



*ASISTA Immigration Assistance  
P.O. Box 12, Suffield, CT 06078*

April 20, 2022

Ms. Samantha Deshommès  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy, USCIS  
5900 Capital Gateway Dr.  
Camp Springs, MD 20746

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

RE: “Agency Information Collection Activities; Extension, Without a Change, of a Currently Approved Collection: Petition To Remove the Conditions on Residence”  
OMB Control Number 1615-0038; Docket ID USCIS-2009-0008

Dear Ms. Deshommès:

On behalf of ASISTA, I respectfully submit this comment in response to the “Agency Information Collection Activities; Extension, Without a Change, of a Currently Approved Collection: Petition To Remove the Conditions on Residence,” initially published in the Federal Register on October 15, 2021<sup>1</sup> and reopened for 30 days for additional public comments on March 21, 2022<sup>2</sup>. We appreciate this opportunity to provide comments.

The mission of our agency is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen

---

<sup>1</sup> Agency Information Collection: Petition To Remove the Conditions on Residence, 86 Fed. Reg. 57,441 (Oct. 15, 2021), *available at*

<https://www.federalregister.gov/documents/2021/10/15/2021-22485/agency-information-collection-activities-extensi-on-without-change-of-a-currently-approved-collection>.

<sup>2</sup> Agency Information Collection: Petition To Removal the Conditions on Residence, 87 Fed. Reg. 16,026 (Mar. 21, 2022), *available at*

<https://www.federalregister.gov/documents/2022/03/21/2022-05854/agency-information-collection-activities-extensi-on-without-a-change-of-a-currently-approved>.

protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes that were created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA). We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors and submit this comment based on our guiding principles and our extensive experience.

These comments will focus on three issues:

1. The form instructions should be clarified to permit I-751 waiver applicants to include as dependents children who were admitted as conditional permanent residents more than 90 days after the principal;
2. The form instructions should be clarified to explain that a battered conditional resident may submit any credible evidence in support of his or her application;
3. The form instructions should be updated so that the URL for extreme hardship does not lead to the general USCIS section of the Federal Register.

**1. The form and instructions should be clarified to permit I-751 waiver applicants to include as dependents children who were admitted as conditional permanent residents more than 90 days after the principal**

A conditional permanent resident (“CPR”) who files an I-751 waiver should be permitted to include any conditional permanent resident children as dependents regardless of when they acquired CPR status. Under the Immigration and Nationality Act (“INA”), the timing considerations for filing a joint petition versus a waiver are completely different: an I-751 joint petition may *only* be filed within the 90 days immediately preceding the expiration of conditional permanent resident status, whereas there is no filing deadline or threshold for filing a waiver.<sup>3</sup> The regulations reinforce this statutory distinction: while dependent children of a joint petitioner may *only* be included on the parent’s I-751 if they acquired CPR status at the same time as, or within 90 days after, the parent,<sup>4</sup> the waiver regulations place no limits on the inclusion of dependent children.<sup>5</sup> This distinction makes logical sense – after all, if joint petitioners have a 90 day window in which to file the I-751, and a child acquires CPR status more than 90 days after the parent, the parent and child’s 90 day periods cannot overlap at all. However, because waivers have (1) no filing deadline; and (2) no filing threshold, there is no reason why a child cannot be included on the parent’s I-751 waiver regardless of when the child acquired CPR status. Insofar as the I-751 form instructions require otherwise, they are inconsistent with the INA and governing regulations.

The current I-751 instructions err in failing to distinguish between joint petitions and waivers. The current form instructions state:

---

<sup>3</sup>Compare INA § 216(d)(2) (“[T]he petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien’s obtaining the status of lawful admission for permanent residence”) and *Matter of Stowers*, 22 I&N Dec. 605, 611 (BIA 1999) (holding that “in certain situations it is appropriate to file a waiver application before or after the 90-day petitioning period”).

<sup>4</sup> 8 C.F.R. § 216.4(a)(2).

<sup>5</sup> See 8 C.F.R. § 216.5.

If you have dependent children who did not acquire conditional resident status on the same day as you or within 90 days thereafter, or if the conditional resident parent is deceased, then those dependent children must each file Form I-751 separately to have the conditions on their status removed.<sup>6</sup>

The instructions provide no exception in the case of waivers. In ASISTA's experience, USCIS service centers have consistently relied on the form instructions in requiring child CPRs who acquired such status more than 90 days after their CPR parent to file a separate I-751 waiver.

This requirement places unnecessary burdens on survivors of domestic violence and other waiver applicants because the child must either pay \$680 for the filing and biometrics fees or obtain a fee waiver, in addition to spending additional time completing the form and gathering evidence. It also increases the burden for USCIS, which must then process and adjudicate duplicative and unnecessary applications. At a time when USCIS is facing historic backlogs<sup>7</sup> and processing times for I-751s have grown from 11.8 months in FY 2017 to 17.5 months in FY 2022,<sup>8</sup> clarifying the I-751 instructions to make them consistent with the statute and regulations and eliminate the unnecessary filing of additional forms makes legal and practical sense.

### **Recommendation**

The I-751 form instructions should be amended to read:

If you **are filing a joint petition and** have dependent children who acquired conditional resident status on the same day as you or within 90 days thereafter, then include the names and Alien Registration Numbers (A-Numbers) of these children in Part 5. of Form I-751 in order to request that the conditions on their status be removed as well. If you have dependent children who did not acquire conditional resident status on the same day as you or within 90 days thereafter, or if the conditional resident parent is deceased, then those dependent children must each file Form I-751 separately to have the conditions on their status removed. **If you are requesting a waiver of the joint filing requirement and have dependent children who are conditional permanent residents, then include the names and Alien Registration Numbers (A-Numbers) of these children in Part 5. of Form I-751 in order to request that the conditions on their status be removed as well. You may do this regardless of when the children acquired conditional permanent resident status. A dependent child who is included on his or her conditional permanent resident parent's I-751 waiver is not required to file an additional Form I-751 to remove the conditions on his or her permanent residence.**

---

<sup>6</sup> Form I-751, Instructions for Petition to Remove Conditions on Residence (Rev. Dec. 2, 2019), <https://www.uscis.gov/sites/default/files/document/forms/i-751instr.pdf>.

<sup>7</sup> USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders (Mar. 29, 2022), <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work>

<sup>8</sup> Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year (up to Feb. 28, 2022), available at <https://egov.uscis.gov/processing-times/historic-pt>.

## **2. The form instructions should be clarified to explain that a battered conditional resident may submit any credible evidence in support of his or her application**

Congress required USCIS to consider “any credible evidence” when adjudicating an I-751 waiver for battered spouses because many survivors face barriers to obtaining evidence.<sup>9</sup> For example, some abusers may limit a survivor’s access to documentation, or a survivor may have fled the abuse without gathering evidence beforehand. Under the “any credible evidence” rule, USCIS is prohibited from requiring an applicant or petitioner to “demonstrate the unavailability of primary or secondary evidence” and cannot deny the I-751 for failure to submit particular evidence.<sup>10</sup>

USCIS should clarify the I-751 instructions to state that battered spouses and children may submit any credible evidence to establish their eligibility for the waiver, consistent with INA § 216(c)(4). *Pro se* applicants in particular may be overwhelmed by the type and quantity of evidence listed in the instructions and may be dissuaded from requesting the waiver even if they are actually eligible for it. Explaining that they may substantiate their claims with alternate documentation would help to ensure that survivors of abuse can access the protections Congress created for them.

### **Recommendation**

The I-751 instructions should be amended to add:

A conditional permanent resident who is requesting a waiver of the joint filing requirement based on battery or extreme cruelty to themselves or their child may submit any relevant credible evidence in place of the suggested evidence.

## **3. The form instructions should be updated so that the URL for extreme hardship does not lead to the general USCIS section of the Federal Register**

Currently, the I-751 form instructions direct CPRs to a URL for a “discussion of extreme hardship.”<sup>11</sup> However, the URL does not lead to a webpage about extreme hardship; rather, it leads to the general USCIS section of the Federal Register, which contains over 1,700 documents. If one runs a search for “extreme hardship,” the only result is a 2007 proposed rule on USCIS’s fee schedule.<sup>12</sup> For *pro se* applicants who may be unfamiliar with the legal concept

---

<sup>9</sup> INA § 216(c)(4).

<sup>10</sup> Memo, INS, “*Extreme Hardship*” and Documentary Requirements Involving Battered Spouses and Children (Oct. 16, 1998), available at <https://asistahelp.org/wp-content/uploads/2018/10/Virtue-Memo-on-Any-Credible-Evidence-Standard-and-Extreme-Hardship.pdf>.

<sup>11</sup> Form I-751, Instructions for Petition to Remove Conditions on Residence (Rev. Dec. 2, 2019), <https://www.uscis.gov/sites/default/files/document/forms/i-751instr.pdf> at 6 (“For a discussion of extreme hardship, please visit this website: <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-42380/0-0-0-44857/0-0-0-47481/0-0-0-47683.htm>”).

<sup>12</sup> Search result, “Extreme hardship,” <https://www.federalregister.gov/documents/search?conditions%5Bagencies%5D%5B%5D=u-s-citizenship-and-immigration-services&conditions%5Bterm%5D=%22extreme+hardship%22> (last accessed Apr. 20, 2022).

of “extreme hardship,” this URL is confusing and does not provide any information relevant to demonstrating extreme hardship in an I-751.

**Recommendation**

Update the URL to provide a resource on extreme hardship.

**Conclusion**

For the reasons above, we urge USCIS to clarify the instructions for Form I-751 so that battered spouses and their children can fully access these protections. Thank you for your consideration of these comments. Please address any questions you may have about our recommendations to me at [amy@asistahelp.org](mailto:amy@asistahelp.org).

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Amy Cheung', with a long horizontal stroke extending to the right.

Amy Cheung  
Senior Legal Counsel on behalf of ASISTA Immigration Assistance