Form I-130
Petition for Alien Relative

Presented by
USCIS Service Center Operations Directorate

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Objectives

- **At the end of this presentation you will understand:**

    - What is a Form I-130
    - Who files an I-130
    - Who benefits from an approved I-130
    - How USCIS processes and adjudicates an I-130
    - How approved I-130s are transmitted to DOS for overseas visa issuance

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What is a Form I-130?

- **Petition for Alien Relative**

  The Form I-130

  ❖ Is an essential document to establish the existence of a familial relationship between someone who is:

  (a) a US citizen (USC) or

  (b) a lawful permanent resident (LPR)

  and another person who is an alien.

  ❖ Often the required document than an LPR or USC files to request USCIS's approval for their alien relative to immigrate to the US.

  ❖ Is the first step in a two step immigrant visa issuance process

Who can file a Form I-130?

The Person Who Files An I-130 On Behalf Of An Alien Relative Is:

- ✓ A USC or an LPR

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For Whom Can I-130 be filed?

➢ The key purpose of I-130 petition is to promote family reunification – so both the petitioner and the named beneficiary on an I-130 benefits when the petition is approved.

A petitioner may file for:

✓ **Spouse**

✓ **Unmarried children (under 21 years old)**

✓ **Siblings**

✓ **Married son or daughter (not available for LPRs)**

✓ **Unmarried son or daughter (21 years old or older)**

✓ **Parents**

But----

For Whom Can I-130 be filed? (cont.)

---- **Remember**, USCs and LPRs are restricted as to who they can file for ---

USCs **must be 21** years of age or older *when filing for a parent or siblings*

and

LPRs **cannot** file for their parents, siblings, or married sons or daughters

✓ **No one can file an I-130 on behalf of an aunt, uncle, cousin, niece, nephew, in-law relative or grandparent.**

For Whom Can I-130 be filed? (cont.)

❑ **Family reunification and legislative restriction on US immigration have resulted in the creation of a two-tiered family-based immigrant visa system.**

Family Reunification = Immediate Relative Category (IRs)

Legislative Numerical Limits =   Family Preference Visa Categories

For Whom Can I-130 be filed? (cont.)

❑ **The Visa Classes**

❖ **IRs**:

Are **not subject to numerical visa limitations**
- Are the Spouse of USCs
- Are the <u>child</u>ren (who are unmarried and under age 21)

❖ **F**amily **P**references:

Are **subject to numerical visa limitations**

First preference (F1)	Unmarried sons and daughters of USCs (INA §203(a)(**1**))
Second preference (F2)	Spouses, children, and unmarried sons and daughters of LPRs (INA §203(a)(**2**))
Third preference (F3)	Married sons and daughters of USCs (INA §203 (a)(**3**))
Fourth preference (F4)	Brothers and sisters of USCs (INA §203 (a)(**4**))

USCIS Process
Adjudicating I-130 Petitions

- Filing an I-130

✓ The Form I-130 if filed according to the filing instructions on the form.

✓ The Form is sent to a Lockbox facility for intake. The Lockbox facility does not adjudicate petitions, rather the lockbox determines whether the petitions meet the acceptance criteria

--- if **YES** (criteria met) – lockbox routes the form I-130 to the appropriate field office or service center to be adjudicated.

--- if **NO** (criteria not met) – lock box will reject the form I-130

✓ When the beneficiary is already in the United States, the petitioner may filed an I-130 with a Form I-485, *Application to Register Permanent Residence or Adjust Status*. **This is known as a concurrent filing.** Concurrently filed I-130s/I-485s are sent to a specific Lockbox facility and are adjudicated by USCIS field offices.

USCIS Process
Adjudicating I-130 Petitions (cont.)

- A properly filed I-130 is one that is received with:

  the petitioner's signature and
  the appropriate filing fee.

(8 CFR §103.2(a))

The Lockbox facility will <u>reject</u> petitions that are not properly filed.

Rejected petitions are returned to the petitioners and are not given a "receipt date."

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USCIS Process
Adjudicating I-130 Petitions (cont.)

What is a priority date and why is it important?

The priority date is:

❑ the date the visa petition was properly filed with USCIS

❑ also the key date for family preference petitions that are subject to annual numerical limits

❑ used as the cut off date to determine visa availability

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USCIS Process
Adjudicating I-130 Petitions (cont.)

- Two-fold purposes of the adjudications process are to determine:

  Whether the petitioner is eligible to file the petition

  and

  Whether the beneficiary has the requisite familial relationship to qualify for the classification being sought

- Petitions that are not rejected by the lockboxes are "accepted." Accepted petitions are receipted and routed to the appropriate USCIS service center or office for processing.

- Cases received at the appropriate service center or office are assigned to Immigration Service Officers (ISOs) for initial review and adjudication.

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USCIS Process
Adjudicating I-130 Petitions (cont.)

● Reviewing an I-130

The ISO's review involves looking at whether:

- The petitioner is eligible to file the Form I-130 (status i.e., Is the petitioner an LPR, USC?- age of petitioner – old enough to file?).
- The relationship that the petitioner states on the I-130 is a "qualifying relationship" for which an I-130 may be filed (who is petitioner filing for?).
- The petitioner has submitted required information to prove the existence of the specific relationship being claimed (i.e., Alien number, proof of USC citizenship, marriage certificate, children's birth certificates, divorce documents?).
- Additional information or evidence is needed for the petitioner to prove the existence and *bona fides* of the claimed qualifying relationship (missing documents, lack of English language translations?).
- There are inconsistencies or material misrepresentations that pose potential fraud concerns.

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USCIS Process
Adjudicating I-130 Petitions (cont.)

Burden of Proof:

- The adjudication of visa petitions is an administrative proceeding. In administrative proceedings, the petitioner bears the burden of proof to establish eligibility for the benefit sought.

Matter of Brantigan, 11 I & N Dec. 45 (BIA 1966)

USCIS Process
Adjudicating I-130 Petitions (cont.)

➢ **What happens if the documentary evidence that the petitioner provided is not sufficient to prove the qualifying relationship?**

❖ **USCIS will send the petitioner a Request for Evidence (RFE)**

The RFE will:

- **tell the petitioner what is deficient**

- **request specific documents or information**

- **provide the petitioner with a set timeframe within which to respond to the RFE and consequences of a failure to timely respond**

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USCIS Process
Adjudicating I-130 Petitions (cont.)

- Most standalone I-130 petitions will be completed without the need of a personal interview; however, the facts of an individual case may indicate that a personal interview is appropriate.

- USCIS Service Centers are not set up to conduct interviews on standalone I-130s. Generally, the interview will take place upon adjustment in the United States or during consular processing overseas.

- When an I-130 has been filed concurrently with an I-485, the interview takes place at a USCIS field office.

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Interview Waived I-130 adjudications

❖ Normally, USCIS's National Benefits Center (NBC) processes incoming family-based I-485's (standalone or filed concurrently with an I-130)

❖ The following family-based categories are interview waived and are adjudicated by the CSC:

- Unmarried minor child or and stepchild of US Citizens
- Parent of US Citizen
- K1/K2 entrant— Fiancé(e) of US Citizen and children of Fiancé(e)
- Native/Citizen of Cuba filing under 11/2/66 Act, or the spouse or child of such an alien, regardless of their citizenship or place of birth
- Child of an LPR (unmarried and under 14 years old)

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Interview Waived I-130 adjudications (cont.)

USCIS waives the I-485 interview for concurrently filed I-130/I-485 cases where:

- Evidence within the case file indicates that the alien applicant was inspected, paroled or interviewed previously by an immigration officer;
- Where the alien's status can be determined by reviewing information in the case file or by requesting additional evidence from the applicant;
- Where the routine background checks on the alien applicant do not indicate violations beyond immigration violations that can be resolved by waivers; and
- Where a review of the case file does not indicate possible fraud.

Decision

✓ If the I-130 petition is approved:

- USCIS notifies the petitioner of the approval;
  and
- forwards the petition to the appropriate USCIS repository;
  or
- forwards the petition to the DOS for overseas processing.

✓ **USCIS uses the Form I-797, Notice of Action to notify the petitioner or any recognized representative of the approval and disposition of the petition.**

✓ If the I-130 petition is denied, USCIS sends the petitioner and any recognized representative a denial letter which informs him or her of his/her appeal rights.

Questions? Thank You!