

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

Fundamental and Advanced Concepts Related to I-130 Visa Petitions

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The Basics:

- ▶ Form I-130 Immigrant Petition for Alien Relative
- ▶ Filed with United States Citizenship and Immigration Services (USCIS). Current edition and instructions available at www.uscis.gov
- ▶ Spousal Petitions require both I-130 petition and Form I-130A Supplemental Information for Spouse Beneficiary
- ▶ Petitioner = U.S. Citizen or Lawful Permanent Resident (LPR) filing the petition with USCIS
- ▶ Beneficiary= Spouse, Parent, Child or Sibling of petitioner

Immediate Relatives of U.S. Citizens

Spouses of U.S.
Citizens

Children of U.S.
Citizens, where the
child is unmarried
and under the age
of 21

Parents of U.S.
Citizens where the
U.S. Citizen child is
over the age of 21

Spousal Petitions

- ▶ For spousal petitions, make sure all prior marriages are terminated or a death has occurred
- ▶ Argue common law marriage if possible to capture possible step kids or avoid conditional residency
- ▶ Same sex marriages
- ▶ Proxy marriages may require consummation
- ▶ Consider whether state law prohibits close familial ties like cousins marrying

Definition of Children INA 101(b)

- ▶ Biological child
- ▶ Step child (marriage created while child under age 18). Step child can petition or be petitioned for even if the marriage creating the step-parent/ step-child relationship has ended in divorce so long as a relationship continues. If kid over 18 at time of marriage, consider whether common law marriage was established prior to age 18
- ▶ Out of wedlock, legitimation or bonafides can be shown
- ▶ Adopted child –under age 16 unless with sibling who is under 18

Adopted Child and Hague Convention

- ▶ Is it a Hague Convention country?
- ▶ Was the adoption entered after April 1, 2008?
- ▶ The Hague Convention only applies if the child is a citizen or resident of a Hague Convention country and the adoptive parent is a habitual resident of the US
- ▶ In order to file the I-130 visa petition for the adopted child, a practitioner must argue that the Hague Convention *does not* apply otherwise USCIS will require orphan procedure

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