



U.S. Citizenship
and Immigration
Services

HQ SCOPS 70/23.12

Interoffice Memorandum

To: Regional Directors
District Directors
Service Center Directors

From: William R. Yates /S/
Associate Director for Operations
U.S. Citizenship and Immigration Services
Department of Homeland Security

Date: June 24, 2005

Re: Revised Interview Waiver Criteria for Form I-751, Petition to Remove the Conditions on
Residence

Purpose

The purpose of this memorandum is to provide additional guidance on when to transfer Form I-751, Petition to Remove Conditions of Residence (jointly-filed and “waiver” petitions) from a Service Center to a District Office for interview.

Applicable Regulations

Pursuant to 8 CFR 216.4(b)(1) relating to the filing of joint petitions, if the Service Center Director is satisfied that the marriage was not for the purpose of evading the immigration laws, the Service Center Director may waive the interview and approve the petition. If not satisfied, then the Service Center Director shall forward the petition to the District Director having jurisdiction over the place of the alien's residence so that an interview may be conducted.

Likewise, under 8 CFR 216.5(d), relating to the filing of waivers of the joint petition requirement, a Service Center director may transfer a case to the district office for interview.

Guidance

In general, interviews should be considered only when:

- Evidence purporting to establish the bona fides of the marriage has been submitted, yet such evidence does not satisfy the Director that the marriage was not entered into for the purpose of evading the immigration laws of the United States and/or
- In waiver cases, the Director has determined that the evidence submitted to establish eligibility for the requested waiver leads to an inconclusive result and that an assessment from a live interview seems appropriate.

Interviews should not be used to obtain information that can be readily requested via our standard Request for Evidence (RFE) process.

Generally, both joint petition and “waiver” cases are considered to be eligible for waiver of the interview requirement when they are accompanied by sufficient supporting documentation to establish the bona fides of the marriage (and in waiver cases, documentation to establish eligibility for the requested waiver), and when there is no indication of apparent fraud or misrepresentation.

When warranted, Service Centers should seek additional evidence through the RFE process and adjudicate the case on its merits in lieu of transferring to a district office for interview, except for instances where the petition contains:

- Information that is inconsistent with information discovered in the supporting documentation;
- Potential evidence of fraud or misrepresentation;
- Inconclusive evidence pertaining to the bona fides of the marriage to make a decision on the record notwithstanding receipt of a response to an RFE; or
- A particularly complex set of facts or issues that the Director feels would be best resolved by an interview.

Service Centers should continue to forward cases meeting the above criteria to the district office for interview except for cases involving fraud. All cases meeting the minimum threshold for fraud must be referred to the Fraud Detection and National Security Immigration Officer (FDNS IO), per the guidance in the memorandum entitled *Criteria for Referring Benefit Fraud Cases* issued on December 14, 2004.

Guidance for Service Centers regarding seeking additional information on an I-751:

- Joint Petitions and “Waiver Cases” with sufficient documentation to establish eligibility for the benefit/waiver: Service Centers will adjudicate the case based on its merits.
- Joint Petitions and “Waiver Cases” without supporting documentation or with insufficient documentation: Service Centers will issue a RFE for supporting documentation.¹ If initial evidence is submitted to support only the bona fides of the marriage or the ground for the waiver but not both, Service Centers will issue an RFE for such evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date provided in the RFE, the Service Center shall consider the petition abandoned, and accordingly deny the petition pursuant to 8 CFR 103.2(b)(13).

As provided in 8 CFR 216.4(a)(5) and 216.5(e)(2), documentation that can be submitted to establish the bona fides of the marriage may include, but is not limited to:

- Several verifiable documents showing the co-mingling of finances (i.e., joint bank accounts, mortgages, jointly filed income tax returns signed by both parties, etc.).
- Documents showing joint residence of the Conditional Permanent Resident (CPR) and petitioning spouse for a large portion of their lives as husband and wife (i.e., joint apartment leases, deeds, etc.).
- Joint insurance policies (i.e., life, health, etc.).
- Birth certificates of children born to the couple.
- Affidavits of third parties having knowledge of the bona fides of the marital relationship.

The Service Center director is also authorized to accept other evidence deemed relevant to the determination, 8 CFR 216.5(e)(2)(iv). For waiver cases, additional documentation that can be submitted to qualify for certain waivers may include:

- Death Certificate of USC or LPR spouse
- Final Divorce Decree

¹8 CFR 216.4(a)(5) requires that the Form I-751 be accompanied by evidence that the marriage was not entered into for the purpose of evading the immigration laws of the United States. Such evidence is considered “initial” evidence and, pursuant to current 8 CFR 103.2(b)(8), adjudicators must issue an RFE if such evidence is missing. **Note:** USCIS is currently amending 8 CFR 103.2(b)(8), see Proposed Rule, “Removal of the Standardized Request for Evidence Processing Timeframe,” 69 FR 69549, published on 11/30/04. If the provisions of this proposed rule become final, the current requirements for RFE issuance for failure to file initial evidence will be changed.

While the purpose of this memorandum is to ensure that cases in the waiver categories are only transferred for interview when they will actually benefit from the special attention of an interview, it is expected that adjudicators will exercise their sound judgment about transferring cases for interview.

Use

This memorandum is intended solely for the guidance of USCIS personnel in performing their duties relative to adjudications of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law of by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Further Information

Any questions regarding this memorandum should be addressed, through channels, to Robert Genesoni, in Service Center Operations or Jean Tharpe, in Field Service Operations.