



PRACTICE ADVISORY: IMMIGRATION BENEFITS FOR SURVIVING RELATIVES

Widow(er)s of U.S. Citizens, 204(I), and Humanitarian Reinstatement¹

By Peggy Gleason

Introduction

If a person who submitted an I-130 immigration petition dies, the petition is automatically revoked.² Thus immigrant families who are already grieving the loss of a loved one often find themselves doubly visited by tragedy because surviving family members may also have lost the ability to immigrate through the deceased's petition.

However, this practice advisory will cover three possible remedies that allow certain beneficiaries and family members to continue to seek an immigration benefit, even after a petitioner or qualifying relative has died. The three possible remedies are:

- 1) Survivor benefits for widow(er)s of U.S. citizens under INA § 201(b)(2)(A)(i);
- 2) Other benefits for certain surviving relatives under INA §204(I); and
- 3) Humanitarian reinstatement of an approved I-130 petition.

These provisions can help certain family members who would otherwise lose the opportunity to apply for permanent residence because the petitioner died, or because the applicant is a derivative and the principal beneficiary died.

Each provision has distinct eligibility criteria and legal authorities. Widow(er)s of U.S. citizens are included in the statutory definition of immediate relative, and have the broadest survivor relief.³ Other family members may fall under the protections at § 204(I), a separate statutory section with mandatory language about relief for eligible surviving family members, although USCIS may still exercise discretion in deciding whether the public interest is served in such approvals.⁴ Finally, humanitarian reinstatement is authorized only by a regulation, and is entirely discretionary.⁵ Each one is described below in greater detail.

¹ Questions about this advisory may be directed to pgleason@ilrc.org.

² 8 CFR § 205.1(a)(1)(B) provides for automatic revocation and termination of immediate relative and family-based petitions upon death of the petitioner or beneficiary.

³ INA § 201(b)(2)(A)(i), 8 U.S.C. §1151 includes in the definition of "immediate relative" the widow(er)s of U.S. citizens.

⁴ INA § 204(I), 8 USC § 1154(I) provides that, "an alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States **shall** have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship describe in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest." (emphasis added).

⁵ 8 CFR § 205.1(a)(3)(i)(C)(2).

I. Widow(er)s of U.S. Citizens

A. Who is Covered: Legal Marriage to U.S. Citizen, Not Remarried

Widow(er)s of U.S. citizens have the broadest avenue of relief should their U.S. citizen spouse die. The statute allows them to remain classified as immediate relatives and to continue to be eligible to immigrate if they file an I-360 self-petition within two years of the death of the U.S. citizen or to automatically convert an already-filed I-130 to an I-360. They must also show a good faith marriage, and demonstrate that they have not remarried to immigrate as an immediate relative.⁶ Note that if the applicant does remarry, they may still be able to pursue relief, under INA § 204(I) instead (see next section).⁷ Although previously the law required that the marriage have lasted a minimum of two years before the U.S. citizen's death in order to seek relief as the widow(er) of a U.S. citizen, that requirement was removed in 2009.⁸

In order to continue with the immigration process after a U.S. citizen spouse's death, applicants must not remarry, must show that they were legally married to the U.S. citizen, are otherwise admissible, and that there was no legal separation or divorce at the time of the death. Depending on where they were in the immigration process when the U.S. citizen spouse passed away, the noncitizen widow(er) may submit an I-360 self-petition or, if the deceased spouse had already submitted an I-130 petition on their behalf, then the widow(er) may proceed with their permanent resident application notwithstanding the spouse's death. The widow(er)s apply as immediate relatives, and unlike other immediate relatives, they can include unmarried sons or daughters under 21 in the application, if the child was under 21 when the visa petition (I-130 or I-360) was filed.

Although widow(er)s of U.S. citizens must still prove they are admissible, there are some differences in terms of how the inadmissibility grounds apply to these applicants. USCIS does not require a Form I-864 Affidavit of Support for either the widow(er) or the accompanying children in order to establish they will not become a public charge under INA § 212(a)(4).⁹ A Form I-864W exemption should be filed.¹⁰ Additionally, for purposes of INA § 212(a)(9)(B)(i), a widow(er) and accompanying children will not accumulate unlawful presence if they were the beneficiary of a spousal I-130 that was pending on October 28, 2009 and that is later approved as a self-petition.¹¹ Widow(ers) are not otherwise exempt from the bars for unlawful presence, and will be subject to the three- and ten-year bars if they accumulate sufficient time and must consular process. The waiver for unlawful presence requires a U.S. citizen or permanent resident spouse or parent, which many widow(ers) will lack.¹²

⁶ INA § 201(b)(2)(A)(i) includes in the definition of "immediate relative" the widow(er)s of U.S. citizens:

"In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under [section 204(a)(1)(A)(ii) of the INA] within 2 years after such date and only until the date the spouse remarries." The widow(er) must remain unmarried until they receive their immigrant status.

⁷ If the surviving spouse resided in the U.S. at the time of the citizen's death, and still resides in the United States, the spouse can pursue INA § 204(I) relief despite the remarriage. USCIS applied the holding in *Williams v. DHS Secretary*, 741 F.3d 1228 (11th Cir. 2014) nationwide. USCIS, *Policy Memorandum: Approval of a Spousal Immediate Relative Visa Petition under Section 204(I) of the Immigration and Nationality Act after the Death of a U.S. Citizen Petitioner, Revision to Adjudicator's Field Manual Chapter 10.21(a), (b), (c)(2) and the last paragraph of (c)(5) (AFM Update AD-15-02) to implement Williams v. DHS Secretary*, 741 F. 3d 1228, (11th Cir. 2014) (Nov. 18, 2015), AILA Infonet Doc. 15113004.

⁸ Section 568 (c)(1), Department of Homeland Security Appropriations Act, 2010, Pub.L. No.111-83, 123 Stat.2142 (2009). After years of litigation against the 2-year marriage requirement, often called the "widow penalty," Congress acted to remove the requirement on October 28, 2009. For widow(er)s who were in the transition period and had a U.S. citizen spouse who died before October 28, 2009, the deadline to file a petition was October 28, 2011.

⁹ INA §212(a)(4)(C)(i)(I) provides an exemption from the I-864 requirement for persons who obtain status under the widow(er) clause of INA §201(a)(1)(A)(ii). These applicants are still subject to the totality of the circumstances factors test for public charge listed under INA §212 (a)(4)(B).

¹⁰ USCIS, *Policy Memorandum: Additional Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children*, (Dec. 2, 2009), p. 10, AILA Infonet Doc. No. 09121430 [hereinafter *USCIS Memo Surviving Spouses*], and USCIS Webpage, "Widow(er)," <https://www.uscis.gov/greencard/widower>.

¹¹ *USCIS Memo Surviving Spouses*, p. 7.

¹² However, if widow(er)s consular process and have a pending I-130 at the time the spouse died can also be considered under INA §204(I) because they meet the U.S. residence requirement, they can file an I-601A or I-601 waiver for unlawful presence, and death of the U.S. citizen spouse will be deemed to satisfy the "extreme hardship" requirement for the waiver. USCIS, *Policy Memorandum: Approval of Petitions and Applications after the*

USCIS “should generally exercise discretion favorably” if an applicant has a prior removal order and files an I-212 form for permission to reapply, if there are no significant adverse factors, and the underlying Form I-130 has been approved as a Form I-360.¹³ Widow(er) benefits have the broadest coverage for surviving spouses compared to other paths covered here in that no affidavit or support or substitute sponsor is needed, no U.S. residence is required, and special considerations are given for certain grounds of inadmissibility.

B. How to Apply for U.S. Citizen Widow(er) Benefits

Upon notification of the death of a U.S. citizen petitioning spouse, USCIS will automatically convert a pending or approved Form I-130 to a Form I-360 self-petition,¹⁴ and the applicant does not need to re-file. The date of filing is deemed to be the date that the initial I-130, if any, was filed. Otherwise, the filing of the I-360 initiates the process. Children who are unmarried and under age 21 at time of filing the I-130 or I-360 can be included.

If there was no I-130 pending at the time of death, the widow(er) can file an I-360 self-petition as an immediate relative. In this circumstance, the I-360 must be filed within two years of the U.S. citizen’s death.¹⁵

Applicants cannot remarry before they adjust or receive an immigrant visa, must show that there was a legal marriage, and that there was no divorce or legal separation at the time of the U.S. citizen’s death. An I-360 can be filed simultaneously with an I-485 adjustment application. An overseas widow(er) can go through the I-360 approval or I-130/I-360 conversion process and consular process overseas.¹⁶

Supporting documents for the widow/(er)’s I-485 include:

- Two passport photos;
- Copy of birth certificate(s) for applicant and any accompanying children;
- Copy of passport page with admission stamp or other proof of admission;
- Form I-693 Medical Exam, valid for one year, which can be presented at time of interview to avoid expiration;
- Form I-864W Request for Exemption for Intending Immigrant’s Affidavit of Support;
- Copy of I-130 receipt and approval, if applicable; or Form I-360 receipt and approval; or
- Form I-360 with required documents, which include the death certificate and documentation to evidence a good faith marriage, if filing concurrently with I-485.

Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act, (Dec. 16, 2010), p. 11 <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/January/Death-of-Qualifying-Relative.pdf>, [hereinafter 204(l) Memo] and USCIS, *Expansion of Provisional Unlawful Presence Waivers of Inadmissibility*, 81 Fed. Reg. 146, p. 50252 (July 29, 2016).

¹³ USCIS Memo *Surviving Spouses*, p. 8.

¹⁴ See 8 CFR § 204.2(i)(1)(iv).

¹⁵ If the widow(er) has a U.S. citizen spouse who died prior to October 28, 2009, they must have filed the I-360 by October 28, 2011.

¹⁶ USCIS Webpage, “Widow(er),” <https://www.uscis.gov/greencard/widower>.

II. INA § 204(I)

In 2009, Congress created a broad protection for survivors with the enactment of INA § 204(I).¹⁷ There are no regulations on this provision, but there is a USCIS Policy Memo.¹⁸

A. Who is Covered by 204(I)

Unlike the widow(er) protections described in the previous section that are limited to U.S. citizen spouses, and unlike humanitarian reinstatement discussed in the next section that is limited to principal beneficiaries of approved I-130 petitions, INA § 204(I) covers several categories of pending or approved petitions. Section 204(I) provides that the persons listed below can seek relief if they can show residence in the United States at the time of the death, and they continue to reside in the United States. Note that 204(I) provides protections not only when the petitioner dies, but also, in some cases, when the principal *beneficiary* or other principal applicant dies.

204(I) covers:

- *Principal or derivative beneficiary* of a pending or approved I-130 petition, when *petitioner* died;
- *Derivative beneficiary* of a pending or approved I-130 petition, when the *principal beneficiary* died;
- *Derivative beneficiary* of a pending or approved I-140 employment-based petition, when the *principal beneficiary* died;
- *Beneficiary* of a pending or approved I-730 refugee/asylee relative petition, when the *petitioner* died;
- *Derivative* of a T or U nonimmigrant visa holder, admitted as a derivative when the *principal* has died;
- *Derivative asylee*, where the *principal asylee* died.¹⁹

B. Residence Requirement for 204(I)

The statute requires that the applicant be residing in the United States at the time of the qualifying relative's death and continue to reside in the United States.²⁰ Residence is the applicant's "principal, actual dwelling place in fact, without regard to intent."²¹ Residence is not the equivalent of physical presence, and it is possible to qualify while briefly abroad if the applicant can show that they were actually residing in the United States.²² While many persons seeking 204(I) may be doing so through adjustment in the United States, it is possible to use 204(I) for a surviving relative who is consular processing if that individual maintains U.S. residence while making a temporary trip abroad.

The residence requirement has been interpreted by USCIS to mean that at least one beneficiary, if there are several derivative beneficiaries, must meet the requirement of living in the United States at the time of the death, and be continuing to live in the United States when seeking relief. If one beneficiary meets the requirement, all beneficiaries may be found to meet the requirement.²³

¹⁷ INA § 204(I), as amended by FY 2010 Department of Homeland Security Appropriations Act, Pub.L.No. 111-83 Stat.2142, §568(c)(1), (October 28, 2009).

¹⁸ USCIS, *204(I) Memo* and USCIS Webpage, "Basic Eligibility for Section 204(I) Relief for Surviving Relatives," <https://www.uscis.gov/greencard/section-204i-relief-surviving-relatives>. The USCIS Webpage also has an overview of the three types of survivor relief discussed here: 204(I), widow/widowers of U.S. citizens, and humanitarian reinstatement, https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/National%20Engagement%20Pages/2011%20Events/Sept.%202011/I-130_Humanitarian_Relief_Presentation_09_27_2011.pdf.

¹⁹ INA § 204(I)(2).

²⁰ INA § 204(I)(1).

²¹ INA § 101(a)(33).

²² *204(I) Memo*, p. 5.

²³ *204(I) Memo*, p. 5.

C. Admissibility and 204(I)

204(I) applicants are subject to the grounds of inadmissibility at the time of adjustment or immigrant visa interview. If applicants are in a category that is required to submit an affidavit of support (either Form I-864 or I-864W), they will need to do so despite the death of the original petitioner. Substitute sponsors must be a U.S. citizen or lawful permanent resident, at least 18 years old, and the spouse, parent, mother-in-law, father-in-law, sibling, child (at least 18 years old), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, grandchild, or legal guardian of the applicant.²⁴

For waivers of grounds of inadmissibility where the statute requires a showing of extreme hardship to a qualifying relative, USCIS will deem the death of a qualifying relative as the “functional equivalent” of a finding of extreme hardship.²⁵ In other words, USCIS will assume that the death of the qualifying relative constitutes extreme hardship for purposes of the waiver, although the waiver applicants will still need to establish they warrant the favorable exercise of discretion. In addition, the waiver applicant must have a qualifying relative that was already a citizen or permanent resident at the time of the death to be eligible. Since derivatives can also qualify for 204(I), and the principal beneficiary can be the qualifying relative, when that principal beneficiary dies before immigrating the derivatives may lack the relative needed for a waiver or the consideration of “functional equivalent” hardship.

D. “Public Interest” Discretionary Standard

INA § 204(I) states that the Secretary of Homeland Security can deny a petition if the approval would not be in the “public interest.”²⁶ Given the mandatory language in the statute and this fairly generous standard, most cases should be approved.²⁷ According to USCIS guidance, “USCIS officers will not, routinely, use this discretionary authority to deny a visa petition that may now be approved, despite the death of the qualifying relative.”²⁸ Adjustment is also a discretionary remedy and presentation of favorable factors are always helpful to support favorable discretion.²⁹

E. Retroactivity

INA §204(I) became law on October 28, 2009. Grants of 204(I) relief are possible for cases that arose because the qualifying relative died prior to the date of enactment.³⁰ USCIS will allow untimely motions to reopen a petition, adjustment application, or waiver application that was denied prior to October 28, 2009 if 204(I) would now allow approval. The motion to reopen fee, or a fee waiver, must accompany such a motion, as well as supporting documentation for 204(I) eligibility.³¹ If USCIS denies a case on or after October 28, 2009 without considering the effect of 204(I) for an eligible applicant, the agency must reopen on its own motion.³²

²⁴ See 8 CFR § 213a.1.

²⁵ *204(I) Memo*, p. 11, and U.S. Citizenship and Immigration Services Policy Manual (USCIS-PM), 7 USCIS-PM A.9, <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartA-Chapter9.html>.

²⁶ See INA § 204(I).

²⁷ Brent Renison, *New Law Expands Immigrant Rights of Survivors*, AILA Infonet Doc. No. 09120830 (Posted December 8, 2009).

²⁸ *204(I) Memo*, p. 12.

²⁹ See INA § 245(a).

³⁰ Brent Renison, *New Law Expands Immigrant Rights of Survivors*, AILA Infonet Doc. No. 09120830 (Posted December 8, 2009).

³¹ *204(I) Memo*, p. 13.

³² *204(I) Memo*, p. 5.

F. How to Apply for 204(I)

There is no specific application form to use to apply for 204(I) relief.³³ Instead, to request 204(I) coverage, applicants should submit a cover letter explaining their eligibility and providing supporting documents.

The applicant should clearly distinguish 204(I) applications from humanitarian reinstatement, as the former has statutory authority and mandatory language, while the latter is entirely a creature of USCIS regulation and is highly discretionary. Sometimes 204(I) applications are confused with humanitarian reinstatement requests, which have very different eligibility criteria.³⁴

Applicants and their representatives should highlight INA §204(I) in the request, and if a petition is pending, the applicant should specifically ask that it be approved under 204(I) despite the death. If the petition was approved prior to the death, the request should specify that the petition now be approved under 204(I).

USCIS instructs applicants to include the following with a 204(I) request:

- Full name of applicant, the deceased relative, and names of any other beneficiaries;
- Any A-numbers of applicant, the deceased relative, or derivatives;
- The receipt number for the underlying petition or application and a copy of the receipt and approval notice, if any (a copy of the petition is also helpful);
- The relative's death certificate;
- Proof of residence in the United States at the time of the death by at least one beneficiary (rental leases, proof of house ownership, utility bills, school records, or pay stubs are all possible documentation);
- Form I-864 Affidavit of Support by a substitute sponsor, or an I-864W, Intending Immigrant's Affidavit of Support Exemption, if applicable.

Since 204(I) can be invoked at several different stages of the permanent residence or immigrant visa process, and it applies to several different types of applications, it can be confusing to determine where and when to file. USCIS's website has a chart which delineates several different scenarios of where to file based on the type of application underlying the 204(I) request.³⁵ Practitioners often find it preferable to present such a request with a USCIS field or district office, where delivery of documents and correspondence may sometimes be reliably accomplished in person. However, there are many scenarios where the pending application may not have arrived yet to the local USCIS, and in those cases, correspondence on 204(I) should be directed to the appropriate USCIS Service Center.

USCIS instructs applicants where to send the request depending on what type of application or petition it is based on and where it was processed. If an I-130, I-140, or I-730 was pending when the relative died, the request goes to the USCIS office that was processing the case. If those petitions were already approved, but no adjustment application (I-485) has yet been filed, the request should go to the USCIS office that approved the petition. The request can also be sent in simultaneously with an I-485 if a visa is available and the applicant is ready to adjust. If the I-485 was already filed when the relative died, the request should be sent to the office handling that I-485. T and U derivatives send 204(I) requests

³³ Department of Homeland Security, Citizenship and Immigration Services Ombudsman, *Improving the Adjudication of Applications and Petitions under Section 204(I) of the Immigration and Nationality Act* (November 26, 2012) reporting difficulties that applicants have when filing for 204(I) relief, and urging development of a standardized form for the process, <https://www.dhs.gov/sites/default/files/publications/cisomb-improving-adjudication-under-ina-204i-11262012.pdf>, [hereinafter *Ombudsman Recommendation 204(I)*].

³⁴ *Ombudsman Recommendation 204(I)*, p.6, footnote 30, reporting that some USCIS adjudicators confused discretionary humanitarian reinstatement standards with 204(I) eligibility, denying cases in error.

³⁵ USCIS Webpage, "Basic Eligibility for Section 204(I) Relief for Surviving Relatives," <https://www.uscis.gov/greencard/section-204i-relief-surviving-relatives>.

to the Vermont Service Center. An asylee seeking adjustment who needs 204(I) coverage should send the request together with the adjustment application.³⁶

204(I) requests are sometimes delayed or misrouted by USCIS because the agency has not devised a standardized form on which to make the request. At large volume mail rooms of USCIS Service Centers, the normal receipting and processing is for standardized forms with fees, and ordinary mail without a form and fee is difficult to route properly.³⁷ There is no acknowledgement of receipt by USCIS, making it difficult for applicants to track progress. As stated by USCIS in a liaison meeting, “Because there is no form or procedure for making a 204(I) request other than in a letter, there is no means to acknowledge receipt at the time it is submitted.”³⁸

Applicants and their representatives should highlight “INA 204(I)” on the envelope and cover letter accompanying it and follow up through whatever customer service channels are possible if delays occur.

III. Humanitarian Reinstatement: Petitioner Dies, Beneficiary Has an Approved Petition

A. The Limitations of Humanitarian Reinstatement

For many years, the only relief available for petitioners in cases where the petitioner died was a discretionary mechanism under a USCIS regulation which gives the agency discretion to decide not to revoke an approved petition upon death for “humanitarian reasons.”³⁹ This limited relief can only be requested by the *principal beneficiary* of an *approved petition*, thus it is not a possible remedy for someone whose long pending petition had not yet been approved, nor can it provide a remedy for derivatives of a principal beneficiary. USCIS treats this as an entirely discretionary request, and denials cannot be challenged by appeal.⁴⁰

B. How to Request Humanitarian Reinstatement

USCIS directs applicants to request humanitarian reinstatement by letter to the office that approved the petition, as no USCIS form exists for this purpose.⁴¹ Because some USCIS offices will not entertain repeated requests for humanitarian reinstatement, it is particularly important to file the initial request with all the supporting evidence that USCIS requests. After the death of petitioner, wait to file the request until the substitute sponsor’s affidavit of support and the humanitarian documentation can be gathered, as well as the identifying information about the underlying petition and the petitioner’s death certificate. The specific documents to include are described below.

Persons requesting humanitarian reinstatement are subject to the affidavit of support requirement and should include a Form I-864, Affidavit of Support from a substitute sponsor,⁴² (or an I-864W, Affidavit of Support Exemption), since the

³⁶ USCIS Webpage, “Basic Eligibility for Section 204(I) Relief for Surviving Relatives,” <https://www.uscis.gov/greencard/section-204i-relief-surviving-relatives>.

³⁷ [Ombudsman Recommendation 204\(I\)](#), p. 6.

³⁸ AILA, USCIS Nebraska Service Center, *Liaison Q and As from Business Product Line Teleconference*, p. 3, (Nov. 14, 2013), AILA Infonet Doc. No. 13112245.

³⁹ 8 CFR § 205.1(a)(3)(i)(C)(2), and U.S. Citizenship and Immigration Services, *The Adjudicator’s Field Manual* Chapter 21.2(h)(2)(C), <https://www.uscis.gov/sites/default/files/ocomm/iilink/0-0-0-3513.html#0-0-0-387>, [hereinafter USCIS AFM].

⁴⁰ USCIS AFM, Chapter 21.2(h)(2)(C). Denial rates are high according to the few statistics that are available: For the period November 2012- May 2013, USCIS received 3,104 such requests, denied 1,101 and approved 142. Most of those requests were adjudicated by USCIS California Service Center (CSC). DHS Citizenship and Immigration Services Ombudsman, *Annual Report 2013*, p. 18 (June 27, 2013), https://www.dhs.gov/sites/default/files/publications/cisomb_2013_annual_report%20508%20final_1.pdf, [hereinafter Ombudsman Annual Report 2013].

⁴¹ USCIS, AFM, Chapter 21.2(h)(2)(C).

⁴² See 8 CFR § 213a.1 for the list of family members who may be a substitute sponsor.

petitioning relative has died and can no longer provide an affidavit of support. In addition, applicants should include documentation showing that they warrant a favorable exercise of discretion.⁴³

Humanitarian reinstatement requests should also include a copy of or identifying information about the underlying petition, the receipt and approval notice, the name of applicant and the deceased petitioner, any A-numbers for applicant or decedent, and the petitioner's death certificate. In addition, an individual requesting humanitarian reinstatement should provide evidence of the following to support favorable discretion:

- Impact on family living in the United States, especially U.S. citizens, lawful permanent residents, and others lawfully present;
- Advanced age or health concerns;
- Ties or lack thereof to the home country;
- Other factors such as unusually lengthy government processing delays; and
- Any other factors that weigh in favor of reinstatement.⁴⁴

In practice, the factors different USCIS offices weigh in adjudicating reinstatement can vary because the requests are solely within USCIS's discretion.⁴⁵

Humanitarian reinstatement processing can be unpredictable and take a long time, due to problems arising from the lack of a standardized form and confusion on the part of both USCIS and applicants over which USCIS office has jurisdiction over a particular humanitarian request.⁴⁶

Unrepresented applicants sometimes have difficulty submitting requests that USCIS deems complete and approvable, and a partially documented request may be denied, rather than receive a request for further evidence. After a denial, some USCIS offices will not permit subsequent requests for reinstatement without the filing of a motion to reopen, I-290B, with the required fee, submitted within 30 days of the USCIS decision.⁴⁷ Since it may take months for an applicant to gather necessary documentation of humanitarian grounds and the I-864 Affidavit of Support, and there is no appeal from denial of humanitarian reinstatement, this means some potential applicants lose the opportunity to request reinstatement.

Conclusion

Individuals seeking to immigrate even after the death of a family member who was an integral part of their immigration case face many challenges, including navigating the various immigration laws that might apply to them after a family member's death. Depending on their situation, the inclusion of U.S. citizen spouses and their children as "immediate relatives" after the death of the U.S. citizen spouse, protections under 204(I), or humanitarian reinstatement might enable them to proceed with their case notwithstanding the relative's death. The strongest relief is the remedy for widow(er)s of U.S. citizens, but 204(I) also provides broad coverage for many survivors. Humanitarian reinstatement is a limited discretionary relief but may sometimes be the only avenue that survivors can pursue if they had an approved I-130 but lacked the residence requirement needed by 204(I).

⁴³ USCIS, AFM, Chapter 21.2(h)(2)(C).

⁴⁴ USCIS Web Page, "Humanitarian Reinstatement," <https://www.uscis.gov/greencard/humanitarian-reinstatement>.

⁴⁵ Some USCIS offices will not state particular criteria for reinstatement, finding it difficult to articulate a standard because the requests are discretionary and fact-specific. Ombudsman Annual Report 2013, p. 18, (June 27, 2013).

⁴⁶ DHS Citizenship and Immigration Services Ombudsman, *Annual Report 2014*, p. 45, (June 27, 2014),

https://www.dhs.gov/sites/default/files/publications/cisomb-annual-report-2014-508compliant_0.pdf. [hereinafter *Ombudsman Annual Report 2014*].

⁴⁷ *Ombudsman Annual Report 2014*, p. 45, stated that the USCIS California Service Center (CSC) denied humanitarian reinstatement requests deemed insufficient and would refuse to consider re-filings unless a timely motion to reopen with fee was presented.

Survivor Benefit	Applicable Law or Regulation	Who Applies To	Requirements	Form
Widow(er)s of USC's	INA § 201(b)(2)(A)(i)	Spouses and children of deceased U.S. citizens	<ul style="list-style-type: none"> Not re-married If no petition filed yet, must file within 2 years of USC's death File I-864W Exemption 	<ul style="list-style-type: none"> If I-130 already filed, none If no petition yet, file I-360
204(I)	INA § 204(I)	<ul style="list-style-type: none"> Beneficiary and derivatives of a pending or approved I-130 petition if petitioner or principal beneficiary died; Derivative beneficiary of a pending or approved I-140 beneficiary if principal beneficiary died; Beneficiary of a pending or approved I-730 if petitioner died; Individual admitted as a derivative U or T grantee if principal died Derivative asylee where principal has died 	<ul style="list-style-type: none"> Must be residing in U.S. at time of death Continue residing in U.S. If subject to affidavit of support requirement, need substitute sponsor 	<ul style="list-style-type: none"> None
Humanitarian reinstatement	8 CFR § 205.1(a)(3)(i)(C)(2)		<ul style="list-style-type: none"> I-130 must already be approved Only applies to principal beneficiary, not derivatives If subject to affidavit of support requirement, need substitute sponsor 	<ul style="list-style-type: none"> None



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.