Sanctuary for Families

DERIVATIVE APPLICANTS

Many asylum applicants wish to assist their family members in attaining asylum status as well. There are some basic rules that you may wish to share with your clients, and some simple procedures to follow to assist them in reuniting with their families.

An asylum applicant may include on their I-589 asylum application a spouse by legal marriage and biological or legally adopted children under the age of 21. A child is deemed eligible for derivative asylee status if they are under 21 years old on the date that the application is received by USCIS or the immigration court. Please consult with your contact at Sanctuary for Families if you have questions about eligibility for any of your client's family members.

Derivative Applicants in the United States

If your client is granted asylum, derivative applicants present in the United States will obtain asylum status on the same date.

If your client's derivatives were not included on the application one or before the date that your client was granted asylum, but are in the United States, your client may file a asylee relative petition on Form I-730, within two years of your client's asylum grant. Effective October 1, 2017, USCIS will begin to phase in interviews for I-730 beneficiaries petitioning to derive status from the principal applicant who are within the United States.

Keep in mind that if your client has indicated past or fear of future domestic violence by their spouse in their asylum case, but your client simultaneously or subsequently seeks to obtain immigration status for their spouse, your client's entire asylum claim could come under scrutiny. While many victims of domestic violence feel obligated or pressured to assist their abusers with immigration matters, they should be aware of the consequences to them if they do so.

I-730 Asylee Relative Petitions/Consular Processing for Overseas Derivative Applicants

If your client has eligible family members (i.e. spouse and/or children under 21) living overseas whom they wish to bring here to join them, your client must include those individuals on their I-589 asylum application and, once granted asylum, should file a Form I-730 petition for each family member, which is free of charge. As always, please review the USCIS instructions to the form to ensure that you have the most updated information. This petition and supporting documentation must be filed within two years of your client's asylum grant. Petitioners in New York and New Jersey should file their I-730 petitions with the Texas Service Center. The USCIS Service Center will conduct a first round determination of eligibility. This first step in the process can take at least a few months.

Once the USCIS Service Center approves the I-730 petition, the file is sent to the National Visa Center (NVC) for "pre-processing" before it transfers the file overseas to a U.S. consulate, usually in

the country where your client's family member resides.[1] The NVC will inform you by email of the U.S. consulate where the file has been sent, along with instructions on how to schedule the derivative family member's consular interview and next steps that must be taken in advance of the interview. However, if the derivative family member lives in a country where USCIS has an international field office, the USCIS Service Center will forward the case overseas to the field office, instead of the NVC or a U.S. consulate, for final adjudication.[2] In such a case, the USCIS Service Center will send you a transfer notice, and the USCIS field office will eventually send the derivative family members a confirmation notice with the requirements that must be completed prior to an interview. Prior to an interview at either a U.S. consulate or a USCIS field office, the derivative family member must complete a medical exam, gather originals of all civil documents submitted in support of the I-730 petition (e.g. marriage and birth certificates), and any additional documentation of their relationship to the primary asylee. In some cases, petitioners and their biological children are also asked, before or after the interview, to undergo DNA testing to confirm their relationship. Regardless, it can generally take months and even years to be scheduled an interview, depending on the consulate or field office and the ability of the family members to comply with all of the requirements. As an advocate, you can assist by contacting the NVC/U.S. consulate or the USCIS Service Center/field office, as applicable in your client's case, and regularly inquiring as to the status of the application.

Once the derivative family member is scheduled an interview, please inform your Sanctuary contact to discuss what the family member can expect at their interview. Subsequent to a successful interview, the family member will be issued a single entry permit (or "boarding foil") valid for only six months and a sealed envelope (or "travel packet") to be provided to Customs and Border Protection (CBP) at a U.S. port of entry. The derivative must use the boarding foil to enter the United States within that six month window. A passport is not required by USCIS or the U.S. consulate to complete and provide the necessary travel documents; however, the country in which the derivative resides may have exit requirements that must also be met before they can board a plane for the United States. It is a good idea to check the exit requirements of the derivative's country of residence and ask your client if her derivative family members have passports before you file the I-730 petitions, in order to anticipate any logistical hurdles down the line.

Rights and Considerations for Derivative Asylees

All the rules and rights that apply to a principal asylee will also apply to derivative asylees, whether they were already present in the United States or traveled to the United States on the basis of an approved I-730 case. Derivative asylees can work legally in the United States and apply for permanent residence after one year of physical presence in the United States following the primary asylee's grant of asylum. Derivative asylees can also travel with a refugee travel document to any country except their country of nationality (although, as noted in the next chapter, Sanctuary does not recommend asylees travel abroad until they become permanent residents).

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[1] U.S. Dep't of State Bureau of Consular Affairs, "Follow-to-Join Refugees and Asylees," https://travel.state.gov/content/visas/en/immigrate/join-refugees-and-asylees.html#nvc.

[2] See "Announcements" in USCIS, "I-730, Refugee/Asylee Relative Petitions," https://www.uscis.gov/i-730. For a list of USCIS field offices, see USCIS, "International Immigration Offices," https://www.uscis.gov/about-us/find-uscis-office/international-immigration-offices.