involvement was historically recorded.


Affidavits        The acceptance of affidavits as secondary evidence is not discretionary.

1)        8 CFR Section 204.1(g)(2) states that the Service will give equal consideration to all secondary evidence, and that all evidence will be evaluated for its authenticity and credibility.

2)        Two affidavits are required in lieu of primary documents such as a birth, marriage or death certificates. Each affidavit must:

1.        Be sworn by two persons who were born at the time of the event

2.        Be sworn to by persons who have personal knowledge of the event to which they attest.

3.        Contain the affiant's full name and address

4.        The affiant's date and place of birth

5.        The affiant's relationship to the petitioner or beneficiary, if any

6.        Full details of the event in question

7.        Complete details concerning how the affiant acquired knowledge of the event.


3)        This Service Center readily accepts affidavits from countries that have historically not issued primary documents.  Check FAM/BENDERs for what is acceptable evidence for individual countries.

4)        Two persons may attest to an event(s) on one affidavit, and a single affidavit may be accepted as one of several items of secondary evidence.

5)        Any affidavit, which does not contain the above-listed information, should not be considered as sufficient evidence to support the event.

6)        When affidavits are inadequate as evidence, all RFEs will include an explanation of the noted deficiencies.

7)        Self-serving affidavits are generally regarded as affidavits, which have been prepared by the petitioner and the beneficiary.  These are not acceptable as secondary evidence.

8)        Affidavits from persons other than the petitioner or beneficiary will not be regarded as self-serving.

9)        Affiants do not need to be United States citizens or Lawful Permanent Residents.

10)        Affidavits will be evaluated in view of the total body of evidence.

Blood Tests    ·        Blood testing will not routinely be requested.

·        Blood testing will only be required as a last effort in establishing the relationship.

·        Blood tests are very expensive and it may be extremely difficult to be tested in certain countries.

·        Blood tests will not be requested based simply upon the submission of a fraudulent document.

·        If blood testing is required, the appropriate correspondance will be prepared as a means of notifying the petitioner of this requirement. See denial, and letter standards.

·        Because 8 CFR Section 204.2 (d)(vi) does not address other types of blood/genetic testing, such testing will not be required.

1)        Results of other types of tests, such as DNA, if submitted, will be considered.

2)        DNA testing is being done more often, especially in remote areas of the world where it is difficult to transport the specimens for blood testing quickly enough to a laboratory.

3)        All test results should include results indicating the likelihood of the claimed relationship.  If the results are not clearly understood, consult with your SCAO before taking further action on the petition.

Blood
Group Antigen Test

·        Regulation requires that a Blood Group Antigen Test be requested first and the results reported on Form G-620. This is an old form and has no area designated for reporting the likelihood of the relationship. We will not require that the results be reported on this form. Occasionally, the form is received and the test results are attached on a separate form, sometimes a computer printout type form.  This is acceptable.

·        All testing must be done at the expense of the petitioner/beneficiary.

·        Regulation states that the district director (Service Center Director) designates the qualified medical specialists who can perform these tests. We will inform the petitioner that a parentage-testing laboratory that is accredited by the American Association of Blood Banks must conduct the parentage testing. A current listing of these laboratories will be attached to the correspondence. If the beneficiary is abroad, the appropriate US consulate should be consulted for a list of specialists/physicians in the country where the beneficiary resides.

Human Leukocyte Antigen
Test (HLA)

·        If the Blood Group Antigen Test is inconclusive, the American Association of blood Banks will inform the petitioner of the necessity of having HLA tests done by a parentage-testing laboratory accredited. If the beneficiary is abroad, the same instructions apply as in A, 3 above.

·        The Form G-620 is not applicable to the HLA test but the form may be used for identification purposes and sometimes the HLA test results may be attached. Often the

lab will type on (modify) the G-620 to indicate the kind of test that was done. We will not require that Form G-620 be used.


Other Records ·      Financial records
·      Tax documents
·      Census records

Addendum 3: Central Index System


Introduction     When an intending immigrant files with the Immigration Service, he or she is sometimes assigned an Alien Registration Number (A-number). The A-number consists of an "A" followed by 9 digits, for example, A099333888. The A-number is used to create a record for the alien in the Central Index System (CIS) in National Systems. This A-number follows the alien throughout his or her dealings with the Immigration Service, and is attached to his or her immigration documentation. Each A-file is tracked by the corresponding A-number.

Thus, when an I-130 is processed at the Service Center, a search of CIS may be conducted to determine if the applicant has previously been assigned an A-number and/or to validate his/ her alleged number. Searches may also reveal that the applicant has a violation.


When to Perform     A CIS search is conducted on all I-130 petitions where the petitioner has not submitted evidence of lawful permanent residence (LPR) or naturalized U.S. citizenship (USC).


Description     A CIS search is completed to determine if the alien has been previously assigned an A-number, if he or she has identified the correct A-number, or to identify whether he or she has been assigned more than one A-number.


Definition of a CIS Search     There are three standard ways to check for A-numbers using CIS:
·      9102 or 9106 Sounds-Like Names Search
·      9103 Exact Name Search
·      9101 ID Search


Procedure for CIS Search     Follow the steps below to perform a CIS Search.

Step    Action: U.S. CIS
1       Log into Nationals.
2       Select CIS.
3       Press the "Home" or press "Alt+9" to return to the main screen.

IF…    THEN…

An A-number, SSN#, or Passport is given    Type "9101" at the "Command" prompt to perform an "ID Search" and press Enter.

No number is given or nothing comes up in the system for a given number    Type "9103" at the "Command" prompt to perform an "Exact Name Search" and press Enter.

No number is given and the Exact Name Search is unsuccessful    Type "9102" or "9106" at the "Command" prompt to perform a "Sounds Like Search" and press Enter.

4       Fill in the following information in the appropriate fields exactly as it appears on the I-130.
·       LASTNAME
·       FIRSTNAME
·       DOB (Date of Birth)
·       COB (Country of Birth)(Optional)
·       Press Enter

*Search up to 2,000 names.  However, do not run this search any longer than 10 minutes.

Step   Action:  U.S. CIS
5       Verify the record.

IF there is…    AND…    THEN…

No record found    Annotate the petition and processing worksheet.

A record found    The A-number is provided by the applicant    Request externally held A-files if applicable as per local policy

I-130 NATIONAL SOP: SECTION 6: POST-ADJUDICATIONS MODULE

Introduction    This section outlines the procedure to be followed after an officer makes a determination on an I-130 case.  The determination as to who (officer, clerk or contractor) will perform these functions is left to local management discretion.
The following procedure does not include the process for Motions and Appeals.

Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center.

Part 1: Updating CLAIMS

Updating CLAIMS   Follow the table below to review the CLAIMS data pertaining to the case and enter the decision into the system for ALL immigrant visa classifications.

Step     Action

| IF… | THEN… |
|---|---|
| Processing an approval | Go to Step 1a.1 |
| Processing a denial | Go to Step 1b.1 |
| Processing a non-decision action | Go to Step 1c.1 |
| Processing a non-decision action at the TSC | Go to Step 1d.1 |
| Processing an amended notice | Go to Step 1e.1 |
| Processing a revocation | Go to Step 1f.1 |

Part 1a: Processing Approvals

Processing Approvals        Perform the following steps to process an approval:
1a.1    Select "Adjudicate a Case."
1a.2    At the "Enter a receipt or A-number" prompt, wand the case's barcode.
1a.3    Press <F2> to check for any address changes.

1a.4    Review the petitioner and petition data for accuracy and make changes if necessary.

1a.5    Verify classification in Part 2 of the screen to Part A of the petition.

1a.6    Review beneficiary data for accuracy and make changes if necessary.

1a.7    If there is a valid G-28, tab or use the down arrow to get to the G-28 field.  If there is a "Y," in the field, press <Enter>.  Review the attorney/representative data for accuracy and make changes if necessary.  If there is an "N" in the field, type "Y" and enter the G-28 information.

IF…    THEN…

You make changes or add new information   Press <F4>, enter "Yes" at the "Save Changes?" prompt and then press "Esc"

You do not make changes      Press <Esc>, and select "Yes" at the "Exit Form?" prompt

1a.8    Press <F4> to save any changes.

1a.9    Press <F10>.

1a.10   Select "Approve the Case."

1a.11   If the case is being certified to the AAO, select "Approve and Certify – Order Notice;" otherwise select "Approve – Order Notice."

1a.12   At the "Approval Data" screen, select the proper action phrase from below and press <Enter> twice.

·       Requested send to consulate – sent to NVC
·       Indicated would Adjust Status; clearly ineligible
·       Adjust status; not eligible now, not barred
·       Indicated would adjust status; appears eligible
·       Will be notified separately on pending 1-485
·       Requested consulate; sent to NVC w/ cable

Note: See addendum at the end of this module for more information on action phrases.

1a.13   Type the priority date in mm/dd/yyyy format (the system automatically advances to successive fields).

1a.14   Leave the consulate field blank unless sending a cable.

1a.15   Advance to the "Send to Clerical? (Y/N)" field.  Leave the "N" (the system default) unless the instructions below for selecting the action phrase direct otherwise.  If you leave the "N," the system will automatically generate the notice and it will be sent out.

Note: If there is a need to send a notice other than batch printing, you must select "Y" and generate a manual notice.

If you selected…       Go to…
"N"      Step 1a.16.

"Y"     Step 2a.1.

1a.16   -       Press <F4>
-       At the "Save Changes?" prompt, select "Yes"
-       At the "Change Case Status?" prompt, select "Yes"
-       At the "Press escape to continue" prompt, press <Esc>
-       At the petition main screen, press <Esc>
-       At the "Exit Form?" prompt, select "Yes"


Part 1b: Processing Amended Notices

Processing Amended Notices If an approval notice is incorrect, DUE TO SERVICE
ERROR, and there is a need to amend the notice, follow the procedure below:
Step    Action
1b.1    Select "Adjudicate a Case."
1b.2    At the "Enter a receipt or A-number" prompt, wand the case's barcode.
1b.3    Press <F2> to check for any address changes.
1b.4    Review the petitioner and petition data for accuracy and make changes if
necessary.
1b.5    Verify classification in Part 2 of the screen to Part A of the petition.
1b.6    Review beneficiary data for accuracy and make changes if necessary.
1b.7    If there is a valid G-28, tab or use the down arrow to get to the G-28 field.  If
there is a "Y," in the field, press <Enter>.  Review the attorney/representative data for
accuracy and make changes if necessary.  If there is an "N" in the field, type "Y" and
enter the G-28 information.

            IF…    THEN…
            You make changes or add new information   Press <F4>, enter "Yes" at
the "Save Changes?" prompt and then press <Esc>.
            You do not make changes      Press <Esc>, and select "Yes" at the "Exit
Form?" prompt

1b.8    Press <F4> to save any changes.
1b.9    Press <F10>.
1b.10   Follow approval instructions to re-approve the case and place on clerical hold.
1b.11   Correct and save the information in CLAIMS
1b.12   Print the "Approval Data" screen and place it on the right side of the case file.
1b.13   Update the case with a "Y" and go to Step 2a.1.

Part 1c: Processing RFE/ITD/ITR

Processing Non-Decision Actions     To process a non-decision action or Suspense
Action (i.e., Requests for Evidence and Intents to Deny) follow the procedure below:

Step    Action: U.S. CIS

1c.1    Select "Adjudicate a Case."

1c.2    At the "Enter a receipt or A-number" prompt, wand the case's barcode.

1c.3    Press <F2> to check for any address changes.

1c.4    Review the petitioner and petition data for accuracy and make changes if necessary.

1c.5    Verify classification in Part 2 of the screen to Part A of the petition.

1c.6    Review beneficiary data for accuracy and make changes if necessary.

1c.7    If there is a valid G-28, tab or use the down arrow to get to the G-28 field. If there is a "Y," in the field, press <Enter>. Review the attorney/representative data for accuracy and make changes if necessary. If there is an "N" in the field, type "Y" and enter the G-28 information.

IF…    THEN…

You make changes or add new information   Press <F4>, enter "Yes" at the "Save Changes?" prompt and then press <Esc>.

You do not make changes    Press <Esc>, and select "Yes" at the "Exit Form?" prompt

1c.8    Press <F4> to save any changes.

1c.9    Press <F10>.

1c.10   Select "Case Review."

1c.11   Select "Place in Suspense."

1c.12   Determine the proper action phrase.

IF…    THEN…
Processing a Request for Evidence    Go to Step 1c.13
Processing an Intent to Deny   Go to Step 1c.14
Processing an Intent to Revoke    Go to Step 1c.15

1c.13   When evidence is being requested, select the phrase, "Order Additional Evidence Request Notice." Go to Step 1c.16.

Note: Do not use the action phrases "Order Initial Evidence Request Notice" or "Order Initial and Additional Evidence Request Notice."

Note: This only applies to CSC and VSC.

1c.14   When an Intent to Deny is being issued, select the phrase, "Intent to Deny Notice Ordered." Go to Step 1c.16.

1c.15   When an Intent to Revoke is being issued, select the phrase, "Intent to Revoke Notice Ordered." Go to Step 1c.16.

1c.16   Press <Enter> twice.

1c.17   Go to Step 2b.1.

Part 1d: Processing Non-Decision Actions at the Texas Service Center (TSC)

Processing Non-Decision Actions at the TSC          Due to differences in staffing at the Texas Service Center, U.S. CIS staff at the TSC should follow instructions as they appear below to process non-decision actions (i.e., Intents to Deny or Requests for Evidence).

Step    Action: U.S. CIS

1d.1    Select "Adjudicate a Case."

1d.2    At the "Enter a receipt or A-number" prompt, wand the case's barcode.

1d.3    Press <F2> to check for any address changes.

1d.4    Review the petitioner and petition data for accuracy and make changes if necessary.

1d.5    Verify classification in Part 2 of the screen to Part A of the petition.

1d.6    Review beneficiary data for accuracy and make changes if necessary.

1d.7    If there is a valid G-28, tab or use the down arrow to get to the G-28 field. If there is a "Y," in the field, press <Enter>. Review the attorney/representative data for accuracy and make changes if necessary. If there is an "N" in the field, type "Y" and enter the G-28 information.

IF…    THEN…

You make changes or add new information    Press <F4>, enter "Yes" at the "Save Changes?" prompt and then press <Esc>.

You do not make changes        Press <Esc>, and select "Yes" at the "Exit Form?" prompt

1d.8    Press <F4> to save any changes.

1d.9    Access CLAIMS main menu.

1d.10   Select "Batch Case Status Update."

1d.11   Select "Batch Off System Notice Sent Update."

1d.12   Select the appropriate phrase.

IF…    THEN…

Processing a Request for Evidence,    Select the phrase, "Request for Evidence Sent."

Processing an Intent to Deny, Select the phrase, "Notice of Intent to Deny Sent."

Processing an Intent to Revoke,        Select the phrase, "Notice of Intent to Revoke Sent."

1d.13   Press <Enter>.

1d.14   Wand each receipt number to be updated with the selected phrase.

1d.15   Press <Esc> three times.

1d.16   Select "RAFACS."

1d.17   Select "USERS."

1d.18   RAFACS each file (receipt number) to the designated file room holding area.

Part 1e: Processing Denials


Processing Denials     To process a denial, follow these steps:

 Step    Action

1e.1     Select "Adjudicate a Case."

1e.2     At the "Enter a receipt or A-number" prompt, wand the case's barcode.

1e.3     Press <F2> to check for any address changes.

1e.4     Review the petitioner and petition data for accuracy and make changes if necessary.

1e.5     Verify classification in Part 2 of the screen to Part A of the petition.

1e.6     Review beneficiary data for accuracy and make changes if necessary.

1e.7     If there is a valid G-28, tab or use the down arrow to get to the G-28 field.  If there is a "Y," in the field, press <Enter>.  Review the attorney/representative data for accuracy and make changes if necessary.  If there is an "N" in the field, type "Y" and enter the G-28 information.


            IF…    THEN…

            You make changes or add new information   Press <F4>, enter "Yes" at the "Save Changes?" prompt and then press <Esc>.

            You do not make changes      Press <Esc>, and select "Yes" at the "Exit Form?" prompt


1e.8     Press <F4> to save any changes.

1e.9     Press <F10>.

1e.10   Select "Deny the Case."



 1e.11  Determine the proper action phrase.

            IF…    THEN…

            Processing a "Regular Denial,"          Go to Step 1e.12

            Processing a "Denial Based on Fraud,"         Go to Step 1e.13

            Processing an "Abandonment Denial,"         Go to Step 1e.14

            Denying a "Previously Approved Case,"       Go to Step 1e.15

1e.12   If a "Regular Denial" is being processed, follow the procedures below:

            IF…    THEN…

            The case is being denied without certification to AAO,        Select the phrase "Order Denial Notice."  Go to Step 1e.16.

            The case is being denied with certification to AAO   Select the phrase "Order Denial and Certification Notice."  Go to Step 1e.16.


1e.13   If a "Denial Based on Fraud" case is being processed, follow the procedures below:

IF… THEN…

The case is being denied without certification to AAO, Select the phrase, "Order Denial Notice with Finding of Fraud." Go to Step 1e.16.

The case is being denied with certification to AAO, Select the phrase, "Order Denial and Certification Notice-Fraud." Go to Step 1e.16.

Caution: Please refer to local policy before using this update.

1e.14 If an "Abandonment Denial" case is being processed, select the phrase, "Order Abandonment Denial Notice." Go to Step 1e.16.

1e.15 If a petition was approved in error, follow the procedures below:

IF… THEN…

The approval notice has not gone out, Update CLAIMS with "Previous Action Cancelled." Exit out of the record by pressing the <Esc> button. Go back to Step 1e.11. Important: Retrieve the erroneous approval notice in accordance with local policy.

The approval notice has gone out, Select the phrase, "Intent to Revoke Notice Ordered." Go to Step 1e.16.

1e.16 Press <Enter> twice.
1e.17 Follow your service center instructions on removing supervisory hold.
1e.18 Proceed to 2b.1.

Part 1f: Processing Revocations

Processing Denials    To process a revocation, follow these steps:

Step    Action
1f.1    Select "Adjudicate a Case."
1f.2    At the "Enter a receipt or A-number" prompt, wand the case's barcode.
1f.3    Press <F2> to check for any address changes.
1f.4    Review the petitioner and petition data for accuracy and make changes if necessary.
1f.5    Verify classification in Part 2 of the screen to Part A of the petition.
1f.6    Review beneficiary data for accuracy and make changes if necessary.
1f.7    If there is a valid G-28, tab or use the down arrow to get to the G-28 field. If there is a "Y," in the field, press <Enter>. Review the attorney/representative data for accuracy and make changes if necessary. If there is an "N" in the field, type "Y" and enter the G-28 information.

IF… THEN…

You make changes or add new information   Press <F4>, enter "Yes" at the "Save Changes?" prompt and then press <Ess>.

You do not make changes    Press <Esc>, and select "Yes" at the "Exit Form?" prompt

1f.8    Press <F4> to save any changes.

1f.9    Press <F10>.
1f.10   Select "Deny the Case."
1f.11   Determine the proper action phrase.

             IF…    THEN…

             Processing a "Regular Revocation,"   Select the phrase, "Order Revocation Notice."

             Processing a "Revocation Based on Fraud,"   Select the phrase, "Order Revocation Notice with Finding of Fraud."

1f.12   Press <Enter> twice.
1f.13   Proceed to 2b.1.


Part 2: Printing Notices


Part 2a: Printing a Manual Notice


Printing a Manual System-generated Notice  A manually-generated CLAIMS notice should be generated if:
·       Returning original documents in the same envelope as the CLAIMS-generated notice;
·       Sending an amended notice; or
·       Special circumstances warrant it.
·       Express envelope is attached to the file
·       Approval notice needing to be faxed to consulate.




Procedure for Printing a Manual System-generated Notice   To Print a manual CLAIMS notice, follow this procedure:



Step    Action
2a.1    Access the CLAIMS Clerical main menu.
2a.2    Select "Printing menu."
2a.3    Select "Print Notices" or "Print Amended Notices" as appropriate.
2a.4    Wand the file's barcode label and press <F4>.
2a.5    Put the system-generated notice and the word processing-generated (if any) together and follow outgoing mail procedures.

Note:  If there is a note or form providing clerical processing instructions, place it on the right side of the file.


Part 2b: Updating CLAIMS after Manual Notices are Sent


Updating CLAIMS after manual notices are sent     Once the word processing-generated denial, the Request for Evidence, the Intent to Deny, or the Intent to Revoke

correspondence has been produced, follow this procedure to update the case to reflect that the notice(s) has/have been sent:

Note:  Before you can update CLAIMS with "DENIAL NOTICE—SENT," you must release the supervisory hold.  To do so, press <Alt-F8>, or <F10> and select "Remove Supervisory Hold."  Type your user ID and password and press <F4>.

Step    Action
2b.1    Access the CLAIMS Clerical main menu.
2b.2    Select "Batch status update."
2b.3    Select "Batch Off-System Notice Sent Update."
2b.4    Select the appropriate phrase.


Part 3: Distributing Work After Updating CLAIMS

Approvals      If adjustment of status (AOS) is requested, route to A-file creates.  If consulate processing is requested, route to mailroom for shipping to the National Visa Center (NVC).


RFEs   Route the file to the appropriate file room to be placed in the 87-day hold area grouped with others files that had RFEs sent on the same date.


Intents Route the file to the appropriate file room to be placed in the 33-day hold area grouped with others files that had Intents sent on the same date.


Denials         Route to A-file creates.  Hold the case for 33 days.  If no appeal is filed, then ship the file to the National Records Center (NRC).


Revocations    If the case is in a receipt file, route it to A-file creates, then send it to the hold shelf for 18 days.  If the case is in an A-file, route it to the hold shelf for 18 days.  If no appeal is filed, the file is routed to the NRC.

Addendum: Action Phrases and Print Options

Action Phrases, General        To view the actual language associated with a decision phrase on the notice, put the cursor on the phrase and press <F3>.


Requested consulate; sent to NVC w/ cable   The petition has been approved.  We have sent a cable to the consulate listed above to notify them of the approval of the petition. We have sent the petition to the US Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909 – NVC processes all approved

immigrant visa petitions that need consular action.  It also determines which consular post is the appropriate consulate to complete visa processing.  NVC will then forward the approved petition to that consulate. – This completes all U.S. CIS action on this petition.  If you have any questions about visa issuance, please contact the NVC directly.  The telephone number to NVC is (603) 334-0700.  Please allow 90 days before contacting the National Visa Center regarding your petition.  – The NVC will contact the person for whom you are petitioning concerning further immigrant visa processing steps.

Will be notified separately on pending I-485 The above petition has been approved.  The person this petition is for will be notified separately when a decision is reached on his or her pending adjustment of status application.

Indicated would Adjust Status; clearly ineligible      The above petition has been approved.  The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status.  The evidence indicates that he or she is not eligible to file an adjustment of status application.  This determination is based on the information submitted with the petition and any relating files.  If the person for whom you are petitioning believes that he or she is eligible for adjustment of status, then he or she should contact the local U.S. CIS office for more information.  – Because the person for whom you are petitioning is not eligible to adjust, we have sent the approved petition to the U.S. Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909.  The NVC processes all approved immigrant visa petitions that need consular action and also determines which consular post is the appropriate consulate to complete visa processing.  The NVC will then forward the approved petition to that consulate.  – This completes all U.S. CIS action on this petition.  If you have any questions about visa issuance, please contact the NVC directly.  The telephone number to NVC is (603) 334-0700.

Adjust status; not eligible now, not barred     The above petition has been approved.  The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status.  The information submitted with the petition shows that the person for whom you are petitioning is not eligible to file an adjustment of status application at this time.  – Additional information about eligibility for adjustment of status may be obtained from the local U.S. CIS office serving the area where the person for whom you are petitioning lives. – Until the person for whom you are petitioning files an adjustment of status application, or applies for an immigrant visa, this approved petition will be stored in this office.  If the person for whom you are petitioning becomes eligible to adjust status based on this petition, he or she should submit a copy of this notice with Form I-485, Application for Permanent Residence, to the local U.S. CIS office.  – If the person for whom you are petitioning decides to apply for an immigrant

visa outside the United States based on this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center.

Indicated would adjust status; appears eligible      The above petition has been approved.  The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status.  He or she should contact the National Customer Service Center at 1-800-375-5283* to obtain Form I-485, Application for Permanent Residence.  A copy of this notice should be submitted with the application. – If the person for whom you are petitioning decides to apply for a visa outside the United States based on this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center (NVC).  – The NVC processes all approved immigrant visa petitions that require consular action.  The NVC also determines which consular post is the appropriate consulate to complete visa processing.  It will then forward the approved petition to that consulate.

* Contact this number if located in the United States, Puerto Rico, Guam, or the U.S. Virgin Islands. If outside of these areas, contact the closest U.S. Embassy or Consulate for assistance.

Requested send to consulate – sent to NVC  The above petition has been approved.  We have sent it to the US Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801—2909. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing.  The NVC will then forward the approved petition to that consulate.  – This completes all U.S. CIS action on this petition. If you have any questions about visa issuance, please contact the NVC directly.  The telephone number to NVC is (603) 334-0700.  Please allow 90 days before contacting the National Visa Center regarding your petition. – The NVC will contact the person for whom you are petitioning concerning further immigrant visa processing steps.

I-130 Processing Worksheet