

Form I-751 Extension: Public Comments and Responses

Comment Submitted by ASISTA Immigration Assistance	USCIS Response
<p>These comments will focus on three issues:</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>3 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,⁴ the waiver regulations place no limits on the inclusion of dependent children.⁵ 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</p>	<p>USCIS will not be making a revision to the form to indicate that children do not need to have been adjusted or admitted within the 90-day period after the parent’s admission or adjustment to be included on the parent’s waiver Form I-751. While the regulations specifically address the circumstances under which dependent children are to be included in their parent’s joint petition, they do not specifically address waiver petitions in this regard. Through the promulgation of the form instructions, USCIS interprets the regulations to apply to both joint and waiver petitions and permitting inclusion of dependents under all requirements outlined regarding eligibility (admitted or adjusted within 90 days after the parent’s admission/adjustment).</p> <p>USCIS will not be making further revisions to the form instructions to provide additional clarification on the evidence required in connection with a request to waive the joint filing requirement based on abuse and/or extreme cruelty. USCIS would like to point out that the form instructions being extended were already revised in the previous revision cycle to specifically state the applicant should submit “any credible evidence.” Specifically, the instructions indicate:</p> <p style="padding-left: 40px;">If you and/or your conditional permanent resident child were battered or subjected to extreme cruelty, you may file your petition with any credible evidence relevant to the requirements to remove conditions on residence.</p> <p>USCIS will not be making further revisions to the form instructions on extreme hardship. USCIS notes that the URL in question was removed from the form instructions in the previous revision cycle.</p>

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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:

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.⁶ 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 backlogs⁷ and processing times for I-751s have grown from 11.8 months in FY 2017 to 17.5 months in FY 2022,⁸ 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

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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**

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.⁹ 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.¹⁰ 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

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<p>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.”¹¹ 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.¹² For pro se applicants who may be unfamiliar with the legal concept 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.</p> <p>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</p>	
<p>Comment Submitted by Xuan Luo</p>	<p>USCIS Response</p>
<p>I have a comment regarding the mailing address on the I-751. The proposed I-751 form requires a US mailing address. Part 1 item 17 has the heading "Your U.S. Mailing Address", and the proposed instructions say, "you must provide a valid mailing address in the United States". 8 CFR 216.4(a)(4) says regarding joint filings, "A petition may be filed regardless of whether the alien is physically present in the United States." Although the propose I-751</p>	<p>While the Form I-751 can be filed while the conditional permanent resident is abroad, USCIS requires a U.S. mailing address. The Form I-551, Permanent Resident Card, is a secure document and may only be sent to a U.S. mailing address. However, FPO, APO, and DPO addresses are counted as U.S. mailing addresses.</p>

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<p>form allows the entry of a physical address that is outside the US, it requires a mailing address in the US.</p> <p>This presents a problem for applicants who are temporarily outside the US at the time of filing, and who will only return to the US after their green card expires. For entry to the US after their green card expires and while the I-751 is pending, an applicant would need to use their expired green card in combination with the I-751 receipt, which doubles as a 24-month extension letter. However, the I-751 receipt would be sent to the mailing address, which must be in the US. Thus an applicant who is outside the US at the time of filing and who remains outside the US until after their green card expires, would not be able to get the I-751 receipt while they are abroad (unless they can find someone in the US to receive it and re-mail it to them abroad), and without getting the receipt abroad, it is difficult for them to return to the US after their green card expires.</p> <p>To solve this problem, I propose that the form allow the applicant to enter a foreign mailing address, or alternately, to allow the applicant to specify a foreign address to send the I-751 receipt to other than the mailing address.</p>	
<p>Comment Submitted by John Flanagan</p>	<p>USCIS Response</p>
<p>As an attorney in private practice, I have done numerous I-751's and I can say the estimated burden for filling out the form and gathering the relevant documents (4.57 hours) is wildly unrealistic and should be doubled or tripled. Just getting passport-style color photographs can take an hour. The evidence of relationship may reside at their respective institutions (banks, mortgage companies, etc.) and pulling together affidavits is generally very time-consuming. USCIS has provided no evidence of its methodology in this or prior estimates of burden for information collection.</p> <p>The I-751 form has also experienced substantial bloat in recent years. The 08/18/2009 version of the form was 3 pages; the form is now 11 pages. USCIS has not provided any justification for why it cannot</p>	<p>In estimating the average time burden that an information collection imposes on respondents, USCIS accounts for activities including the time for reviewing instructions, gathering the required documentation and information, completing the petition, preparing statements, attaching necessary documentation, and submitting the petition. USCIS acknowledges that some respondents may take less or more time than that estimated due to a variety of factors including but not limited to ease of accessing evidence, providing different documents, etc. For example, Passport-style photographs are only required in a small number of cases where the conditional permanent resident is residing abroad pursuant to active-duty U.S. military or U.S. government orders. USCIS will reevaluate the time burden during a future update.</p> <p>USCIS has determined that the fields currently on the Form I-751 are necessary for adjudication of the</p>

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<p>return to the shorter form. Large forms with questions that are duplicative of information already in the A-file or that are irrelevant to the adjudication of an I-751 (e.g. addresses of children) should be slimmed down so as not to create an unnecessary barrier for routine applicants.</p>	<p>benefits that are requested on that form.</p>
<p>Comment Submitted by John Flanagan</p>	<p>USCIS Response</p>
<p>I forgot to mention in my previous comment: criminal history is generally irrelevant to an I-751 and should not be requested in the first instance. If criminal history turns up on biometrics and the officer feels criminal history is relevant to that case, they should issue an RFE. It's a waste of time and generally increases the collection burden, e.g., for joint petitioners where the conditional resident has a minor offense that would not even make them removable.</p>	<p>USCIS will retain the question about criminal history as USCIS has determined that it is necessary for adjudication of the benefits that are requested on that form. As noted in the question, the conditional permanent resident is not required to answer “yes” if the arrest, charge or fine is associated with a violation of a traffic regulation.</p>
<p>Unrelated Comment Submitted by Jean Publice</p>	
<p>mayorkas is attempting to valdalize the laws of hte usa. a sneaking lawbreaking leaching foreign immigrant has certain requirements they shoudl be following. mayorkas is attempting to violate the laws passed by congress with this change in the 751 form. no illegal lawbreaking lying leaching foreigne rshould be able to sneak across our southern or northern border and violate our laws to colelct benefits. that is what the lousy mayorkas is attempting to do here. it is a criminal violation and he is working against the laws of gthe usa so he is a traitor and a criminal and mayorkas should be fired from his job for this kind of anti-american action. it is totally an anti american action. he is a criminal for suggesting this outlandish, cruel attacko n american citizens. it is a creuel, evil, mercenary attack for foreigners to gain advantages fromt jhe tax dollars paid by american citizens. it is also a cruel attack from all the immigrants who did it ht elegal way. this mayhorks is fully unfit for the job he has been appointed to. he shoudl go back where he came from too. imo.</p>	

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