

Practice Pointer: Filing an I-130 Petition Abroad for a Petitioner in the U.S. Military

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AILA's International Operations Committee provides guidance on the circumstances under which an individual can file an I-130 application abroad for a petitioner in the U.S. military.

The USCIS International Operations Division has recently granted blanket authorization for consular posts to accept and adjudicate Forms I-130, Petition for Alien Relative, from certain active duty U.S. military personnel (see 9 FAM 504.2-4(A)(4), FAM updated 15 September 2015).

Active military petitioners can continue to file I-130 petitions with local international USCIS offices if they reside in the same country as that office. However, the Department of State will now accept and adjudicate an I-130 petition filed by an active-duty member of the U.S. military stationed overseas in a country without a USCIS presence, without having to demonstrate exceptional circumstances. In such cases, the petitioner does not need to seek advance permission of USCIS before filing the petition. The petitioner must be considered on "active duty" and must work on a military base. As such, individuals working on temporary orders or working at U.S. embassies or at civilian institutions will not qualify for the blanket authorization.

Consular officers at posts in countries without a local USCIS office are only authorized to adjudicate "clearly approvable" cases (see 9 FAM 504.2-4(a)). If it is determined that the petition is not clearly approvable, the consular officer, who lacks the authority to deny the petition, will forward it and the supporting documents to the appropriate USCIS office with jurisdiction over that location (See 9 FAM 504.2-4(B)(1)(d)). Further, consular officers may only adjudicate petitions if the petitioner and the beneficiary meet the specific physical presence and residence requirements (See 9 FAM 504.2-4(B)(1)).

In conclusion, active-duty members of the U.S. Armed Forces who reside abroad in a country where there is no USCIS international field office, such as Japan, are now able to submit petitions with the local embassy or consulate without having to demonstrate exceptional circumstances. The immigrant visa is then consular processed through the Department of State, thus bypassing a USCIS Service Center and the National Visa Center, and potentially saving significant time. Therefore, the new blanket authority afforded to

local consular officers will amount to a tangible benefit for certain U.S. military personnel submitting I-130 petitions on behalf of their immediate relatives.

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