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ADVANCED TOPICS IN CONDITIONAL PERMANENT RESIDENCE

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INTRODUCTION

Following allegations of rampant marriage fraud between aliens and U.S. citizens or lawful permanent residents, Congress passed Immigration Marriage Fraud Amendments of 1986 (IMFA).[1] This law requires married couples to jointly file a Petition for Removal of Condition (Form I-751) during the 90-day period preceding the second anniversary of the alien spouse's acquisition of resident status.[2] Generally, the couples will file the I-751 petition with the U.S. Citizenship & Immigration Services (CIS) no sooner than twenty-one months from the date the alien spouse becomes a conditional permanent resident (CPR). Under current processing times, a well-supported I-751 petition is usually adjudicated within six months to one year from the date of filing.[3]

Not all I-751 petitions follow the general processing framework. Some petitions are filed beyond the 90-day period out of necessity or oversight. Petitions filed as waivers may be filed at any time before or after the expiration of CPR status.[4] At times, the I-751 petition is filed or reviewed during removal proceedings.

This article will focus on issues which reach beyond the ordinary and timely filing of an I-751 petition, as well as offer some practical guidance over the process. First, this article will cover instances where the couple has neither divorced nor separated legally during the 90-day period preceding CPR expiration. Second, this article will discuss the process after CPR has been "terminated" with emphasis on the processing of I-751 petitions during removal proceedings. Finally, this article will address special issues covering the effect of CPR status on the

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[1] In passing the amendment, Congress relied on a 1984 INS survey claiming that many visa petitions based on marriages between aliens and U.S. citizens were fraudulent. This survey was later disputed by a Service official indicating that it was "statically invalid and lacked any probative value regarding the actual incidence of marriage fraud." Although another survey was ordered to be conducted, then-INS Commissioner Alan C. Nelson cited the 1984 survey to the Congress and stated that up to 30 percent of marriages between aliens and U.S. citizens were suspect. 66 Interpreter Releases 1011 (Sep. 11, 1989).

[2] INA §216 provides for conditional permanent resident status for certain spouses and children of U.S. citizens and lawful permanent residents, and the requirements for the removal of the condition. Given that the current wait time for immigrant visas in the family second preference category is more than 2 years, this article will refer to a marriage between aliens and U.S. citizens only.

[3] *See* 8 C.F.R. §216.4(a)(5). The supporting evidence that the marriage was not entered into for purpose of evading the immigration laws may include documentation of joint ownership, common residence, commingling of financial resources, birth certificates of children born to the marriage, affidavits of third parties with knowledge of the couple's bona fide relationship, and other evidence. *See also* Vermont Service Center Stakeholders Meeting Questions (August 20, 2009), posted on AILA InfoNet at Doc. No. 09090265 (Sep. 2, 2009) (hereinafter VSC Stakeholders Meeting). According the VSC officials, the current I-751 processing time is 6 months.

[4] *See* INA §216(c)(4). Waivers from joint filing are available if conditional resident demonstrates that (1) the conditional resident entered into the qualifying marriage in good faith, but the spouse has died; or (2) the conditional resident entered into the qualifying marriage in good faith, but the qualifying marriage has been terminated due to divorce or annulment; or (3) the conditional resident entered into the qualifying marriage in good faith, remained married, but during the marriage the conditional resident or child was battered or was subject of extreme cruelty perpetrated by U.S. citizen or LPR spouse (or parent in case of a child); or (4) that the termination of conditional resident's status would result in extreme hardship if such alien is removed. But *see Waggoner v. Gonzalez*, 488 F.3d 632 (5th Cir. 2007); *also see* Adjudicator's Field Manual, §25.1(e)(2) (hereinafter AFM) indicating that the extreme hardship waiver provision does not require that the applicant establish that the marriage was entered into in good faith.

naturalization of military spouses living abroad, as well as issues relating to dependent CPR beneficiaries.

NOT DIVORCED YET

Generally, a CPR must file an I-751 petition *jointly* with the spouse to remove the condition on permanent residence status. The joint I-751 petition must be filed within 90 days prior to the expiration of CPR status. The CIS may waive joint filing if the CPR has divorced from the spouse and the marriage in which they had entered into was done in good faith.[5] However, no waiver exists in situations where the CPR and the spouse are legally separated or have initiated divorce proceedings. Recently a CIS memorandum was issued to address such scenario (the "Neufeld memo"). The Neufeld memo provides guidance to immigration officers on how to process I-751 petitions – filed jointly or as a waiver – where the CPR is legally separated or is in divorce (or annulment) proceedings, and the marriage has not been terminated.[6]

Requesting a waiver of joint filing prior to divorce – In cases where the couple is separated or in divorce proceedings, the Neufeld memo instructs the adjudicators to not issue a flat-out denial of a waiver request based on the "divorced but good faith marriage" option simply because the CPR was not divorced at the time of filing the I-751 petition. But rather, CIS will now issue a Request for Evidence (RFE) with a response period of 87 days to allow the CPR additional time to supplement the waiver request with evidence of finalized divorce or annulment, i.e., a copy of the final divorce decree or annulment. The case will then be adjudicated on its merits in accordance with established procedure.

If, however, the CPR fails to respond to the RFE within the required time, the petition will be denied and a Notice of Termination of Conditional Resident Status will be issued. The case will then be processed for issuance of a Notice to Appear (NTA). The CPR may be able to establish waiver eligibility before an immigration judge should the marriage be terminated during removal proceedings.[7]

***Practice Pointer*:** The Neufeld memo does not expressly confer the CPR the right to file a waiver based on a pending divorce, but instead, instructs ISOs to not deny such waiver in the first instance. Implicitly, however, the memo allows CPRs to file a waiver without the divorce so long as the final decree is supplemented before an RFE. This provides the CPR considerable flexibility, especially in matters where the spouse is unwilling or unable to sign jointly. Nonetheless the CPR should be prepared to provide as much evidence as possible to establish that the marriage was entered into in good faith.

***Practice Pointer*:** Clients contemplating or awaiting divorce should be advised that filing a waiver will start the clock (so to speak) on filing supplemental evidence of divorce before the RFE deadline. The practitioner should bear in mind the complexity of the divorce and timeframe for obtaining a final divorce decree by discussing the matter with a family law attorney if possible. Clients should be advised that the divorce may not be finalized within the RFE timeframe. Thus, the timing of the petition should be carefully evaluated with the client.

***Practice Pointer*:** What if CIS issues a notice terminating CPR status, but your client obtains the divorce decree immediately thereafter? If the NTA has not been issued and filed with immigration court, the CPR may want to try reopening the decision to terminate CPR status by way of a motion to reopen filed with CIS. *See* 8 C.F.R. § 103.5 (an alien may request to reopen "an action" by the Service). The regulations appear to

[5] *See* Form I-751, Petition to Remove Conditions on Residence, Page 1, Part 2. Basis for Petition, requesting a waiver of joint filing and the following options: (c.) My spouse is deceased; (d.) I entered into the marriage in good faith but the marriage was terminated through divorce or annulment; (e.) I am a conditional resident spouse who entered a marriage in good faith, and during the marriage I was battered by or was the subject of extreme cruelty by my U.S. citizen or permanent resident spouse or parent; (f.) I am a conditional resident child who was battered by or subjected to extreme cruelty by my U.S. citizen or conditional resident parent(s); (g.) The termination of my status and removal from the United States would result in an extreme hardship.

[6] *See* USCIS Memorandum, "I-751 filed Prior to Termination of Marriage" (Apr. 3, 2009), posted on AILA InfoNet at Doc. No. 09072166 (July 21, 2009) (hereinafter, Neufeld Memo).

[7] *See* Neufeld Memo.

support such maneuver: Notwithstanding termination, "[d]uring the ensuing removal proceedings, the alien may submit evidence to rebut the determination of the director." 8 C.F.R. § 216.3. At their discretion, CIS may cancel their NTA and consider the divorce decree for approval of the I-751 waiver.

Filing a joint petition prior to divorce – According to the Neufeld memo, if the CPR is unable to establish eligibility for a waiver, the only other option is to file a joint petition with the spouse.[8] The CIS may not deny a joint petition solely because the spouses are separated and/or have initiated divorce or annulment proceedings. However, these actions may suggest that the CPR entered into the marriage for the sole purpose of procuring permanent resident status.[9]

If the CIS encounters a jointly-filed petition from a couple who has legally separated or in divorce proceedings, the CIS will issue an RFE with a response period of 87 days requesting evidence of divorce. Once the required information is received, the CIS will treat the matter as a waiver case. [10]

Failing to respond to the RFE or provide evidence of divorce will prompt a review of the submitted *bona fides* of the marriage. The adjudicator must then determine whether the case should be approved, denied, or referred for an in-person interview at the local Field Office.[11] If the adjudicator determines there is no sufficient evidence of a good-faith marriage, then the couple is scheduled for an in-person interview with a notation on their file that they are separated or have initiated divorce proceedings.[12] The memorandum states that the condition on residence will be removed *if both* co-petitioners appear for an interview and the officer determines that the four required facts are true.[13]

All in all, CIS is instructed to approve a jointly-filed petition in cases involving pending divorce or legal separation if:

1. CPR and spouse file a joint petition within 90 days;

2. CPR and spouse appear for an interview; and

3. CIS determines that the marriage was legal where it took place, has not been terminated, was not entered into for procuring permanent resident status and no fee was paid for the filing of the underlying immigrant petition (other than to an attorney).

***Practice pointer*:** If the CPR does not obtain a divorce decree during the RFE stage, the practitioner should direct the adjudicator to the Neufeld memo which indicates that the petition is approvable notwithstanding lack of a divorce so long as there is evidence of a bona fide marriage.

***Practice pointer*:** The interview requirement for co-petitioners may potentially present some problems to the CPR if the USC spouse is unwilling or fails to attend. According to the Neufeld memo, a joint petition may not be approved if one of the petitioners fails to appear at the interview. But this seemingly applies only to joint petitions, not necessarily to waiver requests. If CPR acquires a divorce decree prior to the interview, counsel should request that the joint petition be treated as a waiver thereby eliminating the interview requirement. Alternatively, nothing in the memo prohibits counsel from requesting the petition to be treated as a waiver and rescheduling the interview within a reasonable time in which counsel believes a divorce decree will be available. If so, counsel should provide a letter from the divorce attorney or court documents indicating when a divorce decree should be expected.

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[8] *See* INA §216(c)(3)(A) and (B).

[9] *See* Neufeld Memo.

[10] *Id.*

[11] *Id.*

[12] This statement seems to be referring about an "in-person interview" only when the CR fails to respond to the RFE

[13] The Neufeld Memo seems to be referring to INA §216(d)(1)(A), that the "[1] qualifying marriage was entered into in accordance with the laws of the place where the marriage took place, [2] has not been judicially annulled or terminated, other than through the death of a spouse, and [3] was not entered into for the purpose of procuring an alien's admission as an immigrant; and [4] no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a [I-130 or I-129F] petition with respect to the alien spouse or alien son or daughter."

Filing a joint petition prior to reported marital problems

What if your client reports marital problems to you after the joint petition is filed? First, marital problems alone are insufficient to justify the treatment received on cases involving legal separation or pending divorce proceedings. If the CPR or spouse expresses an intention to divorce, it is incumbent on counsel to explain the different processes outlined in the Neufeld memo. The parties may decide to suspend or postpone divorce proceedings in view of the complications involved. Or in cases where CPR expiration is quite some time away, the couple may decide to facilitate divorce to allow the CPR to execute her waiver request upon divorce.

In cases where one party may not be as amicable or cooperative with the other, it might be necessary to switch from joint petition to a waiver request depending on the situation.[14]

***Practice pointer*:** Timing is everything. Clients should be well informed about the varying processes under the Neufeld memo in view of pending or imminent divorce litigation.

***Practice pointer*:** Above all, it is important to include extensive documentation demonstrating the *bona fides* of the marriage. Even where marital problems arise, the main issue is whether the marriage was *initially* entered into in good faith.

***Practice pointer*:** In the age of "what you put online stays online," practitioners should remind their clients to be aware of social media networking sites such as Facebook, MySpace, or Twitter. Clients' postings are within reach of the adjudicating officers who may be searching the net to corroborate the petitioners' *bona fide* marriage.

FAILURE TO TIMELY FILE I-751 LEADS TO REMOVAL PROCEEDINGS

Failure to file results in an automatic termination of conditional status – Failure to properly file I-751 petition during the 90-day period preceding the second anniversary of the alien's acquisition of resident status will result in automatic termination of the alien's conditional resident status.[15] Similarly, conditional permanent residence terminates if the petitioners fail to appear for an interview.[16] Before issuing the NTA, however, the CIS must provide the alien with an opportunity to review and rebut any derogatory evidence.[17] While it is safe to assume that CIS will eventually initiate removal proceedings against alien,[18] it will generally "shelve" the case for 90 days before issuing an NTA.[19]

Untimely petitions may be accepted after the required time period if the CPR demonstrates to the satisfaction of CIS, in writing, that there was "good cause" for the failure to timely file.[20] According to the VSC, late-filed petitions should have "sufficient" reason or explanation to be considered.[21] After revocation of the CPR status or denial of the I-751 application, the alien will be put in removal proceedings and will have the burden to prove compliance with filing requirements.[22]

***Practice pointer*:** Keep in mind that termination of CPR status triggers unlawful presence, although it could be argued that LPR status does not terminate until an immigration judge issues an order (see below). Therefore, practitioners should carefully explain the consequences of sections 212(a)(9)(B)(i)(I) and (II) of the INA to clients who wish to travel outside of the United States.

***Practice pointer*:** Under section 245(d) of the INA, an alien who became a CPR is not eligible to adjust status under 245(a) of the INA.[23] However,

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[14] *See* notes from the VSC Stakeholders Meeting. According the VSC officials, 18 to 25 percent of I-751 cases are referred to District Office for interview. Similarly, California Service Center AILA Liaison was advised that for petitions pending at the CSC, the applicant may send a notice of change in the relationship or request for a joint petition to be considered as a waiver, posted on AILA InfoNet at Doc. No. 09092883 (Sep. 28, 2009).

[15] INA §216(c)(2); 8 C.F.R. §216.4(a)(6).

[16] 8 C.F.R. §216.4(b)(3). Aliens may seek review of the decision to terminate their status by USCIS in removal proceedings, but the burden shall be on them to establish compliance with the interview requirements.

[17] 8 C.F.R. §216.3(a).

[18] 8 C.F.R. §216.4(a)(6).

[19] *See* VSC Stakeholders Meeting.

[20] 8 C.F.R. §216.4(a)(6).

[21] *See* VSC Stakeholders Meeting.

[22] INA §216(c)(2)(B); 8 C.F.R. §216.4(a)(6).

[23] 8 C.F.R. §245.1(c)(5).

the BIA adopted a narrow interpretation of the regulations, which seemingly allows adjustment of status under section 245(a) of an alien whose CPR status was terminated by CIS.[24]

Removal Proceedings

According to the regulations, if the joint petition is filed prior to jurisdiction vesting with the immigration judge, the CIS may excuse the delay, restore lawful residence to the alien, and cancel any outstanding Notice to Appear.[25] If, on the other hand, the petition is not filed until after the jurisdiction had vested with the immigration court, the immigration judge may terminate the matter upon joint motion to terminate by the alien and U.S. Immigration and Customs Enforcement.[26]

The BIA has held that an immigration judge cannot consider a joint petition or a waiver petition in the first instance.[27] If a waiver application was filed with CIS prior to jurisdiction vesting with the immigration court, removal proceedings should be continued to allow adjudication of the petition by CIS.[28]

In the event that the CIS denies the I-751 petition, the immigration judge can review the denial *de novo*, without regard to whether the petition was filed before or after the commencement of removal proceedings.[29] The CIS bears the burden of proof to establish, by preponderance of evidence, that the facts of the underlying petition are not true with respect to the qualifying marriage.[30] Moreover, the immigration judge is precluded from review of the denied petition if the parties had filed jointly but have divorced prior to the removal hearing.[31]

Finally, in cases where circumstances underlying the waiver have changed, the immigration judge may not consider an alternate ground for a waiver that was not raised before the CIS in the first place.[32] Because aliens in removal proceedings may apply for a waiver only until there is a final removal order, the immigration judge should continue the proceedings to allow the CPR to submit a waiver with the CIS.[33]

***Practice pointer*:** Although CPR status may be automatically terminated for failure to file the I-751 petition, the BIA had recognize the principle that an alien's permanent resident status does not cease until the entry of a final administrative order removing the alien from the U.S.[34]

SPECIAL ISSUES

1. Applying for naturalization under §319(b) of the INA prior to adjudication of I-751 petition.

Recent USCIS memorandum modified the basis under which an alien who was admitted as a lawful permanent resident on a conditional basis ("conditional resident" or "CR") pursuant to §216 of the INA may be naturalized under §319(b) of the Act prior to the removal of the conditions.[35]

In 1952, the Congress enacted §319(b) to protect interests of spouses of certain U.S. citizens who are regularly employed abroad such as

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[24] *See Matter of Stockwell*, 20 I&N Dec. 309 (BIA 1991); *also see* Adjudicator's Field Manual, §25.1(d).

[25] 8 C.F.R. §216.4(a)(6).

[26] *Id*.

[27] *Matter of Stowers*, 22 I&N Dec. 605, Int. Dec. 3383 (BIA 1999).

[28] *Matter of Lemhammad*, 20 I&N Dec. 316, at 322-323 (BIA 1991).

[29] *Stowers* at 13.

[30] INA §216(c)(3)(D); *see also In re Kyomuhendo* (A95208078), BIA slip opinion (July 28, 2008) (BIA must defer to the immigration judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. It will review questions of law *de novo*. In it, the BIA held that the DHS did not meet their burden of proving beyond a preponderance of the evidence that the facts and information set forth by the petitioners are not true or that the petition was properly denied).

[31] *See Matter of Tee*, 20 I&N Dec. 949 (BIA 1995).

[32] *See Matter of Anderson*, 20 I&N Dec. 888 (BIA 1994); *see also Matter of Gawaran*, 20 I&N Dec. 938 (BIA 1995).

[33] 8 C.F.R. §216.5(a)(2).

[34] *Matter of Stowers*, 22 I&N Dec. 605, Int. Dec. 3383 (BIA 1999), referring *Matter of Lok*, 18 I&N Dec. 101, 105 (BIA 1981) (discussing termination of lawful permanent residence within the meaning of section 101(a)(20) of the INA).

[35] *See* USCIS Memorandum, "Conditional Permanent Residents and Naturalization under Section 319(b) of the Act" (Aug. 4, 2009), posted on AILA InfoNet at Doc. No. 090080761 (Aug. 07, 2009) (hereinafter Neufeld N-400 Memo).

spouses of U.S. Armed Forces personnel or other U.S. Government employees stationed abroad. These spouses were allowed to naturalize without having to demonstrate any specific period of residence or physical presence in the U.S.[36]

The Neufeld Memo on Conditional Permanent Residents and Naturalization under §319(b) of the INA allows CPRs who were admitted pursuant to §216 to seek naturalization under §319(b), although they still must comply with the requirements of §216. Additionally, such CPRs who naturalize under §319(b) prior to the required 90-day filing of §216 are not required to file the I-751 petition for purposes of §216. Nevertheless, they must establish that the qualifying marriage met the four requirements of §216(d)(1)(A) of the INA. The memo amends the Adjudicator's Field Manual and outlines procedure for dealing with specific fact patterns involving filing the I-751 petition and N-400 application.

2. Filing from abroad or while stationed abroad pursuant to government or military orders.

The law allows for the I-751 petition to be filed regardless whether the CR is physically present in the United States.[37] However, when the CR is outside the U.S. at the time of the filing, he or she must return along with the U.S. citizen spouse and any dependent children in order to comply with the interview requirements.[38]

The current USCIS practice for petitioners who indicated a foreign address and who are currently living abroad is to hold the I-751 petitions in abeyance. These petitioners will not be scheduled for their biometrics appointment or have the petition adjudicated until the married couple demonstrates the intent to return permanently to the United States.

The USCIS implemented policy guidance to instruct the Service Centers to continue processing petitions where the CRs are temporarily abroad pursuant to government or military orders with an APO/FPO mailing address on the form. All other CRs who are temporarily overseas but not pursuant to government or military orders or, where the CR is abroad pursuant to government or military orders but does not provide an APO/FPO mailing address, are put on an "overseas hold."[39] Finally, I-751 petitions that indicate that the CR is temporarily overseas, but not pursuant to government or military orders, are reviewed for information concerning the reason they are overseas and when they intend to return to the U.S.[40]

***Practice pointer*:** Practitioners should advise their CPR clients about the need to file for a re-entry permit if the length of their trip will be regarded by the USCIS as abandonment of permanent residence.

3. Dependent Beneficiaries

Verification of Inclusion – Dependent children of conditional residents who acquired CR status concurrently with the parent may be included in the joint petition.[42] If the child's conditional residence was acquired on the same date or within 90 days of the parent's acquisition of conditional residence, a child shall be deemed to have acquired the CR status concurrently with the parent.[43] Thus, if the dependent child conditional resident is eligible to be listed as a dependent child in the I-751 petition, the child should receive the "Verification of Inclusion of a Dependent in Filing of Form I-751" receipt from the Service Center. Moreover, there is no bar on filing I-751 petition for each individual permanent resident, and such a filing would ensure that each CR receives an I-751 receipt.[44]

Misclassifying Alien to be a Conditional resident – While the IMFA of 1986 covered spouses, children or spouses, and fiancé(e)s, it did not include children where alien parent did not

[36] *See* Neufeld N-400 Memo.

[37] 8 C.F.R. §216.4(a)(4).

[38] 8 C.F.R. §216.4(a)(4).

[39] Minutes from a USCIS-AILA Meeting on March 19, 2009, posted on AILA InfoNet at Doc. No. 09031920 (March 19, 2009).

[40] *Id*.

[42] 8 C.F.R. §216.4(a)(2).

[43] 8 C.F.R. §216.4(a)(2).

[44] AILA/Vermont Service Center Liaison Committee Practice Pointer: I-751 Receipts for Conditional Resident Dependents, posted on AILA InfoNet at Doc. No. 08121660 (Dec. 16, 2008).

obtain residency through a qualifying marriage under §216 of the Act. Following several cases of misclassification of certain dependent children of alien and U.S. citizen parents, then-INS clarified this point in a legal opinion.[45] Specifically, the issues involved the IMFA's definitions of "alien spouse" and "alien son or daughter."[46]

The Cook Memo states that conditions of §216 apply only to aliens who qualify as an "alien spouse" or "alien son or daughter" defined in §216(g)(2). Consider the following fact pattern.

> ***Example***: An alien who adjusted her status pursuant to the diversity visa lottery selection marries a U.S. citizen. After their marriage, the U.S. citizen husband files a family immigrant petition on behalf of his wife's biological daughter (or his step-daughter) Klaudyna, who was 6 years old when the couple married. Following the grant of an immigrant visa abroad, Klaudyna enters the U.S., and is given the CR-2 or dependent of a conditional resident classification. Moreover, the USCIS takes the position that, under §216 of the INA, Klaudyna was properly classified as a dependent conditional resident, and is therefore, subject to I-751 filing.

The Cook Memo outlined two contradictory possibilities. The first is that an alien spouse to the marriage does not have to obtain an immigration benefit based on the marriage for that partner's biological child to be classified as an "alien son or daughter." The second is that alien may be classified as an "alien son or daughter," and thus as a conditional resident, only if his or her parent qualifies as an "alien spouse." The first reading focuses on the marriage itself, not on whether the alien partner to the marriage obtained an immigration benefit based on it, and results in an "unnatural reading" of the statute.[47]

The second reading, by contrast, considers the entire §216(g)(1) in attempting to construe §216(g)(3). Under this interpretation, a qualifying marriage is a marriage on the basis of which an alien who is party to the marriage obtains permanent residence. The status of an alien son or daughter, therefore, is a derivative status that exists only when the alien who is a party to the marriage qualifies as an alien spouse. The ambiguity is largely caused by the term "qualifying marriage" in §216(g)(3). Thus, according to then-INS legal counsel, the only reasonable reading of §216(g) is that an alien qualifies as an alien son or daughter only if his or her alien parent qualifies as an alien spouse, as defined in §216(g)(1).[48]

Based on the above analysis, because Klaudyna's mother in our example above obtained permanent residence on her own, and independently of marriage to her U.S. citizen husband, she does not qualify as an "alien spouse" under §216. Therefore, her daughter Klaudyna is not an "alien daughter" and her permanent residence should not be subject to §216 of the INA. She should have been originally admitted into the United States as an immediate relative.

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[45] Legal Opinion, Cook, General Counsel (Jan. 12, 1990), *reprinted in* 67 No. 6 *Interpreter Releases* 159, 166–68 (Feb. 5, 1990) (hereinafter Cook Memo).

[46] *See* Cook memo. It also considered the availability of waivers of the join filing requirement for hardship or good cause.

[47] *Id*.

[48] *Id*.