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# I-130 Visa Petitions: From the Basics to the Battles

Fundamental and Advanced Concepts Related to I-130 Visa Petitions

Ann Kelleher Miller
Marisol L. Pérez

Marisol L. Pérez
De Mott, McChesney, Curtright, and Armendáriz LLP
8023 Vantage Dr., Suite 800
San Antonio, Texas 78230
210-858-0310
Marisol@dmcausa.com

Ann Kelleher Miller
Chavez & Valko, LLP
10670 N Central Expy Ste 300
Dallas, Texas 75231
(214) 251-8011
amiller@keyvisa.com

## I. The Basics of the I-130 Visa Petition

### A. Generally

Form I-130 Immigrant Petition for Alien Relative [1] is the first step of the immigration process for family-based immigration cases. The I-130 visa petition can be used to petition for a variety of family members. The authors strongly urge the reader to review the instructions for the I-130 petition, as the forms and instructions have the force of law under 8 C.F.R. 103.2(a)(1) and failure to include supporting evidence at initial filing can result in denial without issuance of a Request for Evidence.

An I-130 Petitioner can be a US citizen or lawful permanent resident (LPR). US citizen petitioners may file for an expanded [2] group of family members whereas the LPR petitioner can only file for a limited [3] group.

The US Citizen or lawful permanent resident petitioner files the I-130 visa petition with US Citizenship and Immigration Services (USCIS) to establish the familial relationship with the beneficiary who wishes to immigrate to the United States. Inadmissibility of the beneficiary is generally not relevant at this time.

### B. I-130 Visa Petition for Immediate Relatives

Immediate relatives of US citizens [4] are not required to wait for an immigrant visa number to become available. [5] The immediate relative category is comprised of a US citizen petitioner filing for a spouse, a parent or their unmarried children [6] under age 21. The I-130 visa petition in this context has no derivative applicants so the only person who receives any benefit is the actual beneficiary.

### C. I-130 Visa Petition and Preference Categories

Unlike immediate relatives, there are four family-based immigration preference categories and wait times for visa availability to immigrate to the United States depend on the immigrant's preference category. The I-130 visa petition in this context is filed for the principal immigrant and the principal immigrant may have derivatives. [7]

The preference categories are as follows:

**First Preference (F1):** Unmarried, adult sons and daughters of US citizens. Adult means 21 years or older.

**Second Preference (F2A)**: Spouses of lawful permanent residents, their unmarried children, who are under 21 years of age
**Second Preference (F2B)**: The unmarried sons and daughters (over 21 years of age) of lawful permanent residents.
**Third Preference**: Married sons and daughters of US citizens.
**Fourth Preference:** Brothers and sisters of adult US citizens. Adult means 21 years or older.

### D. I-130 Visa Petition for Spouse- Marriage Must be Legally Valid

The marriage must be valid in the place where it was entered into. *Matter of Ceballos*, 16 I&N Dec. 765 (BIA 1979). Same-sex marriages are now recognized under *U.S. v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675, 2693-96 (2013). Common Law marriages are also recognized so long as the state recognizes it. Please be aware that only a minority of states recognize common law marriages. [8] Proxy marriages, where the parties were not in each other's physical presence at marriage ceremony, will not be considered valid unless there is proof of consummation. INA §101(a) (35).

The petitioner and beneficiary must provide evidence of the termination of all prior marriages in the form of death certificates or final divorce decrees. The divorce must be valid under the laws of the jurisdiction granting the divorce. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982).

### E. I-130 Visa Petition for Children

The definition of a child for use of the visa petition can be found at INA 101b. A USC or LPR petitioner can file for a biological son or daughter. If out of wedlock, a mother can file, and no legitimation is required. If out of wedlock and a father is petitioning, legitimation can be established in accordance with the laws of the father or child's place of residence. If the relationship between the father and child is not legitimated under applicable laws, a bona fide parent-child relationship must be shown to have existed prior to the child's 21st birthday and while the child was unmarried.

A petitioner may also petition for a step-child, if the marriage creating the step-relationship occurred before the child turned 18. Moreover, a petitioner can do so even if the marriage creating the step-parent/step-child relationship has ended in divorce so long as a relationship continues. *Matter of Pagnerre*, 13 I&N Dec. 688 (BIA 1971).

INA 101b (1)( E) also has a provision for adopted children. A USC or LPR petitioner may file an I-130 for an adopted child if the adoption was completed prior to age 16. There is an exception in the case of siblings who are adopted, if one child was under age 16, the other sibling is younger

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