



U.S. Department of Justice
Immigration and Naturalization Service

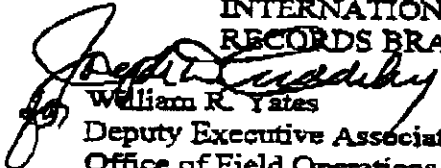
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425 I Street NW
Washington, DC 20536

MAY 15 2000

MEMORANDUM FOR SERVICE CENTER DIRECTORS
DISTRICT DIRECTORS
OFFICERS IN CHARGE
DISTRICT DIRECTORS (Foreign)
OFFICERS IN CHARGE (Foreign)
PORT DIRECTORS
INTERNATIONAL AFFAIRS - REFUGEE BRANCH
RECORDS BRANCH

FROM:


William R. Yates
Deputy Executive Associate Commissioner
Office of Field Operations
Immigration Services Division

SUBJECT: Procedural Guidance on Admission and Adjustment of Status for Refugees

The Refugee/Asylee Relative Petition (I-730) and the Application to Adjust Status (I-485) based on refugee status are applications that may not be accepted by field offices under any circumstances. Since July 6, 1998, they must be filed by direct mail with the Nebraska Service Center (NSC). Your cooperation is requested to implement the following actions to enable the NSC to properly process these applications. All changes to Chapter 16 of the Inspector's Field Manual addressed in this memo have been approved.

REFUGEE TRAVEL PACKETS/ A-FILE CREATION

Each refugee travel packet (especially one submitted by refugees from 15 republics of the former Soviet Union¹) is to be reviewed by the inspector at the time of inspection to determine if the medical examination is enclosed within. If no medical examination form (OF-157) is included with the refugee travel pack, the refugee must be asked if he is in possession of his

¹ The Union of Socialist Soviet Republic no longer exists, and the term USSR is not officially used. Instead, there are 15 independent countries which are referred to as the Republic of Belarus (Belarus), Russian Federation (Russia), Georgia, Ukraine, Republic of Estonia (Estonia), Republic of Latvia (Latvia), Republic of Lithuania (Lithuania), Republic of Uzbekistan (Uzbekistan), Republic of Moldova (Moldova), Republic of Tajikistan (Tajikistan), Republic of Armenia (Armenia), Azerbaijan Republic (Azerbaijan), Republic of Kazakhstan (Kazakhstan), Kyrgyzstan Republic (Kyrgyzstan), and Turkmenistan.

Memorandum for Service Center Directors,
District Directors, Officers in Charge
District Directors (Foreign), Officers in Charge (Foreign)
Port Directors, International Affairs-Refugee Branch, Records Branch
Subject: Procedural Guidance on Admissions and Adjustment of Status for Refugees

Page 2

medical. If the refugee has the medical, the inspector must then associate the medical with the packet. No x-rays are to be included with the packet. If no medical is included or only an incomplete medical is available at the time of inspection, and there is no official stamp in the packet indicating "Public Health Service" cleared the alien, the inspector must clearly mark the refugee packet "No Medical" in a blank space on the front of the packet and defer the inspection to the local office with jurisdiction over the residence of the refugee. The local office will refer the refugee to a civil surgeon for a medical and vaccination update where necessary.

As of the date of this memo, each port of entry, service center, and field office must forward all refugee travel packets in its possession as follows:

Refugee travel packets for persons from one of the 15 republics that belonged to the former Soviet Union are sent to:

**IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON PROCESSING CENTER
1401 NORTH WILSON BLVD - 6TH FLOOR
ROSLYN, VIRGINIA 22209**

All other refugee packets are sent to:

**NEBRASKA SERVICE CENTER
US IMMIGRATION & NATURALIZATION SERVICE
PO BOX 87730
LINCOLN NE 68501-7730**

The WPC and the NSC will store the travel packets. The WPC and the NSC will manually create the A-file and enter the information in CIS. This step is necessary to ensure that the NSC has the A-file for adjudication of the I-730 for derivative refugees and/or the I-485 when the refugee applies to adjust status to permanent resident.

When the NSC requests an A-file (via an FTR on the 9501 screen on CIS) which is located at the Washington Processing Center, the WPC has agreed to forward any A-file relating to a refugee to the NSC within 30 days of the transfer request made by NSC. If no relating A# is found on CIS for an I-485 refugee adjustment applicant who claims to be a refugee from one of the 15 republics that belonged to the former Soviet Union, the NSC is requested to contact Gilbert Jacobs at the WPC by cc: Mail to request that (1) a search be made for the refugee packet, (2) creation of the A-file or a substitute A-file be completed in CIS, and (3) the A-file is sent to the NSC.

I-730: REFUGEE/ASYLSEE RELATIVE PETITION FOR DERIVATIVE REFUGEES

Section 207(c)(2) of the Immigration and Nationality Act (INA) allows the spouse (RE-2) and child(ren) (RE-3) of a principal refugee (RE-1), to derive refugee status and to accompany or follow to join the principal refugee in the United States.

Only principal refugees (RE-1) are eligible to submit an I-730. Only those spouses and children (including those who were *in utero* when the principal was admitted as a refugee) whose relationship to the principal applicant (RE-1) existed at the time the principal refugee was admitted to the United States as a refugee may benefit from the I-730 petition.

The principal refugee (RE-1) must file a separate I-730 petition for each derivative who has not accompanied or arrived within 4 months of the principal refugee's admission. The I-730 must have been filed by direct mail with the NSC before February 28, 2000, or must be filed within two years of the date the principal refugee (RE-1) was admitted to the United States as a refugee whichever is later. [8 CFR 208.19(c)]. The nationality and geographic location of the derivative beneficiaries are not relevant to the adjudication of the I-730. I-730 derivatives may be outside the United States or in the United States either legally or illegally. (In order to confer immigrant status on a dependent, the principal refugee who has dependents but who has missed the February 28, 2000 deadline for the I-730, must adjust status and file the Petition for Alien Relative (I-130), with fee, for qualifying derivatives under family preference.)

No fee is required to file an I-730.

If the beneficiary of the I-730 is in the United States, he or she becomes a refugee (not an asylee) on the date the I-730 is approved.

The Bureau of Populations, Refugees, and Migration at the Department of State (PRM) is responsible for ensuring that refugee admissions do not exceed the refugee admissions ceiling determined through annual consultations between the President and Congress. When an I-730 is approved for a beneficiary who is already in the United States, the NSC is requested to create a chart to record the following information:

- name of beneficiary who is in the United States
- date of birth of the beneficiary
- place of birth of the beneficiary
- country of last residence of the beneficiary

Memorandum for Service Center Directors,
District Directors, Officers in Charge
District Directors (Foreign), Officers in Charge (Foreign)
Port Directors, International Affairs-Refugee Branch, Records Branch
Subject: Procedural Guidance on Admissions and Adjustment of Status for Refugees

Page 4

The NSC is requested to send the chart at the end of each quarter to the PRM at the following address in order to account for the refugee number:

**BUREAU OF POPULATION, REFUGEES AND MIGRATION
ATTN: TERRY RUSCH
DEPARTMENT OF STATE, SA-1
WASHINGTON, DC 20520**

If the beneficiary of an approved I-730 is outside the United States, a refugee number is issued abroad. However, the beneficiary does not become a refugee until the date admitted at a U.S. port of entry. Because the refugee number is assigned and tracked from abroad, the NSC should not include in the above chart or notify the PRM of an I-730 approval in behalf of a beneficiary who resides outside the United States.

The approved I-730 is similar to an immediate relative I-130, in that it is based on family relationship and the validity does not expire. It remains valid unless withdrawn by the principal or the beneficiary ceases to be the principal refugee's spouse or unmarried child under 21 years of age before the beneficiary enters the United States as a refugee. In addition, if evidence that the relationship does not exist is discovered abroad, the I-730 may be returned to the NSC for revocation.

If the beneficiary of an approved I-730 is inspected at a port of entry, and the applicant for admission no longer meets the definition of the spouse or unmarried child under 21 of the principal alien, the inspector will place the applicant for admission in expedited removal proceedings with the right to a credible fear determination pursuant to Section 235(b)(1)(A)(i) and (ii) of the Act. [8 CFR 208.30].

In some instances, the unmarried child under 21 (RE-3) presents himself/herself as the beneficiary of an approved I-730 for inspection at a port of entry, accompanied by his/her undocumented child, the putative grandchild of the principal alien (RE-1) refugee. No I-730 may be filed for the grandchild since the parent cannot be admitted as a principal refugee (RE-1). This situation should cause the inspector to question the parent (prospective RE-3 refugee beneficiary of an I-730) to determine if a marriage has occurred which caused the automatic revocation of the I-730. If the RE-3 and putative grandchild of the RE-1 are no longer admissible, expedited removal proceedings should be instituted to allow the parent/child to make a credible fear claim pursuant to Section 235(b)(1)(A)(i) and (ii) of the Act. [8 CFR 208.30].

District Directors, Officers in Charge
 District Directors (Foreign), Officers in Charge (Foreign)
 Port Directors, International Affairs-Refugee Branch, Records Branch
 Subject: Procedural Guidance on Admissions and Adjustment of Status for Refugees

If the RE-3 (child of the RE-1) is admissible, but the grandchild is not admissible, the grandchild may be granted humanitarian parole into the United States provided:

1. The RE-3 is admitted as a refugee, and
2. The biological/adopted relationship of the child to the RE-3 is established by a preponderance of the evidence available to the inspector, and
3. Before the child is paroled, the inspector examines the following factors regarding future immigration benefits available to the child:
 - The grandchild will be eligible under second preference as the beneficiary of an I-130 filed by the RE-3 parent after the parent (father or mother) is adjusted to permanent resident status as a refugee.
 - See the recent amendments to the definitions of child in section 101(b)(1)(A) through (E) of the INA.
4. If the RE-3, I-130 petitioner becomes a US citizen at a future date, the child will qualify as an immediate relative pursuant to section 201(b) of the INA. If the child does not qualify for parole, and the RE-3 parent is admitted as a refugee, the child must be placed in protective INS custody to avoid the presumption of parole in noncustodial cases.

DOCUMENTATION OF THE PRINCIPAL OR DERIVATIVE REFUGEE AND WORK AUTHORIZATION

As part of the inspection process, the principal or derivative refugee (including the qualifying beneficiary of an I-730) who is admitted to the United States at a port of entry is given an I-94 annotated with appropriate refugee language and "Employment Authorized" stamped in red security ink with the following notation:

For principal, and derivative spouse and children who arrive with the principal:

Admitted as a refugee for an indefinite period pursuant to section 207 of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. EMPLOYMENT AUTHORIZED.

For derivative beneficiary of an I-730 who arrives after the principal is admitted:

Admitted as a refugee for an indefinite period pursuant to section 207(c)(2) of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. EMPLOYMENT AUTHORIZED.

Beneficiaries who are in the United States at the time of approval of the I-730 obtain the I-94 with these notations by presenting the I-797 approval notice for the I-730 to their local field office. This is an interim procedure until the I-797 (I-730 approval notice) issued by the NSC can include a tear-off I-94 (Form I-797A) annotated with "EMPLOYMENT AUTHORIZED."

Refugees, whose prospective employers reject this I-94 stamped with employment authorization because of apparent I-9 requirements, may apply for the Employment Authorization Card (EAD) by submitting the I-765 and the refugee I-94 to their local district office. The local office will issue the EAD **without fee**. [8 CFR 274a.12(a)(3)].

ADJUSTMENT OF STATUS FOR THE REFUGEE

1. ELIGIBILITY

- When a refugee has resided in the United States for periods which total one year after admission as a refugee, the refugee may apply to adjust status to lawful permanent residence pursuant to section 209(a) of the INA. Section 245 of the INA does not apply.
- For purposes of adjustment of status to permanent residence, the residence begins on the date a refugee is admitted to the United States or on the date the I-730 was approved if the beneficiary was in the United States on the date of approval. This is true regardless of whether or not an I-94 was ever issued to the beneficiary of the I-730.

2. APPLICATION REQUIREMENTS

For those refugees who apply for permanent residence on or after July 6, 1998, an I-485 must be filed without fee at the NSC according to the regulatory change in 8 CFR 209. Before adjudicating a refugee's application for adjustment (I-485), the following must be received:

- The completed Application for Permanent Residence (I-485). No fee is required.
- Biographical Information Sheet (G-325A) for all persons 14 years of age and older
- Vaccination update
- Fingerprints for all persons between 14 and 75 years of age. (Note: The NSC will notify those over 14 years of age to appear at a later date to be fingerprinted. All NQP procedures for fingerprinting must be followed. The \$25 fee is required.

Memorandum for Service Center Directors,
 District Directors, Officers in Charge
 District Directors (Foreign), Officers in Charge (Foreign)
 Port Directors, International Affairs-Refugee Branch, Records Branch
 Subject: Procedural Guidance on Admissions and Adjustment of Status for Refugees

3. UNADJUDICATED REFUGEE ADJUSTMENTS RECEIVED BY A LOCAL OFFICE BEFORE JULY 6, 1998, WHICH ARE STILL PENDING AT LOCAL FIELD OFFICES AND PORTS OF ENTRY:

While the elements necessary for adjustment of status are the same, no I-485 is required for a refugee to adjust status if the adjustment was processed through a local office before July 6, 1998.

- Field office managers and port directors are requested to complete all pending refugee adjustments received at field offices before direct mail rules went into effect on July 6, 1998. All local offices must complete these adjudications on or before the close of **FY2000, September 30, 2000**. Approval culminates with the completion of the I-181. The date of admission as a permanent resident is rolled back to the date of admission as a refugee. The date of adjudication is the date used on the approval stamp. The I-181 (Copy 1) is placed on top of the left (record) side of the A-file.
- The officer must send notification of the approval to the refugee instructing the applicant to appear for documentation of permanent resident status at the nearest local INS office. The local office will complete the I-89 if necessary at time of appearance, and ensure that the request for creation of the alien registration card is forwarded to the servicing service center.
- The officer must forward the complete file with the applicant's current address and I-89, if available, to the NSC with the cover memo required for card production by the Phase 5 memo. See Attachment A.

This directive will not adversely impact the naturalization and adjustment of status goals for the local offices. However, meeting this deadline is important to ensure that refugees who are currently otherwise eligible to apply for naturalization receive approval of their permanent resident status.

4. PROCESSING REQUIREMENTS FOR THE ADJUSTMENT OF STATUS OF ANY REFUGEE.

- The G-325A is used for informational purposes only. No hard copies are used for any processing purpose, and all colored copies may be destroyed. Only the white legible copy should remain on the left (record) side of the file.
 - a) No check of consular records is made in the case of refugees (blue copy G-325A).
 - b) The FBI name check and CIA name check (green and pink copies of the G-325A) are automatically loaded on the machine-readable data tapes created by Headquarters as the result of the Claims 3, I-485 receipt data entry created at the NSC. There is a presumptive clearance of the FBI name check 60 days later, and according to the CIA policy memorandum dated November 24, 1999, no delay of the adjudication of the I-485 is required after the Claims 3 receipt entry is made.

District Directors, Officers in Charge

District Directors (Foreign), Officers in Charge (Foreign)

Port Directors, International Affairs-Refugee Branch, Records Branch

Subject: Procedural Guidance on Admissions and Adjustment of Status for Refugees

- c) The FBI/CIA process is completed for refugee adjustments received locally before July 6, 1998, when copy 2 of the I-181 is typed and sent to the servicing service center by the local office.
- All refugees must submit a vaccination update before the I-485 can be adjudicated. However, no new medical examination is required unless no medical examination (OF-157) or public health clearance was included with the refugee travel packet from abroad, or the prior medical discloses grounds of inadmissibility. The NSC has noticed that at times refugees from the 15 republics of the former Soviet Union do not have the medical examination in their refugee travel packets. Those refugees are processed through the Washington Refugee Processing Center (WPC) which is correcting this oversight through liaison with refugee centers located abroad. This problem, if it continues to exist, should be corrected by deferring the inspection of the applicant for admission as a refugee to the INS office nearest the intended residence of the refugee. In the interim, the fact that the paperwork is stamped with the Public Health Service stamp may be accepted as proof that no medical grounds for inadmissibility existed at the time of entry as a refugee.

In this regard, it should be noted that the rules for medical examinations required abroad as established by the Center for Disease Control only require TB testing for children who display symptoms or who have been living with persons who have active tuberculosis.

- No visa number is necessary for the approval of any refugee adjustment including those based on refugee status granted pursuant to the I-730.
- NQP4 Fingerprint rules apply for the processing of fingerprints and criminal records on the I-485.
- The principal refugees need not adjust before the derivative refugee adjusts. As long as the applicant was admitted as a refugee, has not committed any act that would make him/her inadmissible since his/her admission to the United States, and has been physically present in the United States since admission as a refugee for periods which total one year, the applicant is eligible to adjust.
- Visits to the country from which refugee status was granted do not automatically terminate refugee status.

District Directors, Officers in Charge
 District Directors (Foreign), Officers in Charge (Foreign)
 Port Directors, International Affairs-Refugee Branch, Records Branch
 Subject: Procedural Guidance on Admissions and Adjustment of Status for Refugees

- Once a derivative alien has been admitted as a refugee, nothing in the law or regulation terminates eligibility of a derivative for adjustment because the spousal relationship ends or the child marries or turns 21 years of age. [8 CFR 207.9]. The derivative may be adjusted even though the relationship to the principal has ceased to exist (i.e. if the spouse is widowed or divorced, or the child has turned 21 or married, or the principal has died.)
- A person who has been granted refugee status in his own right (RE-1, a principal) is adjusted using the adjustment code RE-6 (add 5 to the RE-1). The RE6 code should not be used for the former spouse or child of a principal alien where that relationship ceased to exist after the derivative was granted refugee status. This could be due to the termination of the marriage or the fact that the former child is now over 21 or married. (The "*non pro tunc*" procedure, which is mandatory for derivative asylees who age out or marry prior to age 21, is not required to preserve the right to adjustment in refugee cases.) The RE6 code is reserved solely for the principal alien to ensure there is no confusion regarding the eligibility to file an I-730.
- The refugee who is an applicant for adjustment of status and who qualified for refugee status as the spouse (RE-2) of the principal, and who is the spouse or former spouse of the principal at the time of adjustment is adjusted using the adjustment code RE-7 (add 5 to the RE-2).
- Likewise, the applicant who as admitted as a refugee child (RE-3, unmarried and under 21 at time of admission) of the principal and who is unmarried and under 21 or the former child of a principal refugee at the time of adjustment is adjusted using the code RE-8 (add 5 to the RE-3).
- No other adjustment codes are permitted for adjustment of a refugee.
- The RE7 and RE8 approvals are not delayed because the principal has not applied for adjustment, is deceased, or cannot be granted adjustment for some reason. [OI 209.2(b)].
- The date of adjustment for a refugee is always rolled back to the date the applicant was inspected and admitted as a refugee. (The rollback for asylee adjustments follows a different rule.) In the case of the derivative who was in the United States on the date of approval of the I-730, the date of approval of the I-730 becomes the date of adjustment. [OI 209.2(b)].

5. DENIAL OF PERMANENT RESIDENT STATUS BASED ON REFUGEE STATUS

- Adjustment of status must be denied using a prepared attachment to Form I-291 if the refugee is found to be inadmissible under Section 212(a) of the INA as applicable to refugees, or the applicant no longer meets the definition of refugee found in section 101(a)(42) of the INA. See 8 CFR 209.2(e). As the result of the denial, the applicant can be restored to refugee status or processed for removal proceedings through the issuance of an NTA as the facts of the case warrant.
- Waivers: If the refugee appears to be inadmissible, the Service Center Director adjudicating the I-485 submitted on or after July 6, 1998, or the field officer adjudicating the adjustment submitted locally prior to July 6, 1998, will determine whether or not an interview is necessary to determine admissibility. [8 CFR 209.2(d)]. Where the I-485 is submitted with the Request for Waiver of Inadmissibility (I-601 or I-602), the Service Center will work the waiver before proceeding with the I-485 unless an interview is necessary. The burden of proof is on the refugee to establish by a preponderance of the evidence that the waiver should be granted for (1) humanitarian reasons, (2) to assure family unity, or (2) that it is in the public interest. See section 209(e) of the INA and 8 CFR 209.2(b); section 212 (g), (h) and (i) criteria are not applicable to refugee waivers of inadmissibility. If an interview is necessary, the complete file must be transferred to the District Director (Adjudications) for interview at the field office with jurisdiction over the applicant's residence. If the waiver is denied on their merits (Form I-292 accompanied by Form I-290), and a proper appeal to the Administrative Appeals Office is filed, no final decision on the I-485 can be made until the appeal is final. While no appeal is permitted when a waiver is denied for lack of prosecution, a motion to reopen may be filed in 30 days.
- Departure from the United States while the I-485 is pending does not terminate the application since the adjustment is pursuant to section 209(a) of the INA, and 8 CFR 245 does not apply. However, the refugee must have a valid refugee travel document.
- There is no bar to adjustment if the refugee applicant for adjustment is subject to Section 212(e) of the INA as a former J-1 nonimmigrant. [8 CFR 209.2(b)]. No 212(e) waiver is needed.
- If the interviewing officer determines that the refugee is inadmissible under section 212(a) of the Act, and the applicant has not included a waiver, the district director must deny the I-485 pursuant to the instructions in 8 CFR 209.1(e). The denial is completed by attachment to the I-291, informing the alien of all the grounds for denial.

District Directors, Officers in Charge
 District Directors (Foreign), Officers in Charge (Foreign)
 Port Directors, International Affairs-Refugee Branch, Records Branch
 Subject: Procedural Guidance on Admissions and Adjustment of Status for Refugees

- There is no appeal in the case of a denied I-485. However, a motion to reopen may be considered if timely filed within 30 days of the date of the denial and received before removal proceedings are instituted. If such a motion includes an I-601 or I-602, and the motion to reopen is granted, the waiver must be worked to final decision before a final decision can be made on the I-485.
- The denied applicant for refugee adjustment is placed in removal proceedings as described in Section 240 of the Act. [8 CFR 209.2(e)]. Immigration judges may remand denied refugee adjustment cases to the district director with instructions to solicit a waiver of inadmissibility (I-601 or I-602) from the applicant to be worked by the district director since only the district director has jurisdiction pursuant to the regulation. There is no provision whereby the director may independently solicit a Request for Waiver of Inadmissibility (I-601 or I-602) in the case of a refugee unless there is prima facie evidence in the file that the waiver would be granted. If the waiver is granted, the district director may cancel the Notice to Appear (NTA) and reopen the original I-485 on Service motion. There is no time limit on a motion to reopen by the Service. Alternately, the immigration judge may entertain the approved waiver as part of consideration of a new I-485 submitted as a request for relief from removal.

NATURALIZATION AND CITIZENSHIP

Refugees, who have been granted status as permanent residents, and who are over the age of 18, are eligible to apply for naturalization pursuant to section 316(a) of the INA, four years and nine months after they were inspected and admitted to the United States as a refugee regardless of when the adjustment of status was adjudicated. However, the adjustment must have been adjudicated before the adult refugee can apply for naturalization.

When determining claims to citizenship made by a derivative refugee or the eligibility for naturalization of a minor refugee, the adjudicating officer must keep in mind that the definition of child in Section 101(b) of the INA which applies to all of Title II (visa petitions) differs significantly from the definition of child in Section 101(c) of the Act which applies to all Title III (citizenship and naturalization) cases.

A refugee child must be granted adjustment of status to qualify to derive citizenship after birth while under age 18 pursuant to section 321 of the INA through the naturalization of both parents, or through the naturalization of the widowed or single refugee parent with legal and physical custody of the child.

However, under the latest provisions of section 322 of the INA (effective as of March 1, 1995), permanent resident status is no longer necessary for the naturalization of a minor in specific cases. Any lawful entry qualifies the child who is under age 18 for juvenile naturalization under section 322 of the INA if one married biological or adopted parent is a U.S.

Memorandum for Service Center Directors,

District Directors, Officers in Charge

District Directors (Foreign), Officers in Charge (Foreign)

Port Directors, International Affairs-Refugee Branch, Records Branch

Subject: Procedural Guidance on Admissions and Adjustment of Status for Refugees

citizen and either the U.S. citizen parent or U.S. citizen's own U.S. citizen parent (i.e., the minor's grandparent) resided in the United States for five years at least two of which were after the parent's or grandparent's 14th birthday.

Refugee status is recognized as an inspection and admission pursuant to a change in section 207 of the INA. Refugees are no longer paroled. Therefore, any child under age 18 who has been inspected and admitted as a refugee, has made a lawful admission for naturalization as required in this amendment to section 322 of the INA. This situation can occur, for example, where one of the married parents has become a naturalized citizen and has legal and physical custody of the child. That U.S. citizen parent's five-year residence as a permanent resident for adult naturalization under section 316(a) of the INA also qualifies as residence for purposes of section 322 of the INA. The refugee child in this situation need not adjust status to qualify for naturalization as a minor under section 322 of the INA. The naturalized U.S. citizen parent must be living and file the N-600 on behalf of the child to take advantage of this provision. Offices must make every effort to adjudicate the N-600 application prior to the child's 18th birthday. The child becomes a citizen on the date of adjudication and oath taking when required. These events must occur before the 18th birthday of the child. A derivative Certificate of Citizenship (single A) is issued as proof of this naturalization.

This memo is a clarification of the procedures that must be followed for refugees at each stage of the path to permanent residence and citizenship. If you have further procedural questions that are not answered in Chapter 16: Special Classes of the Inspector's Field Manual, the memo entitled Phase 5: The final stage of transition of ICF functions to the service centers, 8 CFR 207 and 8 CFR 209, or sections 321 and 322 of the INA, you may contact Michelle A. Egan, HQISD (202-305-7800).