

the noninsured crop disaster assistance program (7 CFR part 1437) for the same tree or vine loss, the eligible owner must choose whether to receive the other program benefits or payments under this part. The eligible owner cannot receive both. However, if the other program benefits are not available until after the eligible owner has received benefits under this part, the eligible owner may obtain the other program benefits if the eligible owner refunds the total amount of the payment received prior to receiving the other program benefits. If the eligible owner purchased additional coverage insurance, as defined in 7 CFR 400.651, or is eligible for emergency loans, the eligible owner will be eligible for assistance under such program, and this part as long as the amount received for the loss under the additional coverage or the emergency loan together with the amount received from the other programs does not exceed the amount of the actual loss of the eligible owner.

Signed at Washington, D.C., on January 20, 1998.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98-1916 Filed 1-26-98; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 207, 208, and 299

[INS No. 1639-93]

RIN 1115-AD59

Procedures for Filing a Derivative Petition (Form I-730) for a Spouse and Unmarried Children of a Refugee/Asylee

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Immigration and Naturalization Service (Service) regulations by providing specific guidelines on the procedures which must be followed by a refugee or asylee to bring his/her spouse and unmarried, minor child(ren) (derivatives) into the United States. This rule responds to the family reunification needs of refugees by establishing an equitable and consistent derivative policy for refugees which parallels the current derivative procedures for asylees. This rule also amends asylum regulations by removing from the definition of qualifying relationship

child(ren) born to, or legally adopted by, the principal alien and spouse after approval of the principal alien's asylum application.

DATES: This rule is effective February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Suzy Nguyen or Ramonia Law-Hill, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: On July 9, 1996, the Service published a proposed rule in the **Federal Register** at 61 FR 35984, providing procedures that must be followed by a refugee or asylee to bring his or her spouse and unmarried, minor child(ren) (derivatives) into the United States.

The proposed rule was designed to respond more fully to the family reunification needs of refugees, while establishing specific guidelines on the derivative policy for both refugees and asylees. First, the proposed rule allowed the Service to use the refugee's date of admission into the United States to determine accompanying or following-to-join eligibility for his/her spouse and unmarried, minor child(ren). A refugee would be able to file a Form I-730, Refugee/Asylee Relative Petition, for his/her spouse and/or each individual child if the relationship predates the refugee's date of admission to the United States, rather than the date of interview or tentative approval date of the application. This eligibility would extend to a child who is *in utero* on the date of the refugee's admission to the United States but is born after the refugee's admission as a refugee.

Second, the proposed rule imposed a 1-year time limit from the date of the principal refugee's admission to the United States within which he or she must file a Form I-730 for his/her spouse and/or each individual child, unless the Service determined that the filing period should be extended for humanitarian reasons. Similarly, the principal asylee would be required to file a Form I-730 for each qualifying family member within 1 year of the date on which he or she was granted asylum status, unless the Service determines that the filing period should be extended for humanitarian reasons.

Third, the proposed rule required that only an alien who was admitted to the United States as a principal refugee would be eligible to file the Form I-730 for accompanying or following-to-join benefits for his/her spouse and/or unmarried, minor child(ren). Those individuals who derived their refugee

status from the principal refugee would not be eligible to file a Form I-730.

Fourth, the proposed rule would amend the asylum regulations by requiring that, for purposes of filing a Form I-730, the asylee's relationship to a child must have existed at the time of approval of the asylum application.

Finally, the proposed rule added certain documentary and evidentiary requirements for filing a Form I-730, such as requiring that a separate Form I-730 be filed for each individual qualifying family member and that a photograph of the derivative be included. These proposed regulations served to clarify the Service's accompanying and following-to-join policy for Service officers and the general public by standardizing refugee and asylee derivative procedures.

The Immigration and Naturalization Service allowed a 60-day public comment period which ended on September 9, 1996. The Service received 19 comments on the proposed rule. The following is a discussion of those comments and the Service's response.

Discussion of Comments

Using the Principal Refugee's Date of Admission To Determine Derivative Eligibility

The Service proposed that the principal refugee's date of admission into the United States be used to determine accompanying or following-to-join eligibility for his/her derivatives. Current regulations require that the refugee's relationship to the spouse or child exist prior to the tentative approval date of the principal's application for refugee status. Furthermore, according to the proposed rule, if the refugee proves that he/she is the parent of a child who was born after the refugee's admission to the United States, but who was *in utero* on the date of refugee's admission as a refugee, the child shall be eligible to accompany or follow-to-join the refugee.

Fourteen commenters praised and supported the Service's decision to use the principal refugee's date of admission rather than date of tentative approval. In addition, three commenters supported the Service's proposed rule pertaining to children *in utero*. Only one commenter was in opposition, claiming that the change would invite exploitation and fraud.

The Service has carefully considered the one commenter's concern regarding the possibility of fraud. The Service feels that the proposed rule contains certain evidentiary and documentary requirements (such as requiring a recent photograph of the spouse or child and

requiring evidence of the claimed relationship as set forth in 8 CFR part 204) which may reduce the risk of fraud and exploitation. Furthermore, the current interpretation of derivative eligibility for refugees has created confusion for Service officers, attorneys and representatives, refugees, and the general public. The Service believes that this rule will alleviate inconsistencies in determining eligibility that has been encountered due to the difficulty in determining the date of tentative approval of the principal refugee's application. In addition, the current interpretation is too restrictive because it requires a refugee to meet a heavier burden for establishing a relationship with his/her spouse and/or child(ren) than is required by regulation for a citizen or lawful permanent resident of the United States. Moreover, the Service believes that this rule reflects the intent of Congress by enhancing family reunification for refugees.

One Year Filing Requirement

The proposed rule required that a separate Form I-730 must be filed for each qualifying derivative within 1 year of the principal refugee's admission to the United States, unless the Service determines that the filing period should be extended for humanitarian reasons. Similarly, the proposed rule required that a separate Form I-730 for each qualifying derivative must be filed within 1 year of the date on which the principal asylee was granted asylum status, unless the Service determines that the filing period should be extended for humanitarian reasons.

Twelve commenters opposed the 1-year time limit. Ten of those claimed that 1 year is too short or unrealistic. Two commenters suggested a minimum of 3 years, and one suggested that a more reasonable time limit would be when the refugee/asylee becomes eligible for U.S. Citizenship. Seven commenters argued that there is no time restriction imposed in the Immigration and Nationality Act ("the Act") and that, therefore, the Service should not set a time limit. Others noted that, since this is a newly imposed time limit, the Service should ensure that refugees and asylees are well informed of this filing requirement. Only one commenter agreed that the 1-year time limit was reasonable.

Derivative benefits for refugees and asylees are intended to expediently reunite families in order for them to make the difficult transition to a new life with the support of their immediate family members by avoiding lengthy delays due to visa quotas. The timely filing of Form I-730 will expedite the

reunification of refugee families. At the moment, Service regulations on derivative benefits for refugee and asylees contain no time limitation. As a result, there are individuals who had entered the United States in the late 1970s or early 1980s as refugees who did not file Form I-730 petitions for their derivatives until ten or more years after their admission. Such filings no longer serve the purpose for which they were originally intended and, instead, only serve to deplete limited refugee admission numbers and refugee resettlement monies needed for currently emerging refugee populations. In determining the filing time limitation for Form I-730, the Service acknowledges that it must be responsive to the needs of the applicant base.

After careful consideration of the comments received, the Service is modifying the proposed rule with regard to the 1-year time limit. Accordingly, the final rule requires that the Form I-730 must be filed within 2 years of the date of admission to the United States for a refugee, or within 2 years of the grant of asylum for an asylee. Although the Service believes that 1 year is a reasonable time limit for refugees and asylees to file the Form I-730, the Service would like to acknowledge and address the commenters' concerns by adopting this change. Therefore, the filing of the Form I-730 within 2 years of admission as a refugee or grant of asylum will serve to notify the Service of a refugee's or asylee's intent to have his/her derivative(s) join him/her in the United States. The Service has also carefully reviewed the provisions of section 207(c)(2) of the Act and has determined that the establishment of a filing period does not violate the language or intent of that section of the Act.

Five commenters argued that, since the proposed rule did not define which "humanitarian reasons" warranted an extension of the filing deadline, this would lead to arbitrary and conflicting decisions by Service officers, or create a large category of applicants under this exception. On the contrary, the Service believes that defining the specific qualifying "humanitarian reasons" would only act to restrict severely the category and shut the door on applicants who need this exception most. As with other immigration benefits, applications should be decided on a case-by-case basis. Likewise, although humanitarian exceptions are used throughout other Service regulations, the term is not defined so that individuals with exceptional cases are not shut out. The Service will make continual assessments of the processing

of the I-730 petitions, particularly in the early stages of the promulgation of this rule, and provide guidance to Service officers, if necessary, in order to ensure uniformity in the decision process.

Ten commenters noted that the Service should have some type of grandfather clause to allow petitioners whose Forms I-730 were denied under the old regulations to refile or reopen their cases. Five commenters pointed out that, although the introductory comment to the proposed rule had indicated that refugees and asylees in the United States for more than 1 year when the regulation becomes effective would be given 1 year to file, this provision was not put in the proposed regulation itself. Furthermore, the proposed rule failed to address refugees and asylees who have been in the United States for less than 1 year at the time the regulation becomes effective.

The Service agrees with the commenters who expressed the need for some type of grandfather clause. The Service is also grateful to those commenters who spotted the inadvertent omission. In response to these comments, the Service is including a grandfather clause in the final rule which allows all persons admitted as refugees or granted asylum prior to the effective date of the final rule to file the Form I-730 within 2 years of that effective date regardless of when they were admitted as a refugee or granted asylum. This will allow refugees and asylees an equal opportunity to apply for derivative benefits for their spouse and/or child(ren). A principal refugee who had previously submitted the Form I-730 but was denied because of current regulations requiring the relationship with his/her derivative(s) to have existed prior to the tentative approval date of his/her application for refugees status should reapply by submitting Form I-730 for each individual derivative within 2 years of the effective date of the final rule. It is noted that petitioners must reapply in these situations since the Service will not *sua sponte* reopen previously denied files. In order to better inform the general public, the Service is including the grandfather clause in the instructions part of the revised Form I-730 to inform all potential refugee and asylee petitioners that they have either 2 years from the date on which the final rule becomes effective or 2 years after the date of admission (for refugees) or grant of asylum (for asylees), whichever is later, to file the Form I-730.

Only the Principal Refugee May File a Form I-730

Similar to current regulations, the proposed rule required that the Form I-730 be filed by the principal refugee. Individuals who have derived their refugee status from the principal refugee are not eligible to file a Form I-730.

Ten commenters opposed the Service's requirement that only the principal refugee may file the Form I-730. Four commenters claimed that, because of the refugee registration systems used overseas, certain refugees may be inadvertently labeled as a derivative when he/she does not fit the definition of a derivative spouse or child and, in fact, should be considered a principal for the purposes of filing the Form I-730. Two commenters argued that any refugee who does not meet the statutory definition of a "derivative" should be allowed to file the Form I-730. Several commenters stated that if the purpose of the principal applicant rule is to deter fraud, then it is overbroad and, as such, violates the intent and language of the Act. One commenter expressed the need for a humanitarian exception in the case where the principal refugee is deceased or incapacitated, becomes abusive, or abandons his/her family after the derivative spouse has reached the United States, in order to allow the derivative spouse to petition for their mutual child(ren). Another commenter stated that the regulation should allow for the child of an unmarried parent to accompany or follow-to-join him/her even if the parent had obtained his/her refugee status on a derivative basis.

The Service has carefully considered their comments and has reviewed the language of the Act at sections 207 (c)(1) and (c)(2). The requirement that only the principal refugee may file for accompanying or following-to-join benefits for his/her spouse and/or child(ren) may be ascertained from the language of sections 207 (c)(1) and (c)(2) of the Act. Section 207(c)(2) provides for the admission of spouses and children (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) of a refugee qualifying for admission under section 207(c)(1) of the Act. Accordingly, only a principal refugee, admitted under section 207(c)(1) of the Act, may file a Form I-730 on behalf of his or her spouse or child(ren). The Service already regards persons admitted under section 207 who do not meet the statutory definition of a spouse or child to be principals for the purpose of filing an I-730 petition.

Eight commenters stated that the proposed rule was confusing in its use

of the terms "principal refugee," "principal applicant," and "principal alien." The Service agrees with these comments and has removed the term "principal applicant" from the final rule in order to avoid any confusion.

Eligible and Ineligible Relatives of a Refugee/Asylee

The Service listed in proposed § 207.7(b) relatives of refugees who are ineligible for accompanying or following-to-join benefits, which included: a spouse or child who has previously been granted asylee or refugee status; an adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years; a stepchild, if the marriage that created this relationship took place after the child became 18 years old; a husband or wife if each/both were not physically present at the marriage ceremony and the marriage was not consummated, or if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws; and a parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

Six commenters put forth various arguments for the inclusion of certain relatives as eligible accompanying or following-to-join derivatives of a refugee or asylee. Four commenters stated that some type of exclusion should be made for a child of a derivative child. Two commenters claimed that relatives listed in proposed § 207.7(b)(6) (i.e., parent, sibling, grandparent/child, nephew/niece, uncle/aunt, cousin, and in-law) should be included as derivative refugees when they are dependent on the principal refugee and reside in his/her household. One commenter argued that barring the mother of the principal alien's child because the principal was not married to the child's mother is harsh and irrelevant. Another claimed that eligible "accompanying derivative" should include relatives of the principal petitioner's spouse, or the principal petitioner's child. One commenter pointed out that many children in agrarian or less-developed societies are customarily adopted without legal formalities; therefore, people should be allowed to present proof that they were the actual custodial guardian of the child for the requisite minimum of 2 years, to petition for the child as a derivative refugee, and then complete the legal adoption formalities in the United States.

The Service has carefully considered these comments. However, section 207(c)(2) of the Act clearly specifies that only a "spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E))" of a refugee shall be eligible for accompanying or following-to-join benefits. Accordingly, the Service has deemed ineligible those relatives who do not fit the statutory definition of a spouse and child as defined in sections 101(a)(35) and 101(b)(1) (A), (B), (C), (D), or (E), respectively, of the Act.

Evidentiary and Documentary Requirements

The proposed rule required that a separate Form I-730 must be filed for each qualifying family member, which must also include a recent photograph of this family member. The petitioning refugee or asylee has the burden to establish by a preponderance of the evidence that the person for whom he/she is petitioning is an eligible spouse or child. The evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the Form I-730; where possible, this will consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5). No fee is charged for filing a Form I-730 petition.

Three commenters opposed the proposed requirement that a separate Form I-730 must be filed for each family member. Four commenters claimed that the photograph requirement is too restrictive and unrealistic. Six commenters argued that the heightened evidence needed to prove spousal relationship should only apply in situations where Congress has expressed the fear of marriage fraud, which would not include refugees cases. In addition, five commenters stated that the "where possible" language of the proposed rule is vague and, therefore, may result in arbitrary decisions by Service officers.

The Service has carefully considered the comments. However, the Service believes that the evidentiary and documentary requirements are reasonable. First, having a separate Form I-730 for each family member will enhance efficiency and facilitate Service processing of the petition, especially in cases where there are many derivatives and/or they are residing in different geographic locations. Since each derivative has a separate I-730, each petition may be processed on its own without having to wait for the rest of the family members. Second, the photograph required of each derivative need not meet Alien Documentation Identification and Telecommunication

System (ADIT) specifications. The Service believes that it is not overly burdensome to require a non-ADIT photograph. Third, the Service believes that adopting the standard of evidence set forth in 8 CFR part 204 to establish a claimed relationship for a spouse or minor, unmarried child is a reasonable requirement in light of the risk of fraudulent petitions.

Finally, petitioners should note that although there is no appeal from the denial of a petition filed on Form I-730, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the refugee or asylee relative petition proceeding, if the petitioner establishes eligibility for accompanying or following-to-join benefits. This is consistent with other types of applications for immigration benefits where no administrative appeal is available, but the applicant may submit a new application or a motion to reopen in the case of a denial (e.g., 8 CFR 204.2(a)(1)(iii)(D)).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is administrative in nature and merely imposes specific regulatory restraints, which parallel procedures currently found in asylum regulations. This rule will not result in an annual effect on the economy of \$100 million or more or adversely and materially affect a sector of the economy, or cause major increases in costs or prices for consumers, or have other adverse effects on the economy in terms of productivity, competition jobs, the environment, public health, or safety. Furthermore, the affected parties are not small entities, and the impact of the regulation is not an economic one.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to and, approved by, the Office of Management and Budget.

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Form I-730

The revised Form I-730 has been included at the end of this final rule to allow the public to duplicate the form from the **Federal Register** until the form is printed and distributed worldwide.

Paperwork Reduction Act

The information collection requirement (Form I-730) contained in this rule has been submitted to and approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5

List of Subjects

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 207—ADMISSION OF REFUGEES

1. The authority citation for part 207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182, 8 CFR part 2.

§§ 207.7 and 207.8 [Redesignated as § 207.8 and § 207.9]

2. Sections 207.7 and 207.8 are redesignated as § 207.8 and § 207.9 respectively.

3. A new § 207.7 is added to read as follows:

§ 207.7 Derivatives of refugees.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, and/or child(ren), as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Act, shall be granted refugee status if accompanying or following-to-join the principal alien. An accompanying derivative is a spouse or child of a refugee who is in the physical company of the principal refugee when he or she is admitted to the United States, or a spouse or child of a refugee who is admitted within 4 months following the principal refugee's admission. A following-to-join derivative, on the other hand, is a spouse or child of a refugee who seeks admission more than 4 months after the principal refugee's admission to the United States.

(b) *Ineligibility.* The following relatives of refugees are ineligible for accompanying or following-to-join benefits:

(1) A spouse or child who has previously been granted asylee or refugee status;

(2) An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years;

(3) A stepchild, if the marriage that created this relationship took place after the child became 18 years old;

(4) A husband or wife if each/both were not physically present at the marriage ceremony, and the marriage was not consummated (section 101(a)(35) of the Act);

(5) A husband or wife if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws; and

(6) A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

(c) *Relationship.* The relationship of a spouse and child as defined in sections 101(a)(35) and 101(b) (1)(A), (B), (C), (D), or (E), respectively, of the Act, must have existed prior to the refugee's admission to the United States and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the refugee proves that the refugee is the parent of a child who was born after the refugee's admission as a refugee, but who was *in utero* on the date of the refugee's admission as a refugee, the child shall be eligible to accompany or follow-to-join the refugee. The child's mother, if not the principal refugee, shall not be eligible to accompany or follow-to-join the principal refugee unless the child's mother was the principal refugee's spouse on the date of the principal refugee's admission as a refugee.

(d) *Filing.* A refugee may request accompanying or following-to-join benefits for his/her spouse and unmarried, minor child(ren) (whether the spouse and children are in or outside the United States) by filing a separate Form I-730 Refugee/Asylee Relative Petition, for each qualifying family member with the designated Service office. The Form I-730 may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to file the Form I-730 on behalf of their spouse and child(ren). A separate Form I-730 must be filed for each qualifying family member before February 28, 2000 or within 2 years of the refugee's admission to the United States, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Form I-730 has been approved, provided that the relationship of spouse or child continues to exist and approval of the Form I-730 petition has not been subsequently revoked. There is no fee for filing this petition.

(e) *Evidence.* Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a

preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for accompanying or following-to-join benefits. Where possible this will consist of the documents specified in § 204.2(a) (1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.

(f) *Approvals.* (1) *Spouse or child in the United States.* When a spouse or child of a refugee is in the United States and the Form I-730 is approved, the Service will notify the refugee of such approval on Form I-797, Notice of Action. Employment will be authorized incident to status.

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the Form I-730 is approved, the Service will notify the refugee of such approval on Form I-797. The approved Form I-730 will be sent by the Service to the Department of State for forwarding to the American Embassy or Consulate having jurisdiction over the area in which the refugee's spouse or child is located.

(3) *Benefits.* The approval of the Form I-730 shall remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. To demonstrate employment authorization, the Service will issue a Form I-94, Arrival-Departure Record, which also reflects the derivative's current status as a refugee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I-765, Application for Employment Authorization, and a copy of the Form I-797.

(g) *Denials.* If the spouse or child of a refugee is found to be ineligible for derivative status, a written notice explaining the basis for denial shall be forwarded to the principal refugee. There shall be no appeal from this decision. However, the denial shall be without prejudice to the consideration

of a new petition or motion to reopen the refugee or asylee relative petition proceeding, if the refugee establishes eligibility for the accompanying or following-to-join benefits contained in this part.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

4. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

5. In § 208.19, paragraphs (b), (c), (d), and (f) are revised to read as follows:

§ 208.19 Admission of asylee's spouse and children.

* * * * *

(b) *Relationship.* The relationship of spouse and child as defined in sections 101(a)(35) and 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the asylee proves that the asylee is the parent of a child who was born after asylum was granted, but who was *in utero* on the date of the asylum grant, the child shall be eligible to accompany or follow-to-join the asylee. The child's mother, if not the principal asylee, shall not be eligible to accompany or follow-to-join the principal asylee unless the child's mother was the principal asylee's spouse on the date the principal asylee was granted asylum.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request accompanying or following-to-join benefits for his/her spouse or child by filing for each qualifying family member a separate Form I-730, Refugee/Asylee Relative Petition, and supporting evidence, with the designated Service office, regardless of the status of that spouse or child in the United States. A recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes. Additionally, a separate Form I-730 must be filed by the asylee for each qualifying family member before February 28, 2000, or within 2 years of the date in which he/she was granted asylum status, whichever is later, unless it is determined by the Service that this

period should be extended for humanitarian reasons. Upon approval of the Form I-730, the Service will notify the asylee of such approval on Form I-797, Notice of Action. Employment will be authorized incident to status. To demonstrate employment authorization, the Service will issue a Form I-94, Arrival-Departure Record, which also reflects the derivative's current status as an asylee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I-765, Application for Employment Authorization, and a copy of the Form I-797. The approval of the Form I-730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his/her spouse or child(ren) by filing a separate Form I-730 for each qualifying family member with the

designated Service office, setting forth the full name, relationship, date and place of birth, and current location of each such person. A recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes. A separate Form I-730 for each qualifying family member must be filed before February 28, 2000, or within 2 years of the date in which the asylee was granted asylum status, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. When the Form I-730 is approved, the Service will notify the asylee of such approval on Form I-797. The approved Form I-730 shall be forwarded by the Service to the Department of State for delivery to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the Form I-730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary

for admission to the United States as a derivative of an asylee.

* * * * *

(f) *Burden of proof.* To establish the claimed relationship of spouse or child as defined in sections 101(a)(35) and 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in § 204.2 (a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

* * * * *

PART 299—IMMIGRATION FORMS

6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

7. Section 299.1 is amended by revising the entry for Form "I-730" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I-730	01-07-98	Refugee/Asylee Relative Petition.

8. Section 299.5 is amended by revising the entry for Form "I-730" to read as follows:

§ 299.5 Display of control numbers.

INS form No.	INS form title	Currently assigned OMB control No.
I-730	Refugee/Asylee Relative Petition	1115-0121

Dated: July 30, 1997.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.

Note: The Form I-730, Refugee/Asylee Relative Petition, will not appear in the Code of Federal Regulations.

U.S. Department of Justice

OMB No. 1115-0121

Immigration and Naturalization Service

Refugee/Asylee Relative Petition**INSTRUCTIONS**

Read these instructions carefully. If you do not follow the instructions, the Immigration and Naturalization Service (INS) may have to return your petition, which may delay final action. If more space is needed to complete an answer, continue on a separate sheet of paper.

1. Who Can File This Petition?

If you have been admitted to the United States as a refugee or if you have been granted status in the United States as an asylee, **within the previous two years and as the principal applicant**, you may file this petition. A separate Form I-730 must be filed for each family member.

You are **not** eligible to file this petition if:

- 1) You were granted status in the United States as a derivative beneficiary or as an accompanying or following-to-join family member; or
- 2) You were admitted to the United States as a refugee more than two years ago (see *NOTE); or
- 3) You were granted status in the United States as an asylee more than two years ago (see *NOTE).

***NOTE:** The requirement that the Refugee/Asylee Relative Petition must be filed within two years of your admission as a refugee or grant of asylum does not go into effect until two years after the effective date of the final rule entitled *Procedures for Filing a Derivative Petition (Form I-730) for a Spouse and Unmarried Children of a Refugee/Asylee*.

2. Who Is Eligible For Accompanying Or Following-To-Join Benefits?

Your **spouse** and/or your **unmarried children under twenty-one (21) years of age**, whether in or outside of the United States, are eligible for accompanying or following-to-join benefits based on this petition **provided** that the family member(s) qualify under the conditions described below.

- If you are a refugee: The relationship between you and your relative must have existed on the date you were admitted to the United States as a refugee and must continue to exist. If the person you are filing for is a child who was conceived but not yet born on the date you were admitted to the United States, the relationship will be considered to exist as of the date

you were admitted to the United States. (The mother of such child is not an eligible relative unless the mother was married to the principal refugee when the refugee was admitted to the United States.)

- If you are an asylee: The relationship between you and your relative must have existed on the date you were granted asylum in the United States and must continue to exist. If the person you are filing for is a child who was conceived but not yet born on the date you were granted asylum in the United States, the relationship will be considered to exist as of the date you were granted asylum in the United States. (The mother of such child is not an eligible relative unless the mother was married to the principal asylee when the asylee was granted asylum in the United States.)
- In all cases, if the family member you are filing for is your child, the child must continue to be unmarried and under 21 years of age.
- A spouse or child must be otherwise admissible as an immigrant (for refugee relatives) or not subject to the mandatory bars of 8 CFR 208.19 (for asylee relatives).

A petition may not be approved for the following people:

- A spouse or child who has previously been granted refugee or asylee status.
- An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the adoptive parent(s) for at least two years.
- A stepchild, if the marriage that created this relationship took place after the child became 18 years old.
- A husband or wife, if each was not physically present at the marriage ceremony and the marriage was not consummated.

- A husband or wife, if it is determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws.
- A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.

3. What Documents Need To Be Submitted?

Certain documents are required to be submitted with this petition to show that you are eligible to file this petition and to show that a relationship exists between you and your relative. (If the documents described below are not available, see Sections 4 and 5 of these instructions.)

- In all cases, submit **evidence of your status as a refugee or asylee** in the United States.
- In all cases, submit a recent, clear **photograph** of the family member you are filing for.
- If you are petitioning for your **husband or wife**, submit your marriage certificate. If you and/or your spouse were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). Evidence of any legal name change must also be submitted, if applicable.
- If you are petitioning for your **child** and you are the **natural mother**, whether the child was born in or out of wedlock, submit the child's birth certificate showing both the child's name and your name. Evidence of any legal name change must also be submitted if the names on the birth certificate do not match the names on the petition.
- If you are petitioning for your **child** and you are the **natural father**, submit the child's birth certificate showing both the child's name and your name. If you were married to the child's mother, submit your marriage certificate. If you and/or the child's mother were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). If you were not married to the child's mother, submit evidence that the child was legitimated by the civil authorities. If the child was not legitimated by the civil authorities, submit evidence that a bona fide parent/child relationship exists or existed between you and the child. Evidence of a bona fide parent/child relationship

should prove that you have emotional and financial ties to the child, and that you have shown genuine concern and interest in the child's support, instruction, and general welfare. Such evidence may include (but is not limited to) the following:

- 1) Money order receipts;
- 2) Canceled checks showing financial support of the child;
- 3) Income tax returns in which you claim the child as a dependent and member of your household;
- 4) Medical or insurance records which include the child as a dependent;
- 5) School records for the child;
- 6) Correspondence between you and the child; and
- 7) Notarized affidavits of reliable persons who are knowledgeable about the relationship.

Evidence of any legal name change must also be submitted, if applicable.

- If you are petitioning for your **stepchild**, whether the child was born in or out of wedlock, submit the child's birth certificate and the marriage certificate between you and the child's natural parent. If you and/or the child's natural parent were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). Evidence of any legal name changes must also be submitted, if applicable.
- If you are petitioning for your **adopted child**, submit a certified copy of the adoption decree and evidence that you resided together with the child for at least two years. If you were granted legal custody of the child prior to the adoption, submit a certified copy of the court order granting custody. Evidence of any legal name changes must also be submitted, if applicable.

IMPORTANT NOTE: In all cases, you should submit one legible photocopy of each required document to the INS. Where a copy of a document is submitted, the INS may at any time require that the original document be submitted for review. Documents in a foreign language must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate. Original documents submitted when not required will remain a part of the record.

4. What If A Document Is Not Available?

If the documents described above are not available from the civil authorities, you can submit the following, as **secondary evidence**, along with a statement from the appropriate civil authority certifying that the required document(s) is(are) not available.

- **Church record:** A certificate under the seal of the church where the baptism, dedication, or comparable rite occurred within two months after birth, showing the date and place of the child's birth, the date of the religious ceremony, and the names of the child's parents.
- **School record:** A letter from the authorities of the school(s) attended, showing the date of admission to the school, the child's date and place of birth, and the names of both parents, if shown in the school records.
- **Census record:** State or federal census record showing name, place of birth, and date of birth or the age of the person(s) listed.

5. What If Secondary Evidence Is Not Available?

If the secondary evidence described above is not available, you can submit affidavits. If you submit affidavits, they must overcome the absence of primary and secondary evidence.

- **Affidavits:** Submit written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove: for example, the date and place of birth, marriage or death. The persons making the affidavits need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his or her full name, address, date and place of birth and his or her relationship to you (if any); full information concerning the event; and complete details concerning how the person acquired the knowledge of the event.

6. How To Prepare This Form?

- Type or print clearly in black or blue ink.

- Answer all questions completely and accurately. If any item does not apply, please write "N/A".
- If you need extra space to complete any item, attach a separate continuation sheet. Indicate the item number, and date and sign each sheet.

7. Where To File This Form?

Send this form along with the required supporting evidence to the following address:

INS
Nebraska Service Center
P. O. Box 87730
Lincoln, NE 68501-7730

8. What Are The Penalties For Committing Marriage Fraud Or Submitting False Information Or Both?

- Title 8, United States Code, Section 1325, states that any individual who knowingly enters into a marriage contract for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than five years, or fined not more than \$250,000, or both.
- Title 18, United States Code, Section 1001, states that whoever willfully and knowingly falsifies a material fact, makes a false statement or makes use of a false document will be fined up to \$10,000 or imprisoned up to five years, or both.

9. The INS Authority For Collecting This Information:

The INS requests the information on the form to carry out the immigration laws contained in Title 8, United States Code, Sections 1157(c)(2) and 1158(b)(3). The INS needs this information to determine whether a person is eligible for immigration benefits. The information you provide may also be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies during the course of the investigation required by the INS. You do not have to give this information. However, if you refuse to give some or all of it, your petition may be denied.

10. Paperwork Reduction Act Notice.

A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated to average **35** minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service, Policy Directives and Instructions Branch (Room 5307), Washington, DC 20536.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0121

Refugee/Asylee Relative Petition

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Name
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Address - C/O

Street Number and Name	Apt. #
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City	State or Province
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Country	ZIP/Postal Code	Sex: a. <input type="checkbox"/> Male b. <input type="checkbox"/> Female
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Date of Birth (Month/Day/Year)	Country of Birth
--------------------------------	------------------

A#	Social Security #
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Other names used (including maiden name)

Present Status: (check one)

- a. Refugee c. Lawful Permanent Resident based on previous Refugee status
- b. Asylee d. Lawful Permanent Resident based on previous Asylee status

Date (Month/Day/Year) and Place Refugee or Asylee status was granted:

If granted Refugee status, Date (Month/Day/Year) and Place Admitted to the United States:

If Married, Date (Month/Day/Year) and Place of Present Marriage:

If Previously Married, Name(s) of Prior Spouse(s):

Date(s) Previous Marriage(s) Ended: (Month/Day/Year)

Part 2. Information about the relationship.

- The alien relative is my:
- a. Spouse
 - b. Unmarried child under 21 years of age

Number of relatives I am filing for: _____ (_____ of _____)

Part 3. Information about your alien relative. (If you are petitioning for more than one family member you must complete and file a separate Form I-730 for each additional family member.)

Family Name	Given Name	Middle Name
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Address - C/O

Street Number and Name	Apt. #
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FOR INS USE ONLY

Returned	Receipt
Submitted	
Reloc Sent	
Reloc Rec'd	
<input type="checkbox"/> Petitioner Interviewed	
<input type="checkbox"/> Beneficiary Interviewed	

Consulate

Sections of Law

- 207 (c) (2) Spouse
- 207 (c) (2) Child
- 208 (b) (3) Spouse
- 208 (b) (3) Child

Remarks

Action Block

To Be Completed by Attorney or Representative, if any

Fill in box if G-28 is attached to represent the applicant

Volag #

Atty State License #

Part 3. Information about your alien relative. Continued

City	State or Providence	
Country	ZIP/Postal Code	Sex: a. <input type="checkbox"/> Male b. <input type="checkbox"/> Female
Date of Birth (Month/Day/Year)	Country of Birth	
Alien # (If any)	Social Security # (If Any)	

Other name(s) used (including maiden name)

If Married, Date (Month/Day/Year) and Place of Present Marriage:

If Previously Married, Name(s) of Prior Spouse(s):

Date(s) Previous Marriage(s) Ended: (Month/Day/Year)

Part 4. Processing Information.

- A. Check One: a. The person named in Part 3 is now in the United States.
 b. The person named in Part 3 is now outside the United States. (Please indicate the location of the American Consulate or Embassy where your relative will apply for a visa.)

American Consulate/Embassy at _____
 City and Country

- B. Is the person named in Part 3 in exclusion, deportation, or removal proceedings in the United States?
 a. No
 b. Yes (Please explain on a separate paper.)

Part 5. Signature. Read the information on penalties in the instructions before completing this section and sign below. If someone helped you to prepare this petition, he or she must complete Part 6.

I certify or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it, is all true and correct. I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print Name	Date	Daytime Telephone # ()
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Please Note: If you do not completely fill out this form, or fail to submit the required documents listed in the instructions, your relative may not be found eligible for the requested benefit and this petition may be denied.

Part 6. Signature of person preparing form if other than Petitioner above. (Sign Below)

I declare that I prepared this petition at the request of the above person and it is based on all of the information of which I have knowledge.

Signature	Print Name	Date	Daytime Telephone # ()
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Firm Name
and Address