



May 14, 2012

PM-602-0043.1

## Policy Memorandum

**SUBJECT:** Process for Responding to Requests by the Department of State (DOS) to Accept a Locally Filed Form I-130, Petition for Alien Relative

### **Purpose**

This policy memorandum (PM) provides guidance and procedures for managers when responding to requests by DOS to accept a locally filed Form I-130 where USCIS does not have a presence.

### **Scope**

This PM applies to all USCIS employees.

### **Authority**

8 CFR 204 and the instructions for Form I-130.

### **Background**

Historically, DOS consular officers have processed Form I-130 *Petition for Alien Relative* (I-130) filed outside the United States where USCIS does not have a presence. Based on recent discussions with DOS, USCIS has determined that it is more cost-effective for USCIS to adjudicate all I-130s with certain limited exceptions. The current instructions for the Form I-130 generally require a petitioner who resides outside the United States to file the I-130 by mail with a USCIS domestic lockbox. The petitioner is allowed to file the I-130 with an international USCIS office *if* the petitioner lives in a country where USCIS has an international field office and prefers to file with that office. Filing the I-130 with DOS at an Embassy or Consulate is permitted only in “exceptional circumstances.” It is the Field Office Director (FOD) of the international USCIS office with jurisdiction over the place of residence who has authority to determine whether to allow the petitioner to file the I-130 at the Embassy or Consulate. DOS cannot accept an I-130 without prior approval to do so from the USCIS FOD.

### **Policy**

DOS is amending the Foreign Affairs Manual (FAM) to provide that a petitioner’s residency within the consular district is no longer a consideration when determining whether a Form I-130 can be processed with the Consular Section. If a consular officer in an embassy or consulate where USCIS is not present encounters an individual case that the officer believes requires immediate processing due to exceptional circumstances, the consular officer should contact the USCIS FOD with jurisdiction over that location to determine whether DOS may accept and adjudicate the case.

If the USCIS FOD authorizes DOS to adjudicate a case, the consular officer may only adjudicate a case that is clearly approvable. If the case is not clearly approvable, DOS must forward the case to USCIS.

The following are some examples of exceptional circumstances when USCIS will likely authorize DOS to accept and process an I-130 petition.

- *Military emergencies:* A U.S. service member abroad becomes aware of a new deployment or transfer with very little notice. This exception applies in cases where the US service member is provided with exceptionally less notice than would normally be expected by most service members in his or her position.
- *Medical emergencies:* A petitioner or beneficiary is facing an urgent medical emergency that requires immediate travel. This includes the situation where a petitioner or beneficiary is pregnant and delaying travel may create a medical risk or extreme hardship for the mother or child.
- *Threats to personal safety:* A petitioner or beneficiary is facing an imminent threat to personal safety.
- *Close to aging out:* A beneficiary is within a few months of aging out of eligibility.
- *Petitioner has recently naturalized:* A petitioner and family member(s) have traveled for the immigrant visa interview, but the petitioner has naturalized and the family member(s) requires a new, stand-alone petition.
- *Adoption of a child:* A petitioner who has adopted a child locally and has an imminent need to depart the country. This exception should only be considered if the child has been in the petitioner's legal and physical custody for at least two years and the petitioner has a full and final adoption decree on behalf of the child.
- *Short notice of position relocation:* A U.S. Citizen petitioner, living and working abroad, who receives a job relocation within the same company or subsidiary to the United States, or an offer of a new job in the United States with very little notice.

This is not an exhaustive list of examples. FODs have discretion to authorize a DOS adjudication of an I-130 when there are compelling humanitarian reasons to do so. FODs should consult with the District Director or Deputy District Director when they have questions about whether to authorize a DOS adjudication of an I-130.

The petitioner does not have the right to appeal or request reconsideration of a USCIS decision to deny a DOS request to process Form I-130 on an exceptional basis.

USCIS may also authorize blanket processing of I-130s by DOS at an international location in response to a large scale crisis such as a natural disaster or widespread civil unrest that creates a humanitarian emergency for U.S. citizens or residents living abroad. In these circumstances, the Chief or Deputy Chief of USCIS International Operations may choose to give blanket authorization to DOS to accept and adjudicate I-130s for a specified period of time.

When DOS requests authorization to accept and adjudicate an emergency I-130, the following process will be followed:

1. A DOS employee will call the USCIS office having jurisdiction over their location and provide details to the FOD;
2. DOS will also e-mail the FOD to request permission to accept and adjudicate the I-130;
3. The FOD may provide verbal approval to proceed in particularly urgent circumstances and will respond to the e-mail via e-mail within 1-3 business days of receipt of the e-mail; and
4. If the decision is negative, DOS should instruct the individual to file the Form I-130 in accordance with the form instructions.

The FOD will have discretion to determine which cases may be processed by DOS and which cases must be filed by mail with the USCIS lockbox in the United States.

The FOD is responsible for keeping track of the requests received from DOS and reporting the requests and responses to Headquarters International Operations (HQ IO) as they occur on the template provided by HQ IO.

### **Implementation**

The *AFM* is revised as follows:

1. Chapter 21.12 is added, to read as follows.

### **Chapter 21.12 Process for Responding to Requests by the Department of State (DOS) to Accept a Locally Filed Form I-130, Petition for Alien Relative**

#### **(a) When DOS Contacts USCIS to Request Authorization for DOS to Accept and Adjudicate an I-130**

DOS has no authority to permit an Embassy or Consulate to accept the filing of a Form I-130. If a consular officer in an Embassy or Consulate in a country where USCIS is not present encounters an individual case that the officer believes requires immediate processing of a Form I-130, the consular officer must contact the USCIS Field Office Director (FOD) with jurisdiction over that location to request authorization for DOS to accept and adjudicate the case. The FOD will determine whether DOS may accept and adjudicate the case.

#### **(b) When DOS Can Adjudicate an Authorized Case**

If the USCIS FOD authorizes DOS to adjudicate a case, the consular officer may only adjudicate a case that is clearly approvable. If the case is not clearly approvable, DOS must forward the case to the USCIS office with jurisdiction.

(c) Exceptional Circumstances

The following are some examples of exceptional circumstances when USCIS will likely authorize DOS to accept and process an I-130 petition:

- (1) *Military emergencies*: A U.S. service member abroad becomes aware of a new deployment or transfer with very little notice. This exception applies in cases where the US service member is provided with exceptionally less notice than would normally be expected by most service members in his or her position.
- (2) *Medical emergencies*: A petitioner or beneficiary is facing an urgent medical emergency that requires immediate travel. This includes the situation where a petitioner or beneficiary is pregnant and delaying travel may create a medical risk or extreme hardship for the mother or child.
- (3) *Threats to personal safety*: A petitioner or beneficiary is facing an imminent threat to personal safety.
- (4) *Close to aging out*: A beneficiary is within a few months of aging out of eligibility.
- (5) *Petitioner has recently naturalized*: The petitioner and family have traveled for the immigrant visa interview, but the petitioner has naturalized and the family member(s) requires a new, stand-alone petition.
- (6) *Adoption of a child*: A petitioner who has adopted a child locally and has an imminent need to depart the country. This exception should only be considered if the child has been in the petitioner's legal and physical custody for at least two years and the petitioner has a full and final adoption decree on behalf of the child.
- (7) *Short notice of position relocation*: A U.S. Citizen petitioner, living and working abroad, who receives a job relocation within the same company or subsidiary to the United States, or an offer of a new job in the United States with very little notice.

(d) Discretion

The list of examples provided in Chapter 21.12(c) is not exhaustive. FODs have the discretion to authorize a DOS adjudication of an I-130 when there are compelling humanitarian reasons to do so. FODs should consult with their District Director or Deputy District Director when they have questions about whether to authorize a DOS adjudication of the case.

(e) Appeal Rights

The petitioner does not have the right to appeal or request reconsideration of a USCIS decision to deny a DOS request for authority to process an I-130 because of exceptional circumstances.

(f) In the Event of a Large Scale Crisis

USCIS may authorize the blanket processing of I-130s by DOS at an international location in response to a large scale crisis. A large scale crisis includes a natural disaster or widespread

civil unrest that creates a humanitarian emergency for U.S. citizens or residents living abroad. In these circumstances, the Chief or Deputy Chief of USCIS International Operations may choose to give blanket authorization to DOS to accept and adjudicate I-130s for a specified period of time.

(g) When DOS Requests Exceptional Authorization

When DOS requests authorization to accept and adjudicate an emergency Form I-130, the following process will be followed:

- (1) A DOS employee will call the USCIS office having jurisdiction over their location and provide details to the FOD.
- (2) DOS will also e-mail the FOD to request permission to accept and adjudicate the I-130.
- (3) The FOD may provide verbal approval to proceed in particularly urgent circumstances and will respond via e-mail within 1-3 business days of receipt of the e-mail.
- (4) If the decision is negative, DOS should instruct the individual to file the Form I-130 in accordance with the form instructions.

The FOD has the discretion to determine which cases may be processed by DOS and which cases must be filed by mail with the USCIS lockbox in the United States.

☞ 2. The *AFM Transmittal Memoranda* button is revised by adding, in numerical order, a new entry to read:

AD11-38 5/14/2012	<b>Chapter 21.12</b>	Establishes process for responding to requests by DOS to accept a locally filed Form I-130, Petition for Alien Relative
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**Use**

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

**Contact Information**

Questions or suggestions regarding this PM should be addressed through appropriate channels to International Operations Division, Refugee, Asylum, and International Operations Directorate.