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## I-130 Relative Petition Overseas

### → Who qualifies as a Relative?

#### I. Immediate Relative Category (Visa is always available – THERE'S NO WAIT!)

- Spouse of U.S. citizen (IR1)
- Unmarried children under 21 of U.S. citizen (IR2) – *unmarried when petition filed AND entry to U.S., otherwise if over 21 then becomes (F1)*
- Mother/Father of U.S. citizen (petitioner must be 21 or older) (IR5)

#### II. Family Preference Category (Limited visas available per year – Wait times vary, check Visa Bulletin)

- 1<sup>st</sup> Unmarried son/daughter (21 or older) of U.S. citizen (F1) – *unmarried when filed AND entry to U.S., otherwise if marries then becomes (F3)*
- 2<sup>nd</sup> Spouse and Unmarried children under 21 of LPR (F2A)
- 2<sup>nd</sup> Unmarried sons/daughters (21 or older) of LPR (F2B)
- 3<sup>rd</sup> Married sons/daughters (any age) of U.S. citizen (F3)
- 4<sup>th</sup> Brothers/Sisters of U.S. citizen (petitioner must be 21 or older) (F4)

### → If I am a U.S. citizen or LPR, and I file for my parents, are my brothers/sisters included?

No. You must file a separate petition for each eligible relative.

### → If I am an LPR and file for my wife who is overseas, are my now step-children included?

Yes, if they were under 18 years old when you and your wife (their mother) got married AND you file your wife's application before they turn 21.

### → Who does NOT qualify as a Relative?

- Adopted parent or adopted child if adoption happened after child turned 16 or is not in legal custody and not lived with parent for 2 years
- Stepparent or Stepchild if marriage happened after child turned 18
- Spouse if neither one was physically present at the marriage ceremony -unless marriage was consummated
- Spouse if gained LPR through a prior marriage, unless:
  - a) they're now naturalized
  - b) have been an LPR for 5-years
  - c) can establish that their prior marriage was not entered to evade U.S. immigration laws, or
  - d) their marriage which they gained LPR ended by death of their former spouse
- Spouse if married while they are the subject of an exclusion, deportation, removal, or rescission proceeding, unless can prove otherwise
- Grandparent, Grandchild, Nephew, Niece, Uncle, Aunt, Cousin, or Parent-in-Law.

### → How many applications do I need if my Relative has children?

One application for the principal, and the derivatives are automatically included within that application.

### → What evidence do I need to show if the beneficiary is my child?

- If mother is the petitioner, copy of child's birth certificate showing her name and the name of her child
- If father is the petitioner:
  - 1- copy of child's birth certificate showing both parents' names
  - 2- marriage certificate to the child's mother, and
  - 3- proof of legal termination of the parent's prior marriage (if any)

### → My spouse is an LPR and I'm on a nonimmigrant visa in the U.S., can I adjust my status here?

No, your LPR spouse can file for I-130 while you're here. If the I-130 is approved and a visa number is available before your nonimmigrant visa expires, you can stay and adjust OR you can request your nonimmigrant visa be extended (ex. If a 6-mo. visa can ask for 6 more mos.) OR change your status to a different visa category (ex. F1 Student).

### → Can I visit my spouse in the U.S. under B1/B2 visa while my I-130 is pending?

PLEASE avoid at all cost. When applying for a business or tourist visa, you have to show your intentions that you will return to your country. If you have a pending I-130, CBP may not allow you to enter the U.S. because your visit may look like a permanent move, also triggering trouble of willful misrepresentation.

NEVER LIE ABOUT YOUR INTENTIONS TO AN IMMIGRATION OFFICER OR CONCEAL THE FACT THAT YOU ARE MARRIED TO A U.S. CITIZEN/LPR AWAITING THE APPROVAL OF YOUR I-130.