

HUMANITARIAN REINSTATEMENT: HOW TO RESURRECT A DEAD I-130

AILA Audio Seminar

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Lee A. O'Connor
Directing Attorney
Immigrants' and Language Rights Center
Indiana Legal Services, Inc.
105 E. Jefferson Blvd., Suite 600
South Bend, IN 46601
(574) 234-8121, ext. 3230
Lee.OConnor@ilsi.net

Widow and Widower Self-Petitions

Immigration law generally requires that the U.S. citizen or LPR initiate the petition for the intending immigrant. However, widows and widowers of U.S. citizens (and the children of widows and widowers) may file a self-petition if they were married for at least two years at the time of the citizen's death and were not legally separated. *See* INA §§ 201(b)(2)(A)(i) and 204(a)(1)(A)(ii). The right to file a self-petition ends two years after the death of the U.S. citizen or when the surviving spouse remarries. INA § 201(b)(2)(A)(i). If the petitioner filed an I-130 for the spouse before dying, the petition will be treated as a properly filed self-petition, provided that they had been married for two years and were not legally separated before the death of the U.S. citizen spouse. Under new regulations at 8 C.F.R. §§ 204.2(i)(1)(iv) and 205.1(a)(3)(i)(C)(1). It also is noteworthy that derivative beneficiary status is accorded to the children of widows and widowers of U.S. citizens. *See* 8 C.F.R. § 204.2(b)(4).

If a self-petitioning widow is inadmissible, it is important to keep in mind that many waivers of inadmissibility require that the alien have a qualifying relative. *See, e.g.*, INA § 212(h) (waiver of certain criminal grounds of inadmissibility), (i) (waiver of misrepresentation), (g)(1) (waiver of HIV ground of inadmissibility). Thus, it could be problematic qualifying for a waiver if the self-petitioning widow's only relative was the U.S. citizen spouse.

For an argument that in widow cases the law creates a legal fiction that the spouse remains alive for purposes of eligibility for a waiver, *see* <http://messages.aila.org/showthread.php?t=32554>. However, this theory will not help in cases where extreme hardship to the qualifying relative is required.

Humanitarian Reinstatement of Approved I-130 Petitions when the Petitioner Dies

USCIS regulations provide that when the petitioner dies, an approved I-130 is automatically cancelled by operation of law. *See* 8 C.F.R. § 205.1(a)(3)(i)(B). This provision was ameliorated by the fact that the Service had a regulation which allowed the I-130 petition to be reinstated for humanitarian reasons. 8 C.F.R. § 205.1(a)(3)(i)(C). However, problems began with the passage of IIRAIRA in 1996, which required a family-based petitioner to file a binding affidavit of support. INA § 212(a)(4)(C). Previously, there was no absolute requirement that the petitioner file an affidavit of support. Thus, after IIRAIRA, INS took the position that the law effectively overruled the regulation allowing for humanitarian reinstatement. (The government's reasoning was: (1) A binding affidavit of support by the petitioner is required for a family-based beneficiary to receive LPR status. (2) A dead petitioner can't submit a binding affidavit of support. Therefore, (3) there would be no point to granting humanitarian reinstatement of the I-130 since the beneficiary can't obtain residence due to the lack of a binding affidavit of support from the petitioner.

This problem was resolved by legislation in 2002 which allows for an affidavit of support by an alternative sponsor if original sponsor has died and the Attorney General has granted humanitarian reinstatement. *See* Family Sponsor Immigration Act of 2002, Pub. L. 107-150, 116 Stat. 74 (codified at INA § 213A(f)(5)). The alternative sponsor must be the spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of a sponsored alien or legal guardian of the sponsored alien. *See* INA § 213A(f)(5)(B), 8 U.S.C. § 1183a(f)(5)(B).

8 C.F.R. § 205.1(a)(3)(i)(C)(2)

Under the regulations, an I-130 petition is automatically revoked upon the death of the petitioner, unless:

U.S. Citizenship and Immigration Services (USCIS) determines, as a matter of discretion exercised for humanitarian reasons in light of the facts of a particular case, that it is inappropriate to revoke the approval of the petition. USCIS may make this determination only if the principal beneficiary of the visa petition asks for reinstatement of the approval of the petition and establishes that a person related to the principal beneficiary in one of the ways described in section 213A(f)(5)(B) of the Act is willing and able to file an affidavit of support under 8 C.F.R. part 213a as a substitute sponsor.

INA § 213A(f)(5)(B)

The term “sponsor” includes an individual who

is a spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which –

- (i) the individual petitioning under section 204 for the classification of such alien died after the approval of such petition; and
- (ii) the Attorney General has determined for humanitarian reasons that revocation of such petition under section 205 would be inappropriate.

71 Fed. Reg. 35732, 35735 (June 21, 2006) (Affidavits of Support on Behalf of Immigrants) <http://edocket.access.gpo.gov/2006/pdf/06-5522.pdf>

Seven commenters suggested that a joint sponsor should be permitted if the visa petitioner dies before the visa petition is approved, and the beneficiary has obtained “relief from revocation” under 8 CFR 205.1(a)(3)(i)(C). There is no authority to approve a visa petition after the petitioner dies. *See Abboud v. INS*, 140 F.3d 843 (9th Cir. 1998); *Dodig v. INS*, 9 F.3d 1418 (9th Cir. 1993); *Matter of Varela*, 13 I. & N. Dec. 453 (BIA 1970). If the petitioner dies before approval of the visa petition, there is no basis for approving the visa petition.

The legal situation is different if the visa petitioner dies after approval of the visa petition. Section 205 of the Act authorizes revocation of approval of a visa petition for “good and sufficient cause.” The related regulation, 8 CFR 205.1(a)(3)(i)(C), provides that the petitioner’s death automatically revokes approval of a family-based immigrant petition. This same

regulation, however, allows the approval to remain in force if USCIS, in the exercise of discretion, “determines that for humanitarian reasons revocation would be inappropriate.” 8 CFR 205.1(a)(3)(i)(C).

Reinstatement of approval of the visa petition does not waive the affidavit of support requirements under section 213A of the Act. However, on March 13, 2002, the Family Sponsor Immigration Act, Public Law 107-150, 116 Stat. 74, was enacted. Public Law 107-150 amended section 213A(f)(5) of the Act to permit another relative to sign the affidavit of support if the petitioner dies after the visa petition is approved, where it is determined that revoking the approval would not be appropriate. This final rule incorporates the provisions of section 213A(f)(5)(B), as amended by Public Law 107-150. A substitute sponsor must be either a citizen or national, or else an alien lawfully admitted for permanent residence. The substitute sponsor must also be at least 18 years of age, and must have a domicile in the United States. If USCIS allows the approval of the visa petition to stand, then the sponsored alien's spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, grandchild, or a legal guardian may sign the affidavit of support.

Adjudicator’s Field Manual § 21.2(h)(1)(C) (without amendment by Aytes memo)

<http://www.uscis.gov/propub/ProPubVAP.jsp?dockey=724ce55f1a60168e48ce159d286150e2>

(C) Discretionary Authority to Not Automatically Revoke Approval. Although revocation of approval is automatic under 8 CFR 205.1(a)(3)(i)(C), when the petitioner has died there are circumstances under which the Attorney General may exercise his or her discretion to not revoke the approval. Such discretionary authority is delegated to the district director or service center director who approved the petition, and may be exercised when he or she “determines that for humanitarian reasons revocation would be inappropriate.”

The Affidavit of Support (AOS) requirement at section 213A of the Act rendered such “humanitarian reinstatement” moot as there was no sponsor to sign the AOS. Congress remedied this by passing the Family Sponsor Immigration Act, Pub. L. 107-150, that allows for the use of a “substitute sponsor.” Now, if a visa petitioner dies after approval of the petition, but prior to the beneficiary adjusting status or immigrating to the U.S., the beneficiary may use a “substitute sponsor” on the AOS.

To request humanitarian reinstatement of a revoked petition, the beneficiary should send a request, in writing, for such reinstatement to the USCIS office where the original Form I-130 was filed. This request must include a copy of the petitioner’s death certificate, proof of the substitute sponsor’s relationship to the beneficiary, a viable AOS completed by the substitute sponsor, and a copy of the Form I-130 approval notice. If the director decides that humanitarian reinstatement is not warranted, this decision should be communicated, in writing, to the beneficiary. There is no appeal from a determination not to exercise this discretionary authority. If the director decides that humanitarian reinstatement is warranted, the beneficiary should be notified and the decision forwarded to either the Department of State (if the beneficiary is abroad) or to the USCIS officer adjudicating the beneficiary’s adjustment application (if the

beneficiary is present in the U.S.).

While there are no other rules or precedents on how to apply this discretionary authority, officers and directors should be aware that it is intended to be used in those cases where revocation would be clearly contrary to the furtherance of justice (such as if there is one family member (out of many) who has been unable to immigrate because of the petitioner's death). The regulation clearly intends that a decision to apply discretion, and not revoke the approval, be the exception and not the rule. Additionally, such discretion should not be exercised in cases where there are doubts about the bona fides of the relationship (even when such doubts were not sufficient to deny the petition originally). Finally, the director should look at the ultimate effect of the decision to revoke or not. It may not be necessary to revoke a petition's approval if the beneficiary is eligible to self-petition as a widow(er) and the self-petition is approvable.

Note: A Form I-130 can never be approved after the death of the petitioner. Humanitarian reinstatement can only be utilized if the Form I-130 petition has been approved, and the petitioner died subsequent to that approval.

9 FAM 42.42 Proc. N. 2

<http://www.state.gov/documents/organization/87853.pdf>

a. If the consular officer believes that a petition revoked under 8 C.F.R. 205.1(a)(3) warrants DHS consideration for humanitarian reasons, the consular officer shall prepare a memorandum requesting such consideration and forward it with the petition to DHS. In evaluating requests for reinstatement of a petition under such circumstances, DHS has considered the following factors:

- (1) Disruption of an established family unit;
- (2) Hardship to U.S. citizens or lawful permanent residents;
- (3) If beneficiary is elderly or in poor health;
- (4) If beneficiary has had lengthy residence in the United States;
- (5) If beneficiary has no home to go to;
- (6) Undue delay by DHS or consular officer in processing petition and visa; and
- (7) If beneficiary has strong family ties in the United States.

b. In the case of a petition approved by a stateside Department of Homeland Security (DHS) office, the consular officer shall send the memorandum and petition to the DHS District Director having jurisdiction over the petitioner's place of residence in the United States. If the petition was approved either by an DHS officer abroad or by a consular officer, the consular officer shall send the petition and memorandum to the DHS District Director having jurisdiction over the DHS office or the consular post abroad.

c. If the consular officer does not believe that the humanitarian reasons are sufficient to warrant DHS action, but the alien beneficiary or other interested party inquires about such action, the consular officer shall instruct the individual concerned to communicate with the approving DHS office.

U.S. Consulate General, Ciudad Juarez, Mexico, Immigrant Visas, Frequently Asked Questions, <http://ciudadjuarez.usconsulate.gov/hivfaqs.html>

What happens if the petitioner dies after the principal beneficiary has immigrated to the United States?

Eligibility of derivative applicants seeking to follow to join a principal beneficiary who has already acquired legal permanent resident status is dependent on the continuing legal permanent resident status of the principal, not on the status of the petitioner. Therefore, if the petitioner dies after the principal applicant has already become a legal permanent resident and one or more derivative applicants seek to follow to join the principal applicant, the derivatives retain eligibility to follow to join despite the death of the petitioner.

Important documents issued by USCIS

Johnny Williams, Executive Associate Commissioner, Office of Field Operations, *Policy Change – Public Law 107-150, the Family Sponsor Immigration Act of 2002: Use of Substitute Sponsor if Visa Petitioner Has Died*, HQADJ 70/21.1.13 (June 15, 2002), available at http://www.uscis.gov/files/pressrelease/PL107_150Pub.pdf, reprinted in 8 BENDER'S IMMIG. BULL. (Jan. 1, 2003)

USCIS Office of Adjudications, *Training Materials on Affidavits of Support* (Oct. 1, 2003) <http://www.aila.org/Content/default.aspx?docid=9464>

Michael Aytes, Associate Director of Domestic Operations, *Effect of Form I-130 Petitioner's Death on Authority to Approve the Form I-130: Revisions to Adjudicator's Field Manual (AFM) Chapter 21.2 (AFM Update AD08-04)* (Nov. 8, 2007) http://www.uscis.gov/files/pressrelease/I130AFMAD0804_110807.pdf

AILA-USCIS LIAISON MEETING MINUTES

CALIFORNIA SERVICE CENTER

AILA-CSC Liaison Meeting Minutes (August 27, 2008)

AILA InfoNet Doc. No. 08082869

<http://www.aila.org/content/default.aspx?docid=26364>

Please describe the procedures for filing and tracking humanitarian reinstatement requests at the CSC: 1) where should the requests be sent; 2) are members still only able to track pending requests by sending emails to Division XII; 3) will CSC ask NVC to send it the I-130; 4) how many officers does the CSC have dedicated to working on humanitarian reinstatement requests; 5) over the past two years, how many requests have been filed with CSC, how many adjudicated, and how many granted; 6) is Division V still responsible for adjudicating humanitarian reinstatement requests; and 7) how long does CSC take to adjudicate humanitarian reinstatement requests?

In order to seek humanitarian reinstatement of a visa petition, you must submit a written request to the USCIS office where the original visa petition was filed and/or adjudicated. When a request is received, the petition is requested from its current file control office or from the Department of State. An inquiry on a pending humanitarian reinstatement request filed with the CSC may be submitted through Division XII 18 months after the request was filed.

DIV V processes these requests and assigns staff resources based on established processing times and workload priorities.

In general, we request that you allow 24 months for processing. Please keep in mind that adjudication of these requests cannot begin until the original petition is received from the file control office or the Department of State.

We do not maintain statistics of this nature for humanitarian cases.

CSC Liaison Meeting Q & A (February 23, 2005)

AILA Doc. No. 05022862

<http://www.aila.org/Content/default.aspx?docid=12432>

38. To whom at the CSC should AILA send Requests for Humanitarian Reinstatements on I-130s that were automatically revoked due to the death of the petitioner?

Requests for Humanitarian Reinstatement should be mailed to the CSC's general mailing address. There is no specific form or format for a Request for Humanitarian Reinstatement of an I-130 that has been automatically revoked due to the death of the petitioner. To facilitate processing of these requests, it is recommended that the term "Humanitarian Reinstatement" appear near the beginning of the letter requesting the relief.

39. *What is the proper channel to follow-up on a reinstatement of visa petition under the Family Sponsor Immigration Act of 2002 (that allows financial sponsor substitution after death of the petitioner) and 8 C.F.R. 205.1 (a)(i)(C) Humanitarian Reason Reinstatement Request. This kind of reinstatement request is made without a fee, and consequently, there is no fee receipt number to track it through either the CSC website or 1-800 inquiry number.*

The CSC does not adjudicate issues relating to the substitution of financial sponsors. Questions regarding the substitution of a financial sponsor should be addressed in the visa issuing process. We recommend AILA address this part of this question to the NVC.

Humanitarian Reinstatement of I-130s is found in 8 C.F.R. 205.1(a)(3)(I)(C). The normal inquiry process can be used to follow-up on reinstatement requests. These requests are held by date of receipt of the request until the I-130 has been received from the Department of State. Once the I-130 has been returned to the CSC, we reactivate the I-130's receipt number (WAC #) and the case can be tracked via the website or the 800 number. Our humanitarian reinstatement request process includes requesting return of the I-130 from DOS.

AILA/CSC Liaison Meeting (October 30, 2002)
<http://www.aila.org/Content/default.aspx?docid=7841>

What if any special procedures have been established to implement PL 107-150, Family Sponsor Immigration Act of 2002, with regard to reinstatement of automatically revoked I-130s due to the death of the petitioner?

HQ is currently working on policy for implementation.

Where should the Motion to Reinstate filed?

With the service center that adjudicated the original petition.

What is the fee?

At present time there is no fee required. This may change with policy implementation.

What "humanitarian" factors will the Service consider in such a motion?

The previous criteria will continue to be used.

In light of the congressional intent behind this new law (i.e., to further family reunification), will the Service relax its standards vis-à-vis humanitarian factors?

This question should be posed to Headquarters. At present, we will continue to apply existing criteria.

What will the approximate processing time for such Motions be?

There is no set processing time. Quite often, a reinstatement request is received before receipt of the petition from Post. The CSC will address these requests as resources permit.

If the Motion is granted, how will the Service notify the Consulate abroad so that IV processing can continue with the substituted sponsor?

Should the CSC approve a reinstatement request, the petition will be annotated and a copy of the decision will be included. It is expected that the I-864 will be required at the time visa application is made at Post.

AILA/CSC QUARTERLY MEETING (May 21, 2002)

AILA InfoNet Doc. No. 02052042

<http://www.aila.org/Content/default.aspx?docid=6311>

41. Request for Humanitarian Reinstatement of Family Petitions-What is the current policy and recommended procedure in light of the new affidavit of support changes recently signed by the President?

We are currently awaiting regulatory guidance on processing humanitarian reinstatements.

VERMONT SERVICE CENTER

AILA-VSC Liaison Conference Call (March 5, 2008)

AILA InfoNet Doc. No. 08031331

<http://www.aila.org/content/default.aspx?docid=24923>

6. How are requests for reinstatement of a petition on humanitarian grounds handled and tracked at the Vermont Service Center? Does the VSC have statistics on how long it takes to adjudicate such requests? Are acknowledgements or any other alternative to a "formal" receipt issued?

Humanitarian requests are processed and reviewed for sufficiency through our Customer Service Unit before forwarding to an officer for adjudication. We are currently working on integrating these requests into Customer Service tracking system with an expected completion date of April 1. We do not have statistics on the length of time to adjudicate requests as some cases are revoked initially for insufficient documents, response time by applicants may vary in response to the revocation, and resource priorities are always a consideration. Our goal is to have such a request reviewed by an Adjudication Officer within 6 months of receipt. There are no receipts or other acknowledgments that are generated during this process other than the revocation or reinstatement letter.

AILA Committee Comment: VSC advised that this is not a "formal" application and, thus, should be distinguished from other non-paying events where receipts will be issued such as for EADs and Paroles filed with or subsequent to an I-485 application under the new fee schedule.

They will look into setting up a process where some kind of acknowledgement is issued.

AILA – VSC Liaison Meeting Minutes (September 17, 2007)

AILA Doc. No. 07100261

<http://www.aila.org/Content/default.aspx?docid=23479>

6. I-130 petitions

What is the procedure for requesting reinstatement of an I-130 for humanitarian reasons due to petitioner's death where the I-130 was filed and approved at the local district office? The Adjudicator's Manual states that the request should be filed with the CIS office where the I-130 was filed but several local offices do not process such requests. Is it possible to file them at the Service Center?

VSC would recommend discussing this issue with HQ Field Service Operations or the respective district offices that do not currently process said requests. It is the understanding of VSC that the district office that approved the I-130 case would be the proper office to consider any humanitarian request.

NEBRASKA SERVICE CENTER

AILA Liaison/NSC Q&A on Business Product Line Issues (January 24, 2008)

AILA InfoNet Doc. No. 08021277

<http://www.aila.org/Content/default.aspx?docid=24608>

Request for Humanitarian Reinstatement of Family-Based Petition

11. For a humanitarian request for a finding that automatic revocation is inappropriate under Section 8 CFR 1205.1(c), our understanding is that the request should be made to the office or service center where the petition was originally approved. If the petition bears a LIN receipt number, then please advise regarding the following:

- a. Would this request be filed at the NSC? Where would the file be located and does NSC request the file?*
- b. Will any submissions made concerning the humanitarian request be connected to the file?*
- c. Will the NSC provide any recognition of the adjudication process and provide petitioner's family additional opportunity to submit any additional information, including I-864 support and if so, when might this be done and how?*
- d. What would be the time frames of any action by the NSC in this type of matter?*

Answer: NSC no longer adjudicates I-130 petitions. Any questions concerning I-130 processes should be sent to CSC.

TEXAS SERVICE CENTER

TSC/AILA Liaison August 2003 Meeting

AILA InfoNet at Doc. No. 03100141

<http://www.aila.org/Content/default.aspx?docid=9436>

Does the TSC director have jurisdiction to determine that for humanitarian reasons the automatic revocation of a family-based IV petition (by death of sponsor) would be inappropriate as allowed by 8 C.F.R. 205.1(a)(3)(i)(C)? If the TSC Director has jurisdiction, then what process should AILA members follow?

Prior to March 1, 2003, attorneys within the Dallas district of the INS were filing such motions for "reinstatement" (as called by the local BCIS officers) with the Dallas INS District Director. The new BCIS Dallas District Director, however, claims that she lacks jurisdiction to "reinstate" a petition that her district didn't originally approve. Instead, attorneys have been instructed to file such future motions for "reinstatement" with TSC. However, recently, when a motion was filed with TSC, it was promptly returned with fee attached, and a cryptic explanation that read: "Your motion has not been denied. Your fee of \$110 is being returned."

Please advise who can "reinstate", or more appropriately, determine that automatic revocation would be inappropriate, the BCIS office that originally approved the petition, or the BCIS district office with jurisdiction over the immigrant's adjustment application?

The office that approved the I-130 has discretion over the motion for reinstatement. No fee is required for this type of motion. If the I-130 was approved by the TSC, a detailed letter should be sent to the TSC Director, Evelyn Upchurch.

ATLANTA DISTRICT

Atlanta USCIS-AILA Liaison Meeting (May 16, 2008)

AILA Doc. No. 08082152

<http://www.aila.org/Content/default.aspx?docid=26291>

9. Does the Atlanta USCIS have policy guidance addressing instances where an I-130 Petitioner dies after approval of an I-130 but prior to the beneficiary obtaining a visa, and the I-130 is to be reinstated through a substitute sponsor (qualified family member)? Is there a time limit from the date of that death for filing a substitute sponsor? Does it matter if the visa will be unavailable for several years? May a reinstatement request be filed before a visa is available?

USCIS Response:

USCIS has found these types of cases to be very rare. A petitioner's death does cause revocation of a pending I-130, although a humanitarian reinstatement through another petitioner may be possible (and the case with a replacement petitioner may have an I-864 co-sponsor too). The

Director of the CIS office in the place where the case will be adjudicated will make the decision regarding the humanitarian reinstatement. A consular officer may help identify reasons why a humanitarian reinstatement should be reviewed favorably. There is no time limit from the date of death for filing a substitute sponsor. Also, it does not matter if the visa will be unavailable for some time, or is unavailable at the time of substitution. A request for reinstatement may be made before a visa is available.

CHICAGO DISTRICT

Chicago Chapter, Questions for Liaison Meeting with USCIS Chicago District Office (November 20, 2007)

AILA Doc. No. 07112050

<http://www.aila.org/Content/default.aspx?docid=23878>

10. ADJUSTMENT OF STATUS. On November 8th, 2007 Michael Aytes issued a memo on petitioner's death and the authority to prove an I-130. Where the petitioner dies after the approval of form I-130 in both immediate relative and family preference cases, USCIS has discretion to reinstate the pre-death approval 8 CFR 205.1(a)(3)(i)(C)(2). This discretion will be exercised favorably if a substitute sponsor has submitted form I-864 in place of any form I-864 that has been filed or would have been filed by the deceased petitioner. Please inform us of the correct procedure to be followed by the substitute sponsor.

a. Should the substitute sponsor's I-864 be filed before the interview on the I-485 or brought to the interview?

The applicant or the attorney should bring the substitute sponsor's I-864 with the request for humanitarian reinstatement to the interview.

b. Is the substitute sponsor's presence required at the adjustment of status interview?

No, the substitute sponsor does not need to appear for the AOS interview. However, there must be evidence to demonstrate the relationship between the beneficiary and the substitute sponsor.

AILA-Chicago Chapter, Agenda for District Director Liaison Meeting (January 26, 2005)

<http://www.aila.org/Content/default.aspx?docid=12231>

HUMANITARIAN REINSTATEMENT OF AN I-130 PETITION, WHERE THE PETITIONER IS DECEASED

3. Where a petitioner for a Form I-130 dies after the Form I-485 adjustment application is filed, and a request for humanitarian reinstatement is filed with the District Director's office, will the Form I-485 application be held in abeyance pending adjudication of the request for reinstatement? Which supervisor is in charge of requests for humanitarian reinstatement?

The I-485 will not be held in abeyance, if the reinstatement is granted, we will do a Service Motion to Reopen. All first-line supervisors oversee this request.

LOS ANGELES DISTRICT

Southern California Chapter, Minutes/Q&A of Liaison Meeting with USCIS Los Angeles District Office (August 25, 2005)

AILA Doc. No. 05092850

<http://www.aila.org/Content/default.aspx?docid=17621>

1. Please define the current standards and process for requesting humanitarian reinstatement where the I-130 petitioner has died.

Martha Nguyen: Submit written request to wherever file is located.

Would it extend to the derivative beneficiaries, even if the principal beneficiary no longer qualifies? E.g. the principal beneficiary is the spouse who remarries after the petitioner died.

Martha Nguyen: No

Southern California Chapter, Minutes/Q&A of Liaison Meeting with USCIS Los Angeles District Office (April 21, 2005)

<http://www.aila.org/Content/default.aspx?docid=16370>

5. What is the procedure for requesting humanitarian reinstatement of an I-130 Petition where the Petitioner died, the deceased Petitioner was not a spouse of the alien, and the new I-864 substitution is a USC blood relative of the alien, and the new I-864 substitution is a USC blood relative of the alien, and the PD is current?

Martha Nguyen: If case was at I-130 unit in District Office, submit request to Room 2050. If file at CSC, send the request to CSC. If scheduled for interview, bring re-instatement request to interview.

Southern California Chapter, Minutes/Q&A of Liaison Meeting with USCIS Los Angeles District Office (September 25, 2003)

<http://www.aila.org/Content/default.aspx?docid=9477>

Question 14: When the beneficiary is under removal, where do we submit the humanitarian reinstatement request involving a deceased petitioner?

Supervisor Martha Nguyen answered the question. File with Room 2050. CIS will wait for the A file from the Court or will request the file.

Options where the petitioner dies before the approval of the I-130 and the parties have not been married for two years

Freeman v. Gonzales, 444 F.3d 1031 (9th Cir. 2006)

Taing v. Chertoff, 526 F. Supp. 2d 177 (D. Mass. 2007)

Turek v. Department of Homeland Security, 450 F. Supp. 2d 736 (E.D. Mich. 2006)

Dodig v. INS, 9 F.3d 1418 (9th Cir. 1993)

Abboud v. INS, 140 F.3d 843 (9th Cir. 1998)

Matter of Varela, 13 I. & N. Dec. 453 (BIA 1970)

<http://www.ssad.org>