

Submitted via email to: www.regulations.gov

August 13, 2019

Ms. Samantha L. Deshommes
Chief, Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529-2140

RE: OMB Control Number 1615-0038; Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition to Remove Conditions on Residence; e-Docket ID USCIS-2009-0008

Dear Chief Deshommes:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits these comments to the USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition to Remove Conditions on Residence (Form I-751), OMB Control Number 1615-0116.

CLINIC is the nation's largest network of nonprofit legal immigration services programs. The network includes approximately 370 affiliated immigration programs, which operate out of more than 400 offices in 49 states. CLINIC's network employs more than 1,500 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. CLINIC and its member agencies serve family-based immigration applicants, applicants for naturalization, and vulnerable migrants such as victims of trafficking and crimes, refugees, asylees, VAWA petitioners, Special Immigrant Juveniles, and Temporary Protected Status applicants for free or on a sliding-scale basis.

CLINIC's work is guided by its Catholic identity and mission to welcome the stranger. Catholic Social Teaching demands special care and advocacy for the rights and dignity of the most vulnerable among us. Accordingly, CLINIC has a lengthy history of advocacy on behalf of immigrants seeking lawful permanent residency based on a family relationship. To this end, CLINIC and our affiliated programs work to identify and address issues that families face when seeking to remain together or reunify in the U.S. CLINIC offers an extensive collection of family-based residency resources for service providers, including in-person and remote trainings, and topic-specific materials.

I. General comments

We appreciate the opportunity to provide feedback on the proposed changes to Form I-751, Petition to Remove Conditions of Residence, and Instructions. CLINIC supports the USCIS's proposed changes to clarify whether the petitioner is the conditional resident spouse or child. While the proposed changes lengthen the form, they add needed clarity. CLINIC opposes certain questions that call for irrelevant information. The references in our specific comments are to page numbers and questions on the proposed new form and instructions.

II. Specific Comments

A. Form I-751, Petition to Remove Conditions on Residence

Page 2, Question #13. CLINIC supports the inclusion of language reminding the petitioner that if the Form I-751 is being filed as a joint petition and the conditional residency has already expired, it is necessary to explain why it is being filed late.

Page 2, Question #16. CLINIC supports the inclusion of language allowing for a safe mailing address in the event the petitioner is filing the Form I-751 as a waiver based on battery or extreme cruelty. This option should also be available to petitioners who are separated from their spouses and are filing a waiver based on good faith marriage and divorce or based on extreme hardship.

Pages 2-4. CLINIC supports the inclusion of language clarifying whether the petitioner is the conditional resident spouse or child.

Page 3, Basis for Petition, 1b and 1c. The Form I-751 only recognizes a joint petition option for the stepchild if they are unable to be included in a joint petition filed by the parent and stepparent. But a joint petition with the child and stepparent is possible in other situations, e.g. the conditional resident parent died; the conditional resident parent decided not to file a Form I-751 for some reason. The Instructions reference the child's filing separately if the parent died, but the I-751 doesn't. Option 1c should be amended to reference death of spouse, stepparent, *or conditional resident parent*.

Page 3, Basis for Petition, 1f. The I-751 does not recognize a waiver option for a child whose conditional resident parent was abused during the marriage. This should also be an option.

Page 3, Basis for Petition, 2a and 2b. The Instructions reference the possibility of filing based on a pending divorce; the text needs to be clearer (see comment below). Consistent with this option, and to avoid confusion, the I-751 should be modified to allow petitioner to indicate that a divorce is pending.

Page 3, Part 3, Question #6: CLINIC questions the relevance of the current marital status of a conditional resident child's current marital status. There is no restriction that a conditional resident be unmarried. Notably, the question only is required when the conditional resident child is filing separately. CLINIC recommends that the following proposed language be removed: "or if you are a conditional resident child filing your own Form I-751 and you are married at the time of filing."

Page 5, Questions #20-22. CLINIC questions the purpose of and opposes the question on employment history since becoming a conditional resident. It is not clear how this information would have any bearing on whether the petitioner is entitled to approval of an I-751 petition.

Page 6-7, Questions #12-19. CLINIC questions the purpose of and opposes the question on employment history of the U.S. Citizen/lawful permanent resident spouse or stepparent since the petitioner became a conditional resident. It is not clear how this information would have any bearing on whether the petitioner is entitled to approval of an I-751 petition.

Pages 7-10. CLINIC supports the inclusion of additional language clarifying whether the petitioner's child is to be included as applying with the petitioner or is filing a separate Form I-751, as well as additional clarifying language. Questions regarding safe mailing address for children should note same caveat as referenced above: safe mailing address option should also be available where seeking waiver based on divorce or extreme hardship.

Page 11, Part 6: CLINIC objects to the proposed removal of the option to request disability accommodations.

B. Instructions to Petition to Remove Conditions on Residence

Page 1. In response to the question, “Who May File Form I-751?,” the proposed form states that “If the marriage upon which you obtained conditional permanent resident status still exists, then file your Form I-751 jointly with your spouse or stepparent...” This oversimplifies the options and does not take into consideration situations where the conditional resident spouse or child has been battered and yet the marriage has not been terminated. It also does not include situations where the parties are separated or have filed for divorce, and where the extreme hardship waiver is the appropriate option. We suggest using the existing language, which indicates that if the petitioner is still married, he or she may file a joint petition, but then immediately states the possibility of also filing based on a waiver.

Page 1. The form still references “your conditional permanent resident parent’s U.S. citizen or lawful permanent resident spouse,” although such language was modified on the proposed Form I-751 to state, “your U.S. citizen or lawful permanent resident stepparent.” We suggest conforming this language to that used in the Form I-751.

Page 1: Given that a conditional resident child may file a waiver based on battery/abuse to the conditional resident parent, option 4 should include language allowing for this option.

Page 2. In response to the question, “When Should I File Form I-751?,” the instructions caution against filing the Form I-90 to renew the I-551. CLINIC supports this language.

Page 2. CLINIC supports the clarifying language that if the Form I-751 is being filed jointly, it cannot be filed before the 90-day period before the second anniversary and must be filed before the conditional residency expires.

Page 2. CLINIC supports the language explaining that a late Form I-751 petition may be filed due to “good cause and extenuating circumstances,” as opposed to the current language, which is “extraordinary circumstances beyond your control and that the length of the delay was reasonable.” This brings the instructions into conformity with the Adjudicator’s Field Manual, Chapter 25.1, which states the basis for filing late is if “there was good cause for the failure to file within the required time period.”

Page 2: The proposed language on late filing should be moved up to appear directly after text on joint petitions, which are actually subject to a filing deadline. The current placement is confusing, since waivers are not subject to a deadline.

Page 4: The safe mailing address instructions should be revised as noted above with respect to the Form I-751.

Page 6: Initial Evidence, Permanent Resident Card. The instructions should allow for alternate proof of lawful permanent resident (LPR) status where card has been lost. This can include a passport stamp of temporary evidence of LPR status, or fee receipt for replacement I-551.

Page 7: Initial Evidence, Evidence of the Relationship: Evidence of good faith marriage is not required for those who are applying based on extreme hardship. The instructions should be modified to note that exception.

Page 7: The Instructions for a child filing separately should reference submitting death certificate of conditional permanent resident parent where applicable

Page 7: The Instructions about a pending divorce are confusing. The Instructions should state that a petitioner may file for a waiver based on divorce where a divorce is pending, and that USCIS will reply by providing the petitioner with a designated period – usually 87 days – to respond with a copy of the final divorce decree. Conditional resident petitioners who do not anticipate having a final divorce decree within that period of time may wish to consider whether another or an additional waiver option is applicable.

Page 7. The instructions to the current and the proposed form use the term “affidavit” instead of “affidavits or declarations.” Affidavits are signed and notarized, while declarations are simply sworn to or affirmed under penalty of perjury. Declarations are to be given the same weight as affidavits. See 28 U.S.C. § 1746.

Page 7: Modify the language to reflect eligibility of the conditional resident child to seek waiver based on battery/abuse to the conditional resident parent, even if the child not directly battered/abused.

Page 8: CLINIC recommends that the proposed definition of extreme cruelty include the following highlighted text from the regulation at 8 CFR § 204.2(c)(vi), which describes battery and extreme cruelty as follows:

vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the U.S. Citizen or LPR spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

Page 8. CLINIC supports the proposed language defining “any credible evidence” of battery or extreme cruelty, and the added language on waiver eligibility for those who believed they entered into a valid marriage that was in fact a bigamous one.

Page 8: The text on extreme hardship waiver should reference that proof of good faith marriage is not required although it can be submitted where possible. The proposed language removes the link to information about extreme hardship on the USCIS website. CLINIC proposes restoring the link or including language describing what evidence may satisfy this requirement.

C. Suggestions for Additional Modifications

As noted above, CLINIC supports many of the proposed modifications to the Form I-751 and Instructions that clarify when the I-751 petition should be filed. We also take this opportunity to note additional issues related to the removal of conditions process that would benefit from inclusion in a newly issued form and instructions. Since it is common that the basis of the petition may change after it is filed and while it is pending, CLINIC suggests that the instructions note the following:

- If the Form I-751 was filed as a joint petition, the petitioner should file a new Form I-751 as a waiver if the petitioner’s spouse or parent/stepparent has died. No fee is required for this new I-751 petition.

- If the Form I-751 was filed as a joint petition, the petitioner should file a new Form I-751 as a waiver if the petitioner or the petitioner's parent was abused or subjected to battery/abuse. A separate filing fee is required for this new I-751 petition.
- If the Form I-751 was filed as a joint petition, the petitioner should file a new Form I-751 as a waiver if the petitioner's marriage or the parent's marriage has terminated. No fee is required for this new I-751 petition.
- If the Form I-751 was filed as a joint petition, the petitioner should file a new Form I-751 as a waiver if the petitioner is basing the waiver on extreme hardship. No fee is required for this new I-751 petition.
- If the Form I-751 was filed as a waiver, the petitioner should file a new Form I-751 and add or change the basis of the waiver if it is necessary. No fee is required for this new I-751 petition unless the basis of the waiver is now battery/abuse.
- Clarify that a conditional resident child petitioner may file Form I-751 even though he or she is over 21 years of age or is married.
- Clarify that a waiver based on extreme cruelty does not need to be supported by an evaluation from a mental health professional, as stated in the regulations at 8 CFR § 216.5(e)(iv). Congress removed this requirement in 1994, but the regulations have not been amended.

III. Conclusion

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, Advocacy Director, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,



Jill Marie Bussey, Esq.
Director of Advocacy
Catholic Legal Immigration Network, Inc.