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Comment

I have two comments regarding the case of a child filing I-751 separately from the parent.

First, in Part 7 of the proposed I-751 form, there is a note that says, "NOTE: If you selected Item Number 1.a. or 1.b. in Part 2., your spouse or stepparent must also read and sign the petition in Part 8.", whereas the same note in Part 7 of the current I-751 form (edition 04/01/24) says, "NOTE: If you selected Box 1.a. in Part 3., your spouse must also read and sign the petition in Part 8." So it seems that Item 1.b was added.

The requirement for the stepparent to sign in the case of a conditional permanent resident child filing I-751 separately (i.e. Item 1.b in Part 2), might prevent the child from applying to remove conditions in a case where the conditional permanent resident parent is unable or unwilling to include the child in their I-751, and the stepparent refuses to sign the separate I-751 for the child. But preventing the child from applying to remove conditions in this case doesn't make sense in terms of the intent of the law, since Removal of Conditions is about ensuring the genuineness of the marriage between the conditional permanent resident parent and the stepparent, and not about ensuring a good relationship between the child and the stepparent.

Consider a case where the conditional permanent resident parent and the stepparent filed I-751 jointly, but chose not to include a conditional permanent resident child, and that joint I-751 is ultimately approved. But their conditional permanent resident child files I-751 separately, but is rejected because they couldn't get the stepparent's signature. This result serves no purpose in preventing marriage fraud, since both I-751s are predicated on the genuineness of the same marriage, so if the parent's I-751 is jointly filed and approved, then the genuineness of the marriage is already established.

In a case where an immigration petitioner refuses to file a joint I-751 for their conditional permanent resident spouse, that spouse has an alternative avenue to removing conditions, by filing for divorce and filing a waiver I-751 on the basis of divorce. However, in a case where an immigration petitioner refuses to file a joint I-751 for their conditional permanent resident stepchild, that stepchild cannot unilaterally force their

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parent to divorce, and therefore, does not have access to the divorce waiver route.

8 CFR 216.4(a)(1) mentions that a waiver should be possible in the case that the petitioner refuses to join in the spouse's I-751: "[...] or if the petitioning spouse refuses to join in the filing of the petition, the conditional permanent resident may apply for a waiver of the requirement to file the joint petition in accordance with the provisions of § 216.5 of this part." I believe this should logically include the children also, so the form should provide a way for a conditional permanent resident child to file a separate waiver I-751 if a petitioner stepparent refuses to join in the filing of the petition.

My second comment is regarding the window to file I-751 as a conditional permanent resident child filing separately from the parent. In the proposed I-751 instructions, section "When Should I File Form I-751?", under "1. Filing jointly", there is the sentence, "If you are filing this petition jointly with your stepparent, you must file it before your conditional permanent resident status expires." This sentence does not appear on the current I-751 instructions (edition 04/01/24).

However, USCIS Policy Manual, Volume 6, Part I, Chapter 3, section C-1, contains the sentence, "CPR children who must file a separate Form I-751 may do so at any time before they are subject to a final order of removal." If "separate" here is interpreted to mean a separate I-751 from the parent's I-751, it can include joint filing with a stepparent. But this statement that it can be filed at any time prior to a final order of removal, conflicts with the proposed instruction that it must be filed before the conditional permanent resident status expires. The regulation in 8 CFR 216.4(a)(2), regarding separate filing by dependent children, also does not mention that it needs to be filed in any particular period of time.

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