



USCIS Update

September 29, 2011

Benefits for Widow/Widower of a Deceased U.S. Citizen

*Widow(ers) **Must** Apply by October 28, 2011 if Spouse Died Before October 28, 2009*

If you are a widow or widower of a U.S. citizen in the Commonwealth of the Northern Mariana Islands (CNMI), U.S. Citizenship and Immigration Services (USCIS) wants you to be aware that you may be able to obtain your green card under U.S. immigration law. Widow(er)s of citizens who died before Oct. 28, 2009, but who did not have a Form I-130 Petition for Alien Relative pending on Oct. 28, 2009, have until Oct. 28, 2011 to file a Form I-360 Petition for Amerasian, Widow(er) or Special Immigrant, for themselves and their unmarried minor children. A widow(er) whose citizen spouse died on or after Oct. 28, 2009 will have two years from the date of the citizen spouse's death to file their Form I-360.

If your spouse filed the I-130 or Form I-485 Application to Register Permanent Residence or Adjust Status for you before he or she died, please see www.uscis.gov for details. If not, you will have to file an I-360 petition. Remember to do this before Oct. 28, 2011 if your spouse died before Oct. 28, 2009; otherwise you will no longer be eligible.

Introduction

On Oct. 28, 2009, the President signed the FY2010 DHS Appropriations Act into law, allowing eligible widows or widowers of U.S. citizens to qualify for permanent resident status regardless of how long the couple was married. The new law amends the Immigration and Nationality Act (INA) by removing the two-year marriage requirement previously necessary for a widow(er) to qualify for permanent resident status as an immediate relative of his or her late U.S. citizen spouse. When a widow(er) qualifies as an immediate relative under the law, his or her unmarried minor children qualify for the same status. The law applies equally to widow(er)s living abroad who are seeking immigrant visas and widow(er)s in the United States who want to become permanent residents based on their marriage.

These provisions of the FY2010 DHS Appropriations Act relate only to the impact of the citizen's death on a widow(er)'s eligibility for classification as an immediate relative. All other requirements for approval of a visa petition remain in force. Specifically, the widow(er) must still establish that:

- He or she was the citizen's legal spouse.
- The marriage was bona fide and not an arrangement solely to confer immigration benefits to the beneficiary.
- He or she has not remarried.
- He or she is admissible as an immigrant.
- In an adjustment of status case, he or she meets all other adjustment eligibility requirements and merits a favorable exercise of discretion.

Widow(er)s Without Pending Cases

Widow(er)s of U.S. citizens who died before Oct. 28, 2009 and who did not have a Form I-130 pending on Oct. 28, 2009, have until Oct. 28, 2011 to file a Form I-360 for themselves and their unmarried minor children. A widow(er) whose citizen spouse died on or after Oct. 28, 2009 will have two years from the date of the citizen spouse's death to file their Form I-360.

Children of Widow(er)s

The child of a widow(er) whose Form I-360 is approved may be included in the widow(er)'s petition as long as they meet the definition for "child" under the INA.

Application Process

To obtain a green card, you need to file Form I-360 with all required documents as listed in the form instructions. If your spouse filed Form I-130 before his or her death, we will consider the petition as if you had filed an I-360.

If You Live in the United States

You may file Form I-485 either at the same time you file your Form I-360 or after you file Form I-360, whether it is pending or approved. If you already filed Form I-485 based on the petition filed by your spouse, USCIS will continue to process this application and you do not need to file another one.

If You Live Outside of the United States

Your approved petition will be forwarded overseas to the U.S. embassy or consulate that has jurisdiction over where you live. For more information, see the "[Consular Processing](#)" link under "Green Card Processes & Procedures" on the USCIS web site.

Supporting Evidence for the Form I-485

You should submit the following evidence/documentation with your application:

- Two passport-style photos;
- Form G-325A, Biographic Information (if between the ages of 14 through 79);
- Copy of your birth certificate;
- Copy of your passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission (entry) or parole stamp (if applicable);
- Form I-94, Arrival/Departure Record (if applicable);
- Form I-693, Report of Medical Examination and Vaccination Record;
- Form I-130 receipt notice or approval letter (Form I-797), if applicable; or
- Form I-360 with all required documents, if filing at the same time with Form I-485;
- Form I-360 receipt notice or approval letter (Form I-797) (if not filing concurrently).

Medical Examination

You will need to undergo a medical exam to be eligible for adjustment as an immediate relative. To locate a civil surgeon near you, see the "Find a Medical Doctor" at www.uscis.gov.

Children of Widow(er) of a U.S. Citizen

Your unmarried children under the age of 21 (known as "derivatives") may be included on your immigration petition.

As "immediate relatives," your derivative children are granted benefits of the Child Status Protection Act, which "freezes" their ages as of the date of the principal's filing of Form I-130 or I-360, whichever is applicable. This provision prevents them from aging-out if they turn 21 prior to adjudication of their adjustment of status or visa application. They must, however, continue to meet any other additional filing requirements. For more information on the Child Status Protection Act, see "Green Card Processes & Procedures" on the USCIS web site.

Work & Travel Authorization

Generally, when you have a pending Form I-485, it is possible for you to apply for authorization to work in the United States and to seek advance parole (advance permission to travel and be admitted to the United States upon your return). For further information, see the "Work Authorization" and "Travel Documents" links under "Green Card Processes & Procedures."

Questions & Answers

Q. If my U.S. citizen spouse has passed away, and I do not have a petition pending with USCIS, how do I obtain status as a widow(er)?

A. If your U.S. citizen spouse died on or after Oct. 28, 2009, you will have two years from the date of the citizen spouse's death to file a Form I-360 petition. If your U.S. citizen spouse died before Oct. 28, 2009 and you did not have a Form I-130 pending on Oct. 28, 2009, you have until Oct. 28, 2011 to file a Form I-360 for you and your unmarried minor children.

Q. Where do I file the Form I-360?

A. USCIS requires that applicants who are submitting a Form I-360 as a widow(er) must file the form with the Vermont Service Center along with the supporting evidence and fees specified in the Form I-360 instructions. The Form I-360 and filing instructions can be found at the USCIS website, under the "Forms" tab or at www.uscis.gov/forms.

Q. If I have a pending I-130 and qualify as an immediate relative, how do I find out if my petition has converted to a widow(er)'s I-360?

A. Your Form I-130 will automatically convert to a widow(er)'s Form I-360. USCIS will adjudicate your converted I-360 and notify you with a decision. If your case has been the subject of litigation in any Federal court on the issue of the effect of the petitioner's death on your Form I-130, you will receive notification from USCIS that the Form I-130 has been reopened.

Q. As a widow(er) of a U.S. citizen, am I required to submit a Form I-864, Affidavit of Support?

A. No. Under the INA, a widow(er) of a citizen and his or her accompanying children are not required to submit Form I-864, Affidavit of Support.

Q. Are the children of my deceased U.S. citizen spouse covered under this new law?

A. Your spouse's children may already be U.S. citizens if they were born in the United States or were born abroad but obtained citizenship by birth or naturalization. If your spouse's children are not citizens, then whether they can be included on your converted Form I-360 depends on whether they are your children as well. Generally, your stepchildren through marriage to the U.S. citizen would be considered your children and covered, as long as your marriage took place when the child was younger than age 18. If those children did not already derive U.S. citizenship through your deceased spouse at birth or on entry into the United States under the Child Citizenship Act of 2000, they may be eligible for immediate relative status under the INA.

Q. Are my children, who are not the children of my deceased U.S. citizen spouse, covered under this program?

A. Yes. Whether or not your children are also the children of your deceased U.S. citizen spouse, the program covers your children in the United States as long as they meet the definition of your "child" in section 101(b) of the INA.

Q. If I become a permanent resident based on my marriage to my deceased spouse, will I have to submit Form I-751, Petition to Remove Conditions on Residence?

A. No. Those who obtain permanent residence based on being the widow(er) of a citizen are not subject to conditional permanent residence and will not have to file Form I-751.

Q. What if my U.S. citizen spouse died and I remarried, but my marriage to the new spouse has been terminated by divorce or death?

A. If you remarried after the death of your previous U.S. citizen spouse, you are ineligible for this program based on your first marriage, whether or not your subsequent marriage ended due to a divorce from or the death of your subsequent spouse. If your second spouse is deceased but was a U.S. citizen, you may be eligible based on your second marriage.

Q. What if I was legally separated or divorced from my U.S. citizen spouse at the time of his or her death?

A. If you were divorced or legally separated from your U.S. citizen spouse at the time of his or her death, you are ineligible for this program.

Q. Where can I find more information?

A. USCIS is the agency within the U.S. Department of Homeland Security that handles immigration. For more information, please visit the USCIS website at www.uscis.gov.

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