

TABLE OF CHANGES – INSTRUCTIONS

FORM I-360

JUNE 19, 2009

LOCATION	CURRENT VERSION	PROPOSED VERSION
<p>Page 1</p> <p>What Is the Purpose of This Form?</p>	<p>This petition is used to classify an alien as:</p> <p>2. Widow or Widower;</p>	<p>This petition is used to classify an alien as:</p> <p>2. A Widow or Widower (based on a marriage of at least 2 years duration);</p> <p>...</p> <p>This petition is also used to request deferred action by surviving spouses of U.S. citizens who have died prior to 2 years of marriage.</p> <p>For purposes of deferred action requests under this program, a surviving spouse is defined as an alien spouse of a U.S. citizen who died prior to 2 years of marriage and who is currently in the United States and who has not remarried since the death of the U.S. citizen spouse.</p> <p>The surviving spouse may also include his or her qualifying children who are currently in the United States on this request for deferred action by specifically naming them in Part 9 of Form I-360.</p>
<p>Page 9</p> <p>(PLACE THIS NEW CATEGORY AFTER THE HEADING : Public Service Information)</p>		<p>Surviving Spouses of Deceased U.S. Citizens Who Died Before the Second Anniversary Of the Marriage (And the Surviving Spouse’s Qualifying Children)</p> <p>You may apply for deferred action if you:</p> <p>1. Are the surviving spouse of a U.S. citizen;</p> <p>2. Were married to (and not legally divorced or legally separated from) that U.S. citizen at the time of his/her death;</p> <p>3. Are presently residing in the United States;</p>

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		<p>4A. Understand that for the purposes of this program, Form I-360 is being used as a means to determine your eligibility for deferred action ONLY; and</p> <p>B. Understand that the grant of deferred action as requested on your Form I-360 does not make you a special immigrant or classify you as an immigrant for purposes of establishing eligibility for an immigrant visa or adjustment of status to permanent resident in the United States and does not mean that you are eligible to self-petition as a widow/widower or special immigrant;</p> <p>5. May include your children who are presently residing in the United States in this request for deferred action by listing them in Part 9, if they meet the following definition of qualifying children:</p> <p>For the purposes of a petition for deferred action as a surviving spouse of a deceased U.S. citizen, who died before the second anniversary of the marriage and his or her qualifying children, the term “<i>qualifying children</i>” is defined as follows:</p> <p>A. Any children of the surviving alien spouse of the deceased U.S. citizen who are:</p> <ul style="list-style-type: none">i. Under the age of 21 years at the time of the filing of the request for deferred action, or under the age of 21 years at the time any immediate relative petition was filed on their behalf by the deceased U.S. citizen spouse;ii. Unmarried; andiii. Presently residing in the United States. <p>B. Qualifying children do not include the</p>
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		<p>following persons:</p> <ul style="list-style-type: none">i. Children born in the United States;ii. Children who are the natural or lawfully adopted children or sons and daughters of the deceased U.S. citizen, unless they are also the stepchildren of the surviving alien spouse by virtue of the marriage to the U.S. citizen having taken place before the children's 18th birthdays;iii. Married sons or daughters of the surviving alien spouse;iv. The sons or daughters of the surviving alien spouse who are outside the United States at the time that the deferred action request is filed; orv. Sons or daughters of the surviving alien spouse who have reached the age of 21 years at the time that the request for deferred action was filed, unless Form I-130 was filed on their behalf as immediate relative children before their 21st birthdays. <p>The following circumstances will make you ineligible for deferred action under this program:</p> <ul style="list-style-type: none">A. A divorce legally terminating the spousal relationship between you and the now deceased U.S. citizen;B. You were married to another person at the time of your qualifying U.S. citizen spouse's death;C. You remarried after the death of the U.S. citizen spouse regardless of whether you are currently divorced from that person or that person has also died; or
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		<p>D. You were legally separated from your U.S. citizen spouse at the time of his or her death;</p> <p>6A. The deferred action applicant must complete Parts 1, 3, 4, 7, 9, 10, and 11 of Form I-360;</p> <p>B. Check “m” in Part 2 of Form I-360 and write in the appropriate language specified within these instructions. (Note: Your failure to check “m” and write in the appropriate language may result in a denial of the petition.);</p> <p>7. Submit the appropriate fee with your Form I-360; and</p> <p>8. Submit your deferred action request (Form I-360 with appropriate fee) with the supporting documents listed under “Widow/Widower of a U.S. Citizen” on Pages 1-2 of these instructions.</p>
<p>Page 9</p> <p>General Instructions</p>	<p>Step 1. Fill Out Form I-360</p> <p>...</p>	<p>5. If you are the surviving alien spouse of a deceased U.S. citizen who died before the second anniversary of the marriage, you must check “m” in Part 2 of Form I-360 and write in the space provided: “Deferred Action: Surviving spouse of a U.S. citizen, married less than 2 years.”</p> <p>NOTE: You cannot file a concurrent Form I-485 with Form I-360.</p>
<p>Pages 9-11</p> <p>Where to File?</p> <p>PLACE THIS NEW CATEGORY ABOVE THE HEADING THAT</p>		<p>Surviving Spouses of Deceased U.S. Citizens Who Died Before the Second Anniversary of the Marriage (And the Surviving Spouse’s Qualifying Children)</p> <p>If you are filing as a surviving spouse of a U.S. citizen who died prior to 2 years of marriage, you must file your Form I-360 with the appropriate fee and supporting documents with the Vermont Service</p>

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READS: For other categories including:		Center.
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Justification:

USCIS is revising the instructions to the Form I-360 in accordance with a recently implemented directive for the Secretary of the Department of Homeland Security. As a result of the Secretary’s directive, USCIS has established a temporary program for the surviving spouses of U.S. citizens who have died before the second anniversary of their marriage and the surviving spouse’s qualifying children. The program will afford these surviving alien spouses and their qualifying children with deferred action as a remedy to the phenomenon commonly referred to as the “widow penalty¹.” The revisions will not impact the Form I-360 but are necessary to provide applicants under this new program with instructions as to how to complete the Form I-360. The revisions also informs would be applicants under the new program as to which supporting documents they should submit, where to file their deferred action requests and explains to which category their I-360 applications are related.

¹ The “widow penalty” occurs when a U.S. citizen dies before the second anniversary of his or her marriage to an alien spouse, and before an I-130 petition has been approved on behalf of his or her surviving alien spouse, thus curtailing that surviving spouse’s ability to adjust status based on the I-130 or to self-petition as a widow(er).