



## PROCESSING OF I-130 PETITIONS SPEEDS UP FOR AN EXPANDING GROUP OF US CITIZENS

*Posted on November 23, 2013 by Cyrus Mehta*

In [Delays for Overseas Spouses of US Citizens Seeking Green Cards](#) I reported about the slowdown in the processing of I-130 petitions filed by US citizens on behalf of immediate relatives, such as spouses, minor children and parents, who are outside the United States. As a result of widespread concern about the delays, the USCIS seems to have reacted positively and sent the following [e mail](#) to its stakeholders:

*From: U.S. Citizenship and Immigration Services*

*Sent: Wednesday, November 20, 2013 3:38 PM*

*Subject: USCIS Message: Update on the processing times of Form I-130s filed by U.S. citizens for their eligible immediate relatives*

*Dear Stakeholder,*

*U.S. Citizenship and Immigration Services (USCIS) has received communications from the public expressing concerns regarding extended processing times for Form I-130, Petition for Alien Relative, filed by U.S. citizens for their eligible immediate relatives. USCIS provides information below in response to the concerns expressed.*

*USCIS is ever-mindful of the need to process a U.S. citizen's immediate relative Form I-130 carefully and expeditiously. The need is defined by the immigration system's goal of preserving family unity. It is for this fundamental reason that USCIS has been focused on addressing delays in the processing of these Forms I-130 for several months.*

*Through concerted efforts, USCIS is now adjudicating U.S. citizens' immediate relative Forms I-130 filed as early as February 2013. This is a significant step forward, as previously published guidance reflected the processing of these Forms I-130 filed in October 2012. Furthermore, USCIS expects the processing of these*

*Forms I-130 to be increasingly timely in the ensuing weeks, culminating in the return to an average processing time of five months for these Forms I-130 by May 2014. USCIS has focused on these Forms I-130 for the very reason that affected members of the public have expressed their concerns; the importance of family unity. Last month, in an effort to expedite the adjudication of these cases, USCIS began transferring stand-alone Forms I-130 filed by U.S. citizens for their immediate relatives from USCIS's National Benefits Center to its Nebraska, Texas, and California Service Centers. This shift improves USCIS's ability to adjudicate the cases in a timely manner.*

#### *When You Receive a Notice of Transfer of Your Case*

*If your case was transferred, USCIS will send you a notice listing the transfer date and where your case will be processed. Your original receipt number will not change and this will not further delay the processing of your case. USCIS will take action on your case within 60 days of the transfer date listed in your notice.*

#### *How to Track the Status of Your Case*

*We have recently updated the USCIS website at [www.uscis.gov](http://www.uscis.gov) with processing times for Form I-130 cases filed by U.S. citizens for their eligible immediate relatives. Please check the processing times at <https://egov.uscis.gov/cris/processTimesDisplay.do> for your petition before inquiring about your case. If your case is transferred to another USCIS office, you should refer to the processing times for the office that has received your case.*

*You can check the status of your case at [www.uscis.gov](http://www.uscis.gov) by entering your receipt number in the "Check Status" field. Additionally, you can sign up to receive automatic case status updates by email as your case is processed. If you have not received a decision on your case within the published processing time, you may submit an inquiry using e-Request or contact the National Customer Service Center (NCSC) at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833. When making any case status inquiries, you should reference your original receipt number and indicate that your case was transferred to a new location.*

*If you have filed a Form I-130 and you receive a request for evidence or any other*

*type of communication from USCIS, please read the notice carefully to ensure that you respond to the same service center that sent you the notice.*

*If you move while your case is pending, you can change your address on the USCIS website <<https://egov.uscis.gov/crisgwi/go?action=coa>> or contact the NCSC so that USCIS can notify you of any further action on your case. It is important that you notify USCIS of any change of address as soon as possible after moving.*

*We appreciate the concerns that members of the public have expressed on this important subject. We are mindful of those concerns and are addressing them with great diligence.*

*Kind Regards,  
USCIS Public Engagement Division*

It is indeed welcome news that USCIS is endeavoring to speed up the processing of I-130 petitions of US citizens, and restore the original processing times of five months or less. While the granting of immigration benefits is contentious in today's political environment, seldom dispute the ability of a US citizen to swiftly bring into this country a foreign national whom he or she has married overseas. The number of US citizens who can file I-130 petitions on behalf of spouses has recently expanded after Section 3 of the Defense of Marriage Act was declared unconstitutional in [United States v. Windsor](#), thus enabling US citizens to also file I-130 petitions on behalf of same sex spouses. These spouses were unjustly deprived of a benefit for years on end as a result of an unconstitutional statute, and they should not be required to wait that much longer for the I-130 petition to get approved.

As an aside, the class of US citizens who can file I-130 petitions on behalf of overseas relatives may be expanding to even dead petitioners. I heard today that attorney Michael Piston was able to obtain an approval for the unmarried son of a U.S. citizen mother who died after her I-130 petition filed on his behalf was approved. The son was outside the U.S. and could not take advantage of INA section 204(l), which allows beneficiaries to apply for a green card if they were in the US at the time of the petitioner's death. Humanitarian reinstatement was also denied. Mr. Piston, who is widely admired for successfully pushing the envelope on interpretations of our immigration laws, filed suit in the U.S. District Court for the Central District of California contending that the unmarried son of a U.S. citizen remained the unmarried son of a U.S. citizen even after the citizen died. The USCIS settled the law suit

and approved the I-130 petition. Such a law suit could not have been successful outside the court in California where it was initiated because the Ninth Circuit in *Federiso v. Holder*, 605 F.3d 695 (9th Cir. 2010), held in the context of the INA section 212(a)(1)(H)(I) waiver that the “spouse, parent, son, or daughter of a citizen of the United States” does not mean that they have to be the spouse, parent, son or daughter of a “living citizen of the United States.” This ruling, which currently is limited to California and other states that come within the ambit of the Ninth Circuit, could potentially be extended to beneficiaries of I-130 petitions too where the citizen has died, and theoretically allow the estates of deceased US citizens to file I-130 petitions on behalf of qualifying relatives who are overseas.

In any event, it is heartening to know that the USCIS heard the widespread concerns of “living” US citizens who justifiably want to unite with their loved ones as quickly as possible. It is hoped that the USCIS could also respond to the concerns of other stakeholders, such as US companies, who often have a hard time transferring their specialized knowledge employees on L-1B visas into the US as a result of unreasonable denials. Our immigration laws have been designed to promote family unity as well as promote economic well-being, and the USCIS would clearly be benefitting the national interests of the country it yielded to the concerns of all legitimate stakeholders who depend on the fair and expeditious processing of immigration benefits applications.