Requirements to Process Relative Petition

By Reuben S. Seguritan

Getting a green card through a relative is a two-step process. The first step is the filing of a petition by the U.S. relative. This petition is filed by completing form I-130 and filing it at the INS office. The INS will verify if the family relationship upon which the petition is based really exists. When the INS approves the petition, the beneficiary will then file his application for a green card. This is known as adjustment of status if he is in the U.S. and he meets all the requirements. If a visa number is currently available, simultaneous filing of the relative petition and the adjustment of status application is allowed.

If the beneficiary is outside the U.S. or if he does not meet the requirements for adjustment of status, he will have to file for immigrant visa at the U.S. Consulate of his country of residence or last residence.

There is presently a huge backlog for relative petitions other than those filed by immediate relatives. For spouses and minor, unmarried children of permanent residents, the priority date currently being processed is March 22, 1992 which would translate to a waiting time of approximately three to four years.   In the case of brothers and sisters of U.S. citizens, the waiting time is decades.

When filing a petition for a relative, the petitioner must be able to provide evidence showing that he is eligible to act as sponsor either as U.S. Citizen or Green Card Holder. This can be accomplished by presenting a Birth Certificate, Naturalization Certificate, or a valid U.S. passport with the petitioner's photograph. Permanent Resident Aliens may present an Alien Registration Card or other evidence of lawful permanent resident status.

The petitioner must also present evidence to substantiate the relationship being claimed. For example:

1.   A petition based on marriage would require a Marriage certificate, a Divorce decree or death certificate of former spouse if either was previously married, and in some cases, proof that the marriage is bona fide. If a widow/widower of a U.S. citizen is filing the petition, the Death Certificate of the U.S. citizen spouse must be presented together with the above requirements.

2.   A natural mother may petition her child whether born in or out of wedlock. The documents needed are the child's birth certificate which names her as the mother. If she or the child has a change of name, this must be substantiated by presenting the Marriage Certificate or change of name decree.

3.   A father petitioning a legitimate child, should submit the child's birth certificate preferably naming both parents. The Marriage certificate of parents, and proof of termination of any and all previous marriages of both mother and father if applicable must also be presented.

4.   Illegitimate children could be petitioned by the father. In the absence of a Birth Certificate naming the petitioner as the father, a blood test, if available, will help prove the child's paternity. To further strengthen the petition, the father could show that he has been supporting the child financially or that the child actually lives with him.

5. A stepparent could petition for stepchildren. To do this, the petitioner must show that he or she is married to the child's natural parent before the child's 18th birthday by providing a Marriage Certificate. If either parent was previously married, a divorce decree or death certificate of the former spouse must be presented. The Birth Certificate indicating the child's natural parents, as well as proof of any change in the beneficiary's last name if applicable, must also be presented.

6. Children who are adopted before their 16th birthday could be petitioned so long as the child lived with and in the legal custody of the petitioner for at least two years prior to the filing of the visa petition.

7. Petitions for siblings should be accompanied by Birth Certificates indicating that the siblings have common parents. Marriage certificates showing any change in surnames must also be presented.