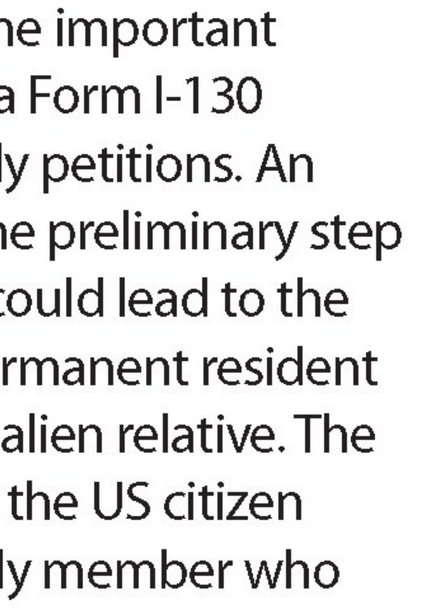
Requirements on an I-130 petitioner

Tales from the Arena



Charles Medina, Esq.

IN applications for immigration benefits or relief, the focus is often on the qualifications or eligibility of the alien for such benefits or relief. In this article, I would like to emphasize some important requirements on a Form I-130 petitioner in family petitions. An I-130 petition is the preliminary step in a process that could lead to the grant of lawful permanent resident (LPR) status to an alien relative. The I-130 petitioner is the US citizen (USC) or LPR family member who initiates this process. Here are some requirements on an I-130 petitioner.

First, an I-130 petitioner must execute a Form I-864 affidavit of support for the alien beneficiary of the petition. An affidavit of support is not required for the approval of the I-130 petition itself but it is necessary for the approval of the immigrant visa or I-485 adjustment application that the alien beneficiary must file after the approval of the I-130. An affidavit of support is a contract that binds the petitioner-sponsor to support the sponsored alien at an annual income that is not less than 125 percent of the federal poverty line during the period when the affidavit is enforceable. An affidavit of support is required because, under INA 212(a)(4), an applicant for admission or adjustment is inadmissible as an alien likely to become a public charge unless the qualified sponsor executes this affidavit of support.

Second, since 8 CFR 213a.2(c)(1)(i)(B) requires an affidavit of support sponsor to be domiciled in the US or any US territory or possession, an I-130 petitioner is in effect required to be domiciled in the US. INA 101(a)(33), defines "residence" as the place of general abode, which is the principal and actual dwelling place, without regard to intent. However, domicile is much more than mere residence. 8 CFR 213a.1 defines "domicile" as the sponsor's place of principal residence, with the intention to maintain that residence for the foreseeable future. Thus, domicile is the combination of "residence" and intention to maintain such residence.

Under 8 CFR 213a.2(c)(1)(ii)(A), if a person is residing abroad temporarily, he may still qualify as an affidavit of support sponsor if he can show that his domicile remains in the US.

If a person is not domiciled in the US, 8 CFR 213a.2(c)(1)(ii)(B) allows a person to submit an affidavit of support if such sponsor could show that he will establish a domicile in the US on or before the date of the principal immigrant's admission or adjustment of status. A sponsor who intends to establish his principal residence in the US may even come to the US at the same time as the principal immigrant.

Third, under INA 204(a)(2)(A), an I-130 filed by an LPR petitioner for his alien spouse may not be approved if: (1) the marriage occurred within five years from the time the LPR petitioner was granted LPR status; and (2) the LPR petitioner obtained his LPR status through a prior marriage to a USC or LPR spouse. However, this prohibited petition under INA 204(a)(2)(A) may nevertheless be approved if: (1) the LPR petitioner establishes that the marriage through which he gained permanent residence was not entered for the purpose of evading immigration laws; or (2) the marriage through which the LPR petitioner obtained permanent residence was terminated through death. The purpose of this law is to prevent aliens from benefiting from fraudulent marriages.

Fourth, under the Adam Walsh Act, an I-130 petitioner who has been convicted of a "specified offense against a minor" is prohibited from filing a family-based immigrant petition for any beneficiary, unless USCIS determines in its discretion that the petitioner poses no risk to the beneficiary. These specified offenses against a minor involve the following: (1) kidnapping, unless committed by a parent or guardian; (2) false imprisonment, unless committed by a parent or guardian; (3) solicitation to engage in sexual conduct; (4) use in a sexual performance; (5) solicitation to practice prostitution; (6) video voyeurism as described in 18 USC 1801; (7) possession, production, or distribution of child pornography; (8) criminal sexual conduct involving a minor; or (9) any conduct that by its nature is a sex offense against a minor.

The purpose of the Adam Walsh Act is to protect children from abuse, sexual exploitation, and violent crime. However, it not only protects minor children, who are defined as individuals under 18 years of age, but also prohibits the filing of a petition for other beneficiaries such as a spouse, fiancé(e), parent, unmarried child, unmarried son or daughter over 21 years of age, orphan, married son or daughter, brother or sister, and their derivative beneficiaries.

A petitioner with a conviction for a specified offense against a minor must submit evidence of rehabilitation and any other evidence that shows he poses no risk to the safety or well-being of the intended beneficiary such as evidence of intervening exemplary service to the community.

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Charles Medina practices immigration law. Visit his website at medinalawgroup.net for more details. This article provides general information only and does not provide legal advice on any specific matter or predict the outcome of any legal matter. It does not invite or create an attorney-client relationship.

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