

Dated: July 3, 1996.

Lon Hatamiya,
Administrator.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 207 and 208

[INS No. 1639-93]

RIN 1115-AD59

Procedures for Filing a Derivative Petition (Form I-730) for a Spouse and Unmarried Children of a Refugee/Asylee

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations by providing procedures which must be followed by a refugee to bring his/her spouse and unmarried, minor child(ren) (derivatives) into the United States. This proposed rule is intended to respond to the family reunification needs of refugees by establishing an equitable and consistent following-to-join policy for refugees which parallels the current following-to-join procedures for asylees. This rule also proposes to amend asylum regulations by removing from the definition of qualifying relationship child(ren) born to or legally adopted by the principal alien and spouse after approval of the principal alien's asylum application.

DATES: Written comments must be submitted on or before September 9, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attention: Public Comment Clerk. To ensure proper handling, please reference INS No. 1639-93 on your correspondence. Comments will be available for public inspection at this location by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Ramonia Law-Hill, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:

A. Background

The United States refugee program places strong emphasis on family reunification and assigns priority for interviews to those refugee applicants who have immediate family members already in the United States. This emphasis on reunifying families also extends to those refugees who have been resettled in the United States, but who remain separated from their spouse and/or child(ren). In such cases, refugees may file to have their spouse and/or child(ren) "follow-to-join" them in the United States. The following-to-join provisions for refugees is found in section 207(c)(2) of the Immigration and Nationality Act (Act).

To apply for such benefits, refugees file Form I-730, Refugee/Asylee Relative Petition, with the designated Service office. Such designation will be through separate action in the Federal Register. Spouses and unmarried, minor children (derivatives) who follow-to-join a refugee already in this country are admitted as refugees.

B. Need for Procedural Review and Revised Regulation

Over the past year, it has become apparent that existing Service procedures regarding following-to-join benefits for refugees is inadequate and has resulted in confusion for the general public. Regulations are necessary to clarify procedures and to establish an equitable and consistent following-to-join policy for refugees which parallels that found in the current following-to-join regulations for asylees, who are also eligible to file Form I-730.

In recent months the Service has received numerous telephone inquiries from members of Congress, the general public, voluntary agencies, and attorneys representing clients concerning the application of the following-to-join provisions found in section 207(c)(2) of the Act. Of primary concern has been the Service's requirement that the refugee's relationship to the spouse and/or child predates the date on which the refugee was granted refugee status. A Service memorandum issued on January 8, 1987, defined this date as the date of tentative approval, which has been interpreted by some as being the day of the refugee's interview. That interpretation, however, has not received Servicewide acceptance.

The Service's recent initiative to combine the Form I-730 with the revised Form I-130 (Petition for Alien Relative), revealed differing practices for processing following-to-join petitions

filed by refugees and those filed by asylees. It was, therefore, determined that rather than consolidate the forms, the Service needed to review and, if necessary, revise existing policies relating to refugees and asylees.

C. Following-to-Join Issue

In the absence of a time limit on the following-to-join regulations, individuals who entered the United States as conditional entrants in the late 1970s and refugees in the early 1980s are filing Form I-730 petitions for a spouse and/or child(ren). Following-to-join benefits are available to help refugees make the difficult transition to a new life with the support of their immediate family members. Forms I-730 filed ten or more years after admission no longer serve the purpose for which they were originally intended. Instead, they deplete limited refugee admission numbers and refugee resettlement monies needed for emerging refugee populations. The proposed regulations are intended to respond more fully to the family reunification needs of refugees, while establishing specific guidelines on the following-to-join process.

Current interpretations of the following-to-join benefits for refugees have created confusion for Service officers, attorneys, refugees, and the general public. While some interpret following-to-join eligibility based on the refugee's date of admission, current practice requires the relationship to exist prior to the tentative approval date of the principal's application for refugee status. The Service determined that the current interpretation of following-to-join for refugees is too restrictive since it requires a refugee to meet a heavier burden for establishing a relationship with his/her spouse and unmarried, minor child(ren), than is required by regulation for a spouse and unmarried minor child(ren) of a citizen or lawful permanent resident of the United States. To resolve this disparity, the Service is adopting a more generous interpretation of the point at which a qualifying relationship exists for following-to-join benefits. This rule proposes that the refugee's date of admission be used to determine following-to-join eligibility. A refugee will then be able to file a separate Form I-730 for his/her spouse and/or each individual child if the relationship predates the refugee's date of admission to the United States, rather than the date of interview. The Service believes this proposal reflects the intent of Congress to reunite refugees with their families. Further, it alleviates inconsistencies in determining eligibility as is currently encountered

because of the difficulty in determining the date of tentative approval.

Additionally, the Service has found that the benefit accorded asylees regarding children is too broad in that current asylum regulations extend following-to-join benefits to children born to, or adopted by, asylees at any point after the date of their approval. As a result, this rule will amend existing asylum regulations by requiring that, for purposes of filing a Form I-730, the asylee's relationship to a child exists on the date the asylee is granted asylum.

Only refugees who entered the United States as principal aliens will be eligible to file the Form I-730 for following-to-join benefits for a spouse and/or each individual unmarried, minor child under this proposed rule. Those individuals who have derived their refugee status from the principal alien will not be eligible to file Form I-730.

Past practice has allowed for the adjudication of Form I-730 filed by a son or daughter who claimed to be single in order to qualify as a member of a parent's refugee case, and who then petitioned for his/her spouse after arrival to the United States. As the proposed rule does not permit the filing of a Form I-730 by derivatives, this type of misrepresentation should be reduced. Only the spouse and unmarried, minor child(ren) of a refugee may benefit under the proposed following-to-join regulation.

Currently there is no established time to file for and receive following-to-join benefits, either for asylees or refugees. The proposed regulation will impose a 1-year time limit from the date of the principal's admission, within which a refugee or asylee must file a separate Form I-730 for each individual qualifying family member, unless it is clearly established that compelling circumstances preclude the timely filing of the application. Refugees or asylees who have resided in the United States for more than 1 year when this regulation becomes effective will be granted 1 year from the effective date of the final regulation in which to file Form I-730 for following-to-join benefits for their spouse and unmarried, minor child(ren). The Service may, however, waive the 1-year limit when it is determined that humanitarian reasons for extending the filing period exist. The 1-year limit refers only to the filing of the Form I-730. Such limit is not imposed on family members' travel to the United States, as the Service is aware of the impediments which may delay family members' travel for years following the refugee's arrival in the United States. The filing of the Form I-730 will serve to notify the Service of

a refugee's or asylee's intent to have his/her spouse and/or child(ren) join him/her in the United States. The approval of the Form I-730 shall remain valid for the duration of the relationship to the refugee or asylee, and in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked.

The Service has established what it believes to be a reasonable time limit on the filing of the Form I-730. It is further believed that derivative benefits for spouses and children of refugees was intended for the purpose of reuniting families and to avoid lengthy delays due to visa quotas. Timely filings will expedite the reunification of refugee families and ensure the removal of spouses and children of refugees from a country subjecting them to persecution on the basis of that relationship. Thus, refugees must file following-to-join petitions within 1 year of the date of their admissions; asylees within 1 year of being granted asylum status.

While the rule proposes necessary bounds, such as adding eligibility requirements and establishing a filing period for following-to-join benefits, it is liberal in defining the point at which a qualifying relationship exists for this benefit. The proposed rule will clarify the Service's following-to-join policy for Service officers and the general public by standardizing refugee and asylee following-to-join procedures.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because it is administrative in nature and merely imposes specific regulatory restraints, which parallel procedures currently found in asylum regulations.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget and waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will enhance family well-being by establishing an equitable and consistent following-to-join policy for refugees which parallels the current following-to-join policy for asylees.

Paperwork Reduction Act

The information collection requirement (Form I-730) contained in this rule is being revised by the Immigration and Naturalization Service. In accordance with the Paperwork Reduction Act, the Service published a notice in the Federal Register on May 3, 1996, at 61 FR 19958, notifying the public of the revision to the Form I-730.

List of Subjects

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 207—ADMISSION OF REFUGEES

1. The authority citation for part 207 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1157, 1159; 8 CFR Part 2.

§ 207.1 [Amended]

2. Section 207.1 is amended by removing paragraph (e).

§§ 207.7 and 207.8 [Redesignated as § 207.8 and § 207.9]

3. Sections 207.7 and 207.8 are redesignated as § 207.8 and 207.9 respectively.

4. A new § 207.7 is added to read as follows:

§ 207.7 Derivatives of refugees.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, and/or child(ren), as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the

Act, may be granted refugee status if accompanying or following-to-join the principal alien. An accompanying derivative is a spouse or child of a refugee who is in the physical company of the principal refugee when he or she is admitted to the United States, or a spouse or child of a refugee who is admitted within 4 months of the principal refugee's admission. A following-to-join derivative, on the other hand, is a spouse or child of a refugee who seeks admission more than 4 months after the principal refugee's admission to the United States.

(b) *Ineligibility.* The following relatives of refugees are ineligible for accompanying or following-to-join benefits:

(1) A spouse or child who has previously been granted asylee or refugee status;

(2) An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years;

(3) A stepchild, if the marriage that created this relationship took place after the child became 18 years old;

(4) A husband or wife if each/both were not physically present at the marriage ceremony, and the marriage was not consummated;

(5) A husband or wife if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws;

(6) A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

(c) *Relationship.* The relationship of a spouse and child as defined in sections 101(a)(35) and 101(b)(1)(A), (B), (C), (D), or (E), respectively, of the Act, must have existed prior to the refugee's admission to the United States and must continue to exist at the time of filing for following-to-join benefits and admission to the United States. If the refugee proves that the refugee is the parent of a child who was born after the refugee's admission as a refugee, but who was *in utero* on the date of the refugee's admission as a refugee, the child shall be eligible to follow-to-join the refugee. The child's mother, if not the principal refugee shall not be eligible to follow-to-join the principal refugee unless the child's mother was the principal refugee's spouse on the date of the principal refugee's admission as a refugee.

(d) *Filing.* A refugee may request following-to-join benefits for his/her spouse and unmarried, minor child(ren) (whether the spouse and children are in or outside the United States) by filing a

separate Form I-730, Refugee/Asylee Relative Petition, for each qualifying family member with the designated Service office. Persons who derive their refugee status from the principal applicant are not eligible to file Form I-730. The Form I-730 may only be filed by the principal applicant. Family members, such as unmarried sons and daughters who derived their refugee status, are not eligible to file the Form I-730 on behalf of their spouse and child(ren). A separate Form I-730 must be filed for each qualifying family member within 1 year of the refugee's admission to the United States, unless the Service determines that the filing period should be extended for humanitarian reasons. There is, however, no time limit imposed on family members' travel to the United States once the Form I-730 for following-to-join benefits has been approved, provided approval of the Form I-730 petition has not been subsequently revoked. There is no fee for filing this petition.

(e) *Evidence.* Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for following-to-join benefits. Where possible this will consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(E), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. Although the photograph need not meet Alien Documentation Identification and Telecommunication System (ADIT) specifications, it must clearly identify the derivative. The photograph will be made part of the derivative's immigration record for identification purposes.

(f) *Approvals.* (1) *Spouse or child in the United States.* When a spouse or child of a refugee is in the United States and the Form I-730 is approved, the Service will notify the refugee of such approval on Form I-797, Notice of Action. Employment will be authorized incident to status.

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the Form I-730 is approved, the Service

will notify the refugee of such approval on Form I-797. The approved Form I-730 will be sent by the Service to the Department of State for forwarding to the American Embassy or Consulate having jurisdiction over the area in which the refugee's spouse or child is located.

(3) *Benefits.* The approval of the Form I-730 shall remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. To demonstrate employment authorization, the Service will issue a Form I-94, Arrival-Departure Record, which also reflects the derivative's current status as a refugee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I-765, Application for Employment Authorization, and a copy of the Form I-797.

(g) *Denials.* If the spouse or child of a refugee is found to be ineligible for derivative status, a written notice explaining the basis for denial shall be forwarded to the refugee. There shall be no appeal from this decision. However, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the refugee and asylee relative petition proceedings, if the refugee establishes eligibility for the following-to-join benefits contained in this part.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

5. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

6. In § 208.21, paragraphs (b), (c), (d), and (f) are revised to read as follows:

§ 208.21 Admission of asylee's spouse and children.

* * * * *

(b) *Relationship.* The relationship of spouse and child as defined in sections 101(a)(35) and 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved. If the asylee proves that the asylee is the parent of a child who was born after asylum was granted, but who was *in utero* on the date of the asylum grant, the child shall be eligible to follow-to-join the asylee. The child's mother, if not the principal asylee, shall

not be eligible to follow-to-join the principal asylee unless the child's mother was the principal asylee's spouse on the date of the principal asylee's grant as an asylee.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request following-to-join benefits for his/her spouse or child by filing for each qualifying family member a separate Form I-730, Refugee/Asylee Relative Petition, and supporting evidence, with the designated Service office, regardless of the status of that spouse or child in the United States. The Form I-730 must also be accompanied by a recent, clear non-ADIT style photograph for each derivative. The photograph will be used for identification purposes and will be placed in the derivative's immigration record. Additionally, a separate Form I-730 must be filed by the asylee for each qualifying family member within 1 year of the date in which he/she was granted asylum status, unless it is determined by the Service that this period should be extended for humanitarian reasons. Upon approval of the Form I-730, the Service will notify the asylee of such approval on Form I-797 "Notice of Action." Employment will be authorized incident to status. To demonstrate employment authorization, the Service will issue a Form I-94, Arrival-Departure Record, which also reflects the derivative's current status as an asylee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I-765, Application for Employment Authorization, and a copy of the Form I-797. The approval of the Form I-730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request following-to-join benefits for his/her spouse or child(ren) by filing a separate Form I-730 for each qualifying family member with the designated Service office, setting forth the full name, relationship, date and place of birth, and current location of each such person. The Form I-730 must be accompanied by a recent, clear non-ADIT style photograph for each

derivative. A separate Form I-730 for each qualifying family member must be filed within 1 year of the date in which the asylee was granted asylum status, unless the Service determines that the filing period should be extended for humanitarian reasons. When the Form I-730 is approved, the Service will notify the asylee of such approval on Form I-797. The approved Form I-730 shall be forwarded by the Service to Department of State for delivery to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the Form I-730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

* * * * *

(f) *Burden of proof.* To establish the claimed relationship of spouse or child as defined in sections 101(a)(35) and 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in § 204.2 (a)(1)(i)(B), (a)(1)(iii)(E), (a)(2), (d)(2) and (d)(5) of this chapter. The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

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Dated: May 7, 1996.
Doris Meissner,
Commissioner, Immigration and Naturalization Service.
[FR Doc. 96-17265 Filed 7-8-96; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96-027-1]

Change in Disease Status of the Czech Republic and Italy Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare the Czech Republic and Italy free of rinderpest and foot-and-mouth disease and to add these two countries to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed rule would remove the prohibition on the importation into the United States, from the Czech Republic and Italy, of live ruminants and fresh, chilled, and frozen meat from ruminants and would relieve restrictions on the importation of milk and milk products from ruminants from these two countries. However, because the Czech Republic and Italy are not declared to be free of certain diseases of swine, including hog cholera and swine vesicular disease, the importation from these countries of swine and fresh, chilled, and frozen meat from swine would continue to be restricted.

DATES: Consideration will be given only to comments received on or before September 9, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-027-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-027-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1228, (301) 734-3399.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.