Evidentiary Challenges to Refugee/ Asylee Relative Petitions: A Practitioner's Resource

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Introduction and Disclaimer:

This resource was created in order to assist lawful immigration practitioners with the construction of rebuttals to evidentiary requests generated by USCIS in connection with Refugee/Asylee Family Reunification Petitions (I-730s). This resource is intended to 1) help practitioners identify applicable statutes and regulations, and 2) to apply those statutes and regulations in fact-specific situations in order to promote family reunification. This resource is not intended to help individuals apply for immigration benefits pro se, nor does it intend to provide a comprehensive response to any individual evidentiary request. Only licensed attorneys and individuals who have been individually accredited by the Board of Immigration Appeals should refer to this resource.

How to Use This Resource:

Use this resource to identify applicable federal statutes, regulations and case law that will assist you in Motioning to Reopen a denied I-730, or in rebutting a Request For Evidence (RFE), Notice of Intent to Deny (NOID), or Notice of Intent to Revoke (NOIR), issued by USCIS in connection with a pending I-730 petition. Once you have identified the evidentiary issue that is being contested by USCIS, look it up on the "Glossary of Evidentiary Issues" on the next page. Refer to the page of this resource where that specific evidentiary issue is addressed. The pertinent section of this document will cite to applicable sections of the INA and 8 CFR to help you construct your rebuttal, as well as provide cites to existing case law concerning the specific evidentiary issue. Finally, you will be given a case-specific example of an RFE that addresses the evidentiary issue in question, as well as a model rebuttal. Model rebuttals in this resource should **NEVER** be copied verbatim for the purposes of rebutting an RFE or other evidentiary request on behalf of one of your clients since they are *case specific*.

Glossary of Evidentiary Issues:

Relevant Case Studies

Summary of Evidentiary Issues and Applicable Laws:

Case Numbers will be listed under all pertinent issues and may be repeated.

All statutes will be listed under all pertinent issues and may be repeated.

a) Secondary Documentation/ Lack of civil issued documentation: Many refugee/asylee petitioners are unable to obtain primary documentation in evidence of their relationship to a beneficiary—i.e., birth certificate, marriage certificate, etc. If USCIS requests primary documentation and your client is unable to obtain it, you can argue that secondary documentation is sufficient. In arguing the sufficiency of secondary documentation—including affidavits—you will also want to document any attempts that your client has made to obtain primary documentation. 9 FAM Appendix C indicates what type of documentation is required for U.S. visa reciprocity, and in for some countries, it will indicate that documentation is unavailable. Where Appendix C states that primary documentation is unavailable, there is a clear mandate for USCIS to accept secondary documentation such as affidavits (See 8 §CFR 204.1(f)-(g) below). Even where Appendix C states that primary documentation is available in your client's country of origin you have a strong argument for the sufficiency of secondary documentation. In 8 CFR §207.7(e), it states that evidence to prove a petitionable I-730 relationship will be the same type of documentation listed for I-130 petitioners, ***where possible***. This qualifying statement, "where possible," opens the door for arguing the sufficiency of secondary documentation any time that it's not possible to get primary documentation.

1. **Pertinent case numbers:**
    i. Case 12—Civil-issued documentation was requested but only affidavits were submitted in evidence of the petitionable relationship. FAM confirmed unavailability of documentation in Somalia.
    ii. Case 9—Civil-issued documentation was not available from Liberia as confirmed by the FAM.
2. **Pertinent statutes:**
    i. 8 §CFR 204.1(f)(1): when it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM)."
    i. 8 CFR §204.1(g)(2) Secondary evidence. If primary evidence is unavailable, the petitioner must present secondary evidence. Any evidence submitted as secondary evidence will be evaluated for authenticity and credibility. Secondary evidence may include, but is not limited to, one or more of the following documents: (i) A baptismal certificate with the seal of the church, showing the date and place of birth in the United States and the date of baptism; (ii)

Affidavits sworn to by persons who were living at the time and who have personal knowledge of the event to which they attest. The affidavits must contain the affiant's full name and address, date and place of birth, relationship to the parties, if any, and complete details concerning how the affiant acquired knowledge of the event; (iii) Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s); (iv) Census records showing the name, place of birth, and date of birth or age of the petitioner;

ii. 9 FAM Appendix C: Visa Reciprocity by country available at: http://travel.state.gov/visa/fees/fees_3272.html

iii. 8 CFR §103.2(b)(2)(ii), states in pertinent part: Demonstrating that a record is not available . Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. **However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist.** An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

iv. 8 CFR §207.7(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 accompanying or following-to-join benefits. Where possible this will consist of the documents specified in 8 CFR § 204.2(a(1)(i)(B) , (a)(1)(iii)(B) , (a)(2) , (d)(2) , and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.

b) <u>Illegitimacy of children (born out of wedlock):</u> Illegitimate children can always benefit from an I-730 filed by their mother, but they can only benefit from an I-730 filed by their father if the father can prove the existence of a parent/child relationship prior to the child's 21st birthday. In practice, USCIS doesn't always require proof of the parent/child relationship in cases where a father is filing for an illegitimate child, but if you do get an RFE requesting proof of the parent/child relationship, there are a couple things to keep in mind. First, you can use secondary documentation to prove the parent/child relationship. Second, don't be so sure that the child is illegitimate—just because a child is born out of wedlock doesn't mean he's illegitimate. Many countries have legitimation statutes that provide that an out-of-wedlock child is automatically legitimated when the father acknowledges paternity. This can happen through a simple act such as the father acknowledging paternity on the child's birth certificate. Always double check the laws of the country where the child was born since you may be able to argue that proof of parent/child relationship is unnecessary in cases where the child has already been legitimated.

1. **See also:**
    i. (j) Parent/child relationship
2. **Pertinent case numbers:**
    i. Case 3;
3. **Pertinent statutes:**
    i. A legitimate child is defined in INA § 101(b)(1)(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;
    ii. An illegitimate child is defined at INA § 101(b)(1)(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;
    iii. 8 CFR § 204.2(d)(2)(ii) <u>Primary evidence for a legitimated child or son or daughter.</u> A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the

legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the beneficiary's birth certificate and the parent's marriage certificate or other evidence of legitimation issued by civil authorities.

c) **Late-issued civil documentation:** USCIS often takes issue with so called "late-issued documentation," that is issued long after the occurrence of the event it intends to prove. The Service contends that this documentation is less persuasive than documentation issued contemporaneously with the event—i.e., the birth, marriage, death, etc. You can essentially treat this type of RFE the same as you would treat one requesting primary documentation that is unavailable to your client. (See item (a) in the glossary, above.) If the RFE indicates that late-issued civil documentation is insufficient, make sure to refer to Appendix C of the FAM to see if civil documentation is listed as available for that particular country. If the FAM cites unavailability, then you can argue using secondary evidence and affidavits. It is also possible that the FAM says documents are available in certain countries, but you may argue that certain regions in that country are still unable to produce documents. For affirmative confirmation that documents are available or unavailable, you can call the Department of State Country Offices for the particular country of interest, http://www.state.gov/documents/organization/115480.pdf is a current link as of 02/27/2012. If the link is no longer available, go to the State Department website and search "Country Offices Telephone Directory."

1. **See also:**
    i. (a) lack of civil issued documentation

d) **Non-disclosure of relative on prior benefits application:** If your client files an I-730 for a spouse or child that was not disclosed in previous immigration matters—such as the I-590 interview overseas—USCIS will likely issue an RFE. An RFE of this type usually involves at least two evidentiary consequences. First, USCIS will require that the individual provide a statement to explain why they failed to list their relative in the previous immigration matter. Secondly, USCIS will usually raise the petitioner's burden of proof from "preponderance of the evidence," to the higher burden of "clear and convincing evidence." There are many reasons why an individual might have failed to disclose the beneficiary in a prior application. Although it is best to deal with non-disclosure affirmatively by addressing it with an affidavit filed contemporaneously with the I-730, you will often be forced to deal with it in an RFE simply because you were unaware of it prior to filing. For this reason it is a very good practice to ask every I-730 petitioner whether they listed their spouse and all children during their overseas I-590

interview. If you learn that your client omitted names during the interview, you may be able to head off an RFE by filing an affidavit with the I-730 that explains the reason for non-disclosure. Reasons for non-disclosure may include misinformation in the refugee camp, relative(s) missing and presumed dead, illegitimate children that applicant was ashamed to disclose, perception that children/spouse not present cannot be listed, and others. Often, the Service will allege that a beneficiary was not previously disclosed when s/he really was disclosed. The I-590 only has four spaces for listing children. Additional children must be added on an addendum. Lost addendums often account for an appearance of non-disclosure. For this reason it is critical to review the I-590 where the client allegedly failed to disclose the beneficiary. In many cases however, USCIS will not provide the attorney/BIA rep. with a copy of the allegedly deficient I-590. In these cases you may want to invoke 8 CFR §103.2 (below) and argue that the Service has failed to comply with its statutory obligation to give the applicant sufficient information to respond to the RFE, and/or to permit the applicant to inspect the record of proceeding which constitutes the basis for the proposed denial of his case.

1. **Pertinent case numbers:**
    i. Case1—Nondisclosure was due to the fact that petitioner was not yet married to beneficiary spouse on the date of the I-590 interview. As such, it does not constitute nondisclosure.
    ii. Case 6—Nondisclosure was because a JVA staff member advised petitioner not to disclose his wife and son since it might slow the processing of his family's case, which was awaiting medical expedite due to father's poor health.
    iii. Case 5—Nondisclosure is contested by petitioner who swears she listed all of her children and, as an illiterate refugee applicant, couldn't read over I-590 to check for accuracy.
    iv. Case 9—Nondisclosure of overseas child was due to petitioning mother's poor understanding of which children need to be included on the application, and possibly to cognitive problems.
    v. Case 15—Allegation of nondisclosure was incorrect as inspection of applicant's I-590 revealed that there were "amendments" authorized by him on form I-590, and the continuation reflecting the amendments was not provided to petitioner and attorney.
2. **Pertinent statutes:**
    i. 8 CFR §103.2 (b)(8)(iv) Process . A request for evidence or notice of intent to deny will be in writing and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and **sufficient information to respond**.

ii. 8 CFR §103.2 (b)(16) Inspection of evidence . An applicant or petitioner **shall be permitted to inspect the record of proceeding** which constitutes the basis for the decision, except as provided in the following paragraphs.

e) Adoption or cultural adoption: Scrutinize the fact pattern extensively before agreeing to represent a petitioner with a cultural adoption-based I-730. (If for no other reason, because you'll be getting a nasty RFE on this one and you don't want to take on a meritless case that's immediately going to generate an RFE that requires a ten page rebuttal.) Individuals who refer to their nieces and nephews as "adopted" often do so without intending any petitionable relationship under the INA. Before even entertaining questions about the possibility of filing for a culturally adopted child, ask about periods of cohabitation and ask whether the parents of the adopted child are living or deceased. Some individuals have bona fide customary adoptions that are worth fighting for. If you feel up to the task of arguing a customary adoption case, read case study number 8. Regrettably, this is the only case study in this resource that didn't result in eventual approval of the case. This is a real shame considering that the petitioner in this case had been relied upon by the U.S. government to give testimony in federal court that helped convict Chuckie Taylor on federal charges resulting in a 97 year prison sentence that he is currently serving in Florida. His testimony with respect to his customarily-adopted daughter was evidently given less consideration by the government.

1. **Pertinent case numbers:**
    i. Case 8
2. **Pertinent statutes:**
    i. INA § 101 (b) As used in titles I and II- (1) The term "child" means an unmarried person under twenty-one years of age who is- (E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household : Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or (ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;
    ii. *Matter of Kwok,* 14 I&N, Dec. 127, 130 (BIA 1972): "we also reaffirm our long-standing rule that the validity of an adoption for immigration purposes is governed by the law of the place where the adoption occurred."

iii. *Kaho v. Ilchert*, 765 F.2d 877 (9th Cir. 1985). In this case, the 9th Circuit found that "the BIA has expressly held that it is not necessary for an adoption to be recognized by a juridical act before it can be recognized as valid for immigration purposes." "for an adoption to be valid under section 101(b)(1)(E), an adoption need not conform to the BIA's or Anglo-American notions of adoption; the adoption need only be recognized under the law of the country where the adoption occurred."

f) **<u>Marriage, cultural marriage</u>**: The INA definition of marriage doesn't define marriage, but rather, just states what it is not. (A proxy marriage that has not been consummated does not constitute marriage under the INA.) For marriages contracted overseas, the principle of international comity applies. The marriage is valid in the U.S. if it was valid in the country where it was contracted or celebrated, with a few public policy exceptions including polygamy and same-sex marriage.

1. **Pertinent case numbers:**
   i. Case 12—Affidavits of marriage submitted in evidence of petitionable relationship.
2. **Pertinent statutes:**
   i. 8 CFR § 207.7 DERIVATIVES OF REFUGEES (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 accompanying or following-to-join benefits. Where possible this will consist of the documents specified in Sec. 204.2(a (1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.
   ii. INA § 101(a)(35): the term "spouse," "wife," or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.
   iii. *Matter of H:* This case established that, "[t]he validity of a marriage is determined by the law of the place where it is contracted or celebrated and if it is valid there, it is valid everywhere." *Matter of H., 9 I&N Dec. 640 (BIA 1962). "*An exception is made when the marriage is contrary to U.S. public policy." *Id.* This case specifically stated that a polygamous marriage, though valid under foreign law, is against public policy and will not be recognized as a marriage

under the INA. However, it doesn't say anything about "cultural marriages" as being against public policy. Furthermore, particularly because the caselaw says that the marriage is valid in the U.S. as long as it was valid in the place where it was contracted or *celebrated*, you can use this case to bolster a cultural marriage argument.

g) Proxy marriage & Consummation: It doesn't get any more exciting than this. Proving that your client's proxy marriage was consummated is a delightful task. INA § 101(a)(35) states that a proxy marriage is only valid for immigration purposes if it has been consummated. As such, wherever you represent a petitioner with a case involving proxy marriage, make sure that you can provide evidence of consummation. Case study number 11 provides a fun example.

1. **Pertinent case numbers:**
    i. Case 11
2. **Pertinent statutes:**
    i. 8 CFR § 207.7(a) eligibility for derivative refugee benefits. 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, shall be granted refugee status if accompanying or following to join the principal alien.
    ii. INA § 101(a)(35): the term "spouse," "wife," or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

h) Voluntary DNA: In some cases a petitioner may elect to provide DNA evidence in order to provide proof of the qualifying relationship.

1. **Pertinent case numbers:**
    i. Case 7; Case 9

i) Humanitarian extension of filing deadline: In cases where the petitioner has missed the two-year filing deadline, USCIS may grant an extension of the deadline for "humanitarian reasons." There are many reasons why a petitioner in a particular case might not have timely-filed the I-730 and as long as there is an objectively reasonable basis for having missed the deadline, it is worthwhile to request extension. You can do this affirmatively, by including a cover letter with the I-730 submission. In most cases you will want to include an affidavit from the petitioner that includes relevant testimony pertaining to the extension request.

1. **Pertinent case numbers:**
    i. Case 2—Child beneficiary was missing during the eligibility period for filing form I-730 and was discovered to be alive after expiration of the two year period.

ii. Case 10—A timely-filed petition was submitted by beneficiary's father, who was not the Principal Applicant (PA). The beneficiary's mother was the PA, and filed late, with request for humanitarian extension.
iii. Case 14—Petitioning mother was prevented from timely-filing an approvable petition because beneficiary child was missing and presumed dead.
iv. Case 16—Petitioner didn't know about filing deadline because his refugee resettlement agency didn't tell him about it despite the fact that he inquired about family reunification.

2. Pertinent statutes:

i. 8 CFR § 207.7(d): Filing . A refugee may request accompanying or 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. The Form I-730 may only be filed by the principal refugee. Family members 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 before February 28, 2000 or within 2 years of the refugee's admission to the United States, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Form I-730 has been approved, provided that the relationship of spouse or child continues to exist and approval of the Form I-730 petition has not been subsequently revoked. There is no fee for filing this petition.

j) Parent/child relationship: In the context of I-730s, the ONLY petitionable relationship that requires proof of a parent/child relationship is that of a father to his out-of-wedlock/ illegitimate child. In any case where you receive an RFE that requests proof of parent/child relationship, scrutinize the basis of the request to ensure that it is statutorily appropriate. If the petitioner is a mother, there is no requirement of showing parent/child relationship. Similarly, if the petitioner is a father who has legitimated his out-of-wedlock child under the laws of the country where the child was born or where the father resided, then there is no statutory basis for the request. (See section (b), above, for illegitimacy of children.) If proof of parent/child relationship is warranted based on the facts, send in as much primary and/or secondary documentation as possible.

1. Pertinent case numbers:

i. Case 3—Haitian case involving legitimated child. Proof of parent/child relationship was also submitted and itemized in the rebuttal.

ii. Case 4—Liberian mother who has no parent/child relationship with daughter who was the product of rape and who has never cohabited with petitioner isn't required to prove parent/child relationship as a petitioning MOTHER.
iii. Case 7—Liberian father has parent/child relationship despite the Service's contention that marriage to child's mother is invalid.
iv. Case 9—Liberian mother not statutorily required to provide proof of parent/ child relationship since she is a petitioning MOTHER.

2. Pertinent statutes:

i. INA § 101(b)(1)(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

k) <u>Requests for information that isn't statutorily necessary</u>: USCIS will often issue an RFE that requests documentation or information that is not statutorily required in order for the petition to be approved. As such, before you endeavor to obtain the type of documentation requested by USCIS, first determine if that information or documentation actually goes towards proving any eligibility requirement under the controlling statute.

1. Pertinent case numbers:

i. Case 9—Requests proof of parent/child relationship from a petitioning MOTHER.
ii. Case 13—States that the petition can be denied because the beneficiary child wasn't able to explain the circumstances of how he came to be separated from his petitioning mother in Liberia.
iii. Case 12—Requests affidavits of birth for a beneficiary SPOUSE.
iv. Case 4—Requests proof of parent/child relationship from a petitioning MOTHER.

2. Pertinent statutes:

i. INA § 207(c)(2)(A): "a spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of any refugee who qualifies for admission under paragraph (1) shall…be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee."
ii. INA § 101(b)(1)(D) states, "a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person."
iii. 8 CFR § 204.2(d)(2)(iii) states, "primary evidence for an illegitimate child or son or daughter. If a petition is submitted by the mother, the child's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name

as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted by the purported father of a child or son or daughter born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child relationship was established when the child or son or daughter was unmarried and under twenty-one years of age."

l) <u>Burden of proof: including evidentiary standards of preponderance of evidence OR clear and convincing:</u> The evidentiary burden for an I-730 petitioner is to prove the petitionable relationship by a preponderance of the evidence. This is a relatively low threshold. Sometimes USCIS will erroneously state that the petitioner's burden of proof is the higher threshold of "clear and convincing evidence." In other cases however, the Service is entitled to raise the petitioner's burden of proof to the higher standard if nondisclosure or misrepresentation is apparent in the Service record. Scrutinize the RFE closely to determine whether USCIS has correctly or erroneously raised the burden of proof before attempting to meet the higher standard of "clear and convincing evidence."

1. **Pertinent case numbers:**
    i. Case 1—The RFE erroneously raised the burden of proof where it alleged non-disclosure on form I-590, when there wasn't in fact, any non-disclosure.
    ii. Case 6—The RFE erroneously raised the burden of proof and failed to provide petitioner with a copy of the Service record containing the alleged non-disclosure.
2. **Pertinent statutes and Case Law:**
    i. 8 CFR § 207.7 DERIVATIVES OF REFUGEES (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 **<u>petitioner to establish by a preponderance of the evidence</u>** 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 accompanying or following-to-join benefits. Where possible this will consist of the documents specified in Sec. 204.2(a (1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.
    ii. 8 Code of Federal Regulations, §207.7 (e) states in pertinent part: <u>Evidence</u>. 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 . . . Where possible this will consist of the documents specified in 204.2 (a) (1) (i) (B), (a) (1) (iii) (B), (a) (2),(d)(2) and (d)(5).

iii. "The 'preponderance of the evidence' standard requires that the evidence demonstrate that the applicant's claim is 'probably true,' where the determination of 'truth' is made based on the factual circumstances of each individual case." (Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm. 1989).)

m) <u>Affidavits used:</u> Affidavits are often the only type of documentation available in support of a claimed spousal or parent/child relationship. Affidavits constitute secondary documentation that can be used alone or in concert with other secondary documentation. See section (a) addressing the sufficiency of secondary documentation.

1. Pertinent case numbers:

i. Case 12—Affidavits of marriage used in evidence of petitionable relationship.

ii. Case 2—Affidavit provided to explain circumstances that warrant humanitarian extension of the filing deadline.

2. Pertinent statutes:

i. 8 CFR § 207.7 DERIVATIVES OF REFUGEES (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 accompanying or following-to-join benefits. Where possible this will consist of the documents specified in Sec. 204.2(a (1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.

i. 8 CFR §204.1(g)(2) Secondary evidence. If primary evidence is unavailable, the petitioner must present secondary evidence. Any evidence submitted as secondary evidence will be evaluated for authenticity and credibility. Secondary evidence may include, but is not limited to, one or more of the following documents: (i) A baptismal certificate with the seal of the church, showing the date and place of birth in the United States and the date of baptism; (ii) **<u>Affidavits sworn to by persons who were living at the time and who have</u>**

personal knowledge of the event to which they attest. The affidavits must contain the affiant's full name and address, date and place of birth, relationship to the parties, if any, and complete details concerning how the affiant acquired knowledge of the event; (iii) Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s); (iv) Census records showing the name, place of birth, and date of birth or age of the petitioner; or

n) Country conditions: Country conditions are often pertinent to document availability, particularly if the beneficiaries live in the same country where the petitioner was persecuted. If the petitioner is unable to obtain documentation due to adverse conditions in his/her country of origin, document the unfavorable conditions and argue for consideration of secondary documentation. (See section (a) for "sufficiency of secondary documentation.")

1. **Pertinent case numbers:**
    i. Case 12—Conditions in Somalia unfavorable for obtaining additional proof of relationship.
    ii. Case 9—Appendix C indicates no documents are available in Liberia due to civil unrest.

Case Summaries and model rebuttals

Case Study No. 1

- **Evidentiary Issues:**
    - Primary: NON-DISCLOSURE OF RELATIVE ON PRIOR BENEFITS APPLICATION
    - Secondary: clear and convincing evidence; marriage; preponderance of evidence; affidavits used
- **Corrective Measures Requested:**
    - Applicant (wife) filed a petition on behalf of husband who was not identified in previous immigration matters. Petition approval contingent on support by clear and convincing evidence to establish that relationship between HUSBAND and WIFE actually exists. Action needed:
    - A statement to explain why you did not list the beneficiary on your previously approved Form I-590 Registration for Classification as a Refugee.
    - Evidence to demonstrate that your present marriage is bona fide. This evidence may be in the form of birth certificates for common children, rent receipts, documentary evidence of joint ownership of property, joint income tax returns, joint accounts, etc.
- **Corrective Measures Sent:**
    - RE NON-DISCLOSURE: Sent explanatory letter and affidavit. Applicant was not married at time of interview, therefore it is NOT non-disclosure.
    - RE BONA FIDE MARRIAGE: sent birth certificate of common child.
- **Notes:**
    - The burden of proof requested was incorrect. Per 8 CFR § 207.7(e), when the petitioner has not failed to identify a relative in a previous immigration matter, the burden of proof remains the statutorily prescribed burden of "by the preponderance of evidence," NOT "clear and convincing."
    - 8 CFR § 207.7 DERIVATIVES OF REFUGEES (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 accompanying or following-to-join benefits. Where possible this will consist of the documents specified in Sec. 204.2(a (1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.

Model Rebuttal No. 1

Re: I-730, Request For Evidence
Petitioner: Ms. Smith
Beneficiary: Mr. Smith
Alien Number:
Receipt Number:

Dear Sir or Madam:

On April 13, 2010, your office issued a Request For Evidence in connection with the pending I-730 petition filed on behalf of Mr. Smith, by his wife, Ms. Smith. Your office has requested the following information in connection with the pending request:

1) Review of the Service record indicates that you are filing this petition on behalf of a relative whom you did not identify as your relative in previous immigration matters. Therefore, this petition must be supported by clear and convincing evidence to establish that the claimed relationship between you and the beneficiary actually exists. Please submit a statement to explain why you did not list the beneficiary on your previously approved form I-590 Registration for Classification as a Refugee.
2) Submit evidence to demonstrate that your present marriage to Mr. Smith is bona fide. This evidence may be in the form of birth certificates for common children, rent receipts, documentary evidence of joint ownership of property, joint income tax returns, joint accounts, etc.

Please review the enclosed documentation which the petitioner is submitting at this time in compliance with the request issued by your office:

I. <u>Statement to Explain Why You Did Not Identify Your Relative in Previous Immigration Matters:</u>

Enclosed please find the sworn statement of the petitioner, Ms. Smith, which is being submitted at this time in compliance with the request issued by your office. A review of the petitioner's sworn statement will reveal that Ms. Smith did not list the beneficiary on form I-590 because her I-590 interview predated her marriage. Ms. Smith was therefore unmarried on the date that she interviewed with a consular officer and signed form I-590. She recollects that she signed form I-590 in March or April of 2008. She did not marry the beneficiary until August 16, 2008. As such, the absence of Mr. Smith's name from form I-590 does not indicate non-disclosure by the petitioner. Her civil status simply changed subsequent to filing the form. Please review the enclosed copy of the following documentation, which support this conclusion:

1) *<u>Refugee Biodata Form</u>*: Issued by the U.S. State Department's Bureau for Population, Refugees and Migration. This document indicates that Ms. Smith's "INS Approval Date," was August 22, 2008, only days after her marriage on August 16th. Her refugee status interview—which generated form I-590—would have predated the INS Approval Date by anywhere from 60-180 days.

Your careful review of form I-590, completed during Ms. Smith's refugee interview, should reveal that the petitioner attested to the accuracy of the information on form I-590 prior to the date of her marriage, on August 16, 2008. This detail is of critical importance, since it means that the form was correct on the date of signature. The absence of the beneficiary's name on the form under these circumstances is not an omission, but is an articulable fact, that was correct on the date of signature.

II. <u>Evidence of Bona Fide Marriage to Mr. Smith:</u>

Please review the enclosed birth certificate for Son Smith. Son Smith was born on November 8th 2009, only three and a half months after Ms. Smith's arrival in the United States as a refugee. Six month old Son Smith is the legitimate, biological child of Ms. Smith, and the beneficiary, her husband, Mr. Smith. Please review the listed names for "mother," and "father" on Son Smith's birth certificate, which reflect "Ms. Smith," as mother, and "Mr. Smith," as father. Please accept the birth certificate of the common between the petitioner and beneficiary as evidence of their bona fide marriage.

Furthermore, please consider that the evidentiary burden that must be observed in connection with this case is not, "clear and convincing evidence," as stated by your office, but in fact is the lower evidentiary threshold, "by the preponderance of the evidence." Ms. Smith's sworn testimony, along with the copy of the enclosed correspondence from DHS provide persuasive evidence that the petitioner did not "fail to identify" her husband as your office suggests. Rather, because she was not married to him yet on the date of the interview, her honest response precluded the possibility of listing his name. As such, because the petitioner has not failed to identify a relative in a previous immigration matter, her burden of proof in connection with the present I-730 petition remains the statutorily prescribed burden of proof "by the preponderance of the evidence," in accordance with 8 CFR §207.7(e). Because the omission of the beneficiary's name was appropriate and honest under the circumstances, the Service's decision to raise the petitioner's evidentiary standard to that of "clear and convincing evidence," was unwarranted.

Please conclude, based on the preponderance of the evidence, that Ms. Smith has sufficiently proven the existence of the qualifying relationship to her husband, Mr. Smith. Please therefore resume processing the pending I-730 on behalf of Mr. Smith. We would be grateful for an approval decision in this matter.

Case Study No. 2

- EVIDENTIARY ISSUES: I-730 is being submitted after expiration of the two-year window of eligibility.
- CORRECTIVE MEASURES SENT: I-730 continuation, explaining the reason for delayed submission of the I-730.
- NOTE: By crafting the humanitarian extension request as a "continuation" to part 3 of form I-730, rather than including it as a "cover letter," you may make it more likely that your masterpiece will actually be read by an adjudicator. Cover letters are often stuffed at the back of an A file, but if you structure the extension request as a part of the petition itself, the adjudicator should read and consider it.

Model Rebuttal No. 2:

Re: Continued Response to form I-730, Page 3, Part 3
Petitioner: Maggie McDuffee
Alien Number: A 000-000-000
Beneficiary: Seamus McDuffee

October 24, 2011
Dear Sir or Madam:

Please accept the enclosed I-730 petition of Ms. Maggie McDuffee, on behalf of her son, Seamus McDuffee, which is being submitted at this time with a request for humanitarian extension pursuant to 8 CRF § 207.7(d). The unique and difficult circumstances surrounding this case necessitate consideration for an extension of the two-year filing deadline for "humanitarian reasons." For the reasons cited below, please exercise your favorable discretion in this case and grant the humanitarian extension.

Request for Humanitarian Extension Pursuant to 8 CRF 207.7(d):

The petitioner's request for humanitarian extension of the two-year filing deadline, pursuant to 8 CRF § 207.7(d) should be approved for the following reasons: 1) despite good

faith efforts, petitioner was unable to gain information on the whereabouts of her son within the two year period and believed that he was deceased, and 2) granting humanitarian extension in this case would promote family unity.

8 Code of Federal Regulations, § 207.7(d) states in pertinent part:

> Filing. *A separate I-730 must be filed for each qualifying family member before February 28, 2000 or within 2 years of the refugee's admission to the United States, whichever is later, unless the Service determined that the filing period should be extended for humanitarian reasons.*

The regulations stipulate that at the Service's discretion, the two-year filing period for I-730 petitions should be extended when "humanitarian reasons" for its extension exist. Ms. Maggie McDuffee's grounds for requesting an extension of the two-year filing deadline are sufficient to warrant humanitarian extension, because the fact that her son was missing and believed dead prevented her from complying with the two year filing deadline.

Please review the enclosed, sworn affidavit of Ms. McDuffee, which explains why she was unable to file the I-730 petition for her son until the present. Ms. McDuffee's statement discloses that she was separated from her son one afternoon in 2005 when an army attacked the village where they were living. During the attack, the residents of the village ran in different directions and Ms. McDuffee was separated from her children. Ms. McDuffee's home was burned and her husband was killed during this attack. Although she was able to reunite with a few of her other children, her son Seamus was not seen again. Ms. McDuffee constantly sought information about the whereabouts of her son and hoped that he was alive. However, the lack of information about Seamus led Ms. McDuffee to believe that her son was most likely deceased as a result of the attack on their village.

Nearly six (6) years after their separation, Ms. McDuffee received a call from her adult daughter who lives in Cameroon, Dolly McDuffee. Dolly McDuffee told her mother that Seamus had been discovered alive and had been trying to find his family for years.

Seamus found the address of his older sister, Dolly McDuffee through information from an old family friend he crossed paths with in Benamkor. At only sixteen years old, Seamus traveled by foot from Benamkor to Cameroon, a dangerous journey that lasted over a week, to be reunited with his older sister.

As soon as the petitioner discovered that her son was in fact alive and living with his older sister in Cameroon, she contacted the Elon Law Humanitarian Immigration Clinic and sought information on how to be reunited with her son.

Service policy dictates that humanitarian extensions are permitted when they would facilitate family unity. Ms. McDuffee is a widow who has already been forced to deal with the death of her husband and one of her daughters. For six years she lived with the heartbreak of believing that her son Seamus was also deceased. Ms. McDuffee's family has been separated for a long period of time, and Seamus has been living without his parents for years. This family has endured sustained separation and to allow this situation to become perpetual would be contrary to the goals of the United State's onshore refugee program. The favorable exercise of discretion in permitting a humanitarian extension for this petitioner would therefore unquestionably promote family unity. For the forgoing reasons, please grant the present request for humanitarian extension of the filing period and accept the enclosed I-730 for processing.

In accordance with 8 CRF § 207.7(d), the humanitarian extension should be allowed in this case as the petitioner did not file because she could not confirm that her son was living. It would be equitable to grant humanitarian extension of the filing deadline in order to promote family unity. Ms. McDuffee has been separated from her son for over six years. The possibility of her perpetual separation from her son is a tragedy that the Service could help remedy.

If the present extension request is not granted, the family's separation will persist. This prolonged separation is unnecessary since the beneficiary could have benefitted from a derivative refugee status years ago if the petitioner has been able to confirm that her son was living. Your favorable discretion in this matter will promote equity and family reunification. As such, please approve the present request for humanitarian extension of

the two-year filing deadline for the I-730 submitted by Ms. McDuffee on behalf of her son, Seamus McDuffee, and render a favorable adjudication in this case. Your consideration in this matter is greatly appreciated.

Sincerely yours,

Student Attorney
Elon University School of Law
Humanitarian Immigration Law Clinic

Case Study No. 3

- **Evidentiary Issues:**
    - Lack of civil issued documentation; sufficiency of secondary documentation; illegitimacy of children; Legitimation law by country (Haiti); parent child relationship; burden of proof
- **Corrective Measures Requested:**
    - RE LACK OF CIVIL ISSUED DOCUMENTATION and SUFFICIENCY OF SECONDARY DOCUMENTATION: please submit a copy of your official birth record from the National Archives of Haiti with a certified English Translation if necessary. If a birth certificate does not exist or cannot be obtained, you may submit any secondary evidence in your possession to support the information you have provided about your birth and parentage. Secondary evidence should pertain to the facts at issue and may be evaluated for authenticity and credibility. Such evidence may include, but is not limited to, medical records, school records, and religious documents. If secondary evidence does not exist or cannot be obtained, you may submit two or more affidavits, sworn to or affirmed by persons who have direct personal knowledge of the events and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the availability of both primary and secondary evidence.
    - RE ILLEGITIMACY, LEGITIMATION, BURDEN OF PROOF, AND PARENT/CHILD RELATIONSHIP: you must comply with the following in order to establish that a bona fide parent/child relationship exists or existed between FATHER AND SON prior to the beneficiary's twenty-first birthday. An illegitimate child may meet the definition of a "child" for immigration purposes if it can be established that a bona fide parent/child relationship does exist or has existed between the child and the natural father prior to the child's twenty-first birthday. Furnish all documentation you have to demonstrate that such a relationship exists or existed. Such evidence may include but is not limited to: money order receipts or canceled checks showing financial support of the child; income tax returns which name the child as the dependent of the parent; medical or insurance records which include the child as a dependent of the parent; school records for the child showing the father's name; correspondence between the parties; notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable about

the relationship, (affidavits should discuss the nature and the extent of the relationship); and a statement showing exact periods the father resided with the child and proof of such residence.

- **Corrective Measures Sent:**
  - RE LACK OF CIVIL ISSUED DOCUMENTATION: sent copy of original birth certificate with certified translation by D.W.P Translation Services.
  - RE ILLEGITIMACY, LEGITIMATION, BURDEN OF PROOF, AND PARENT/CHILD RELATIONSHIP: sent explanatory letter that child is LEGITIMATE, therefore it is not required to show proof of a bona fide parent/child relationship, which is required for a beneficiary that is ILLEGITIMATE. Even though it was unnecessary, petitioner sent tuition certificate, sworn affidavit, copy of birth certificate with certified translation, and money transfer receipts.
- **Notes**
  - It is not necessary to prove a parent/child relationship between a parent and a legitimate child, but it is required to prove a parent/child relationship between a parent and an illegitimate child.
  - A legitimate child is defined in INA § 101(b)(1)(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;
  - An illegitimate child is defined at INA § 101(b)(1)(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;
  - 8 CFR § 204.2(d)(2)(ii) Primary evidence for a legitimated child or son or daughter. A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's

residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the beneficiary's birth certificate and the parent's marriage certificate or other evidence of legitimation issued by civil authorities.

- In this case the beneficiary is a legitimate child under the laws of Haiti, the child's domicile.
- The legitimation laws of Haiti are documented in immigration case law. In the Matter of Mesias, the Presidential Decree of January 27, 1959 amended the Civil Code of Haiti to provide for the legitimation of a child, if born out of wedlock, after acknowledgement by the natural father and if the child is not born of an incestuous or adulterous relationship. Evidence of acknowledgement was given through birth certificate.
- See also, Matter of Richard, 18 I&N Dec. 208 (BIA 1982), affirming that "We have held that when the country where a beneficiary was born and resides eliminates all legal distinctions between legitimate and illegitimate children, all subsequently born children are deemed to be the legitimate offspring of their father for immigration purposes…The 1959 Haitian Presidential Decree would appear to abolish all distinctions between children born in and out of wedlock…Under these circumstances we find that under the law of Haiti at the time the beneficiary's birth, a child born out of wedlock was deemed to be the legitimate offspring of his natural father.

Model Rebuttal No. 3

Re: I-730, Request For Evidence
Petitioner: Mr. Smith
Beneficiary: Child Smith

Dear Sir or Madam:

On March 30, 2010, your office issued a Request For Evidence in connection with the pending I-730 petition filed on behalf of Child Smith, by his father, Mr. Smith. Your office has requested the following documentation in order to continue processing the pending petition:

1) You must comply with the following in order to establish that a bona fide parent/child relationship exists or existed between Mr. Smith and Child Smith, prior to the beneficiary's twenty-first birthday. An illegitimate child may meet the definition of a "child" for immigration purposes if it can be established that a bona fide parent/child relationship does exist or has existed between the child and the natural father prior to the child's twenty-first birthday. Furnish all documentation you have to demonstrate that such a relationship exists or existed.

In fact, it is not necessary in this case to prove a parent/child relationship between the petitioner and beneficiary because the beneficiary is a legitimated child as defined in INA §101(b)(1)(C), and not an illegitimate child, as stated in the RFE issued by your office. Whereas an illegitimate child, defined at INA §101(b)(1)(D), requires proof of a bona fide parent/child relationship in the case of a petitioning father, a petition on behalf of a "legitimated" child has no similar requirement of a petitioning father. The beneficiary, Child Smith, is a legitimated child pursuant to the laws of Haiti, which is the country of Child Smith's residence and domicile.

8 CFR §204.2(d)(2)(ii) states in pertinent part:

> *(ii) Primary evidence for a legitimated child or son or daughter. A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided--while the child was under eighteen years of age--in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the beneficiary's birth certificate and the*

parents' marriage certificate or other evidence of legitimation issued by civil authorities.

The legitimation laws of Haiti are well-documented in immigration case-law pertaining to the petitionable relationship between a natural father and his legitimated child.[1] It was concluded in the Matter of Mesias, that the Presidential Decree of January 27, 1959, amended the Civil Code of Haiti to provide for the legitimation of a child born out of wedlock after acknowledgement by the natural father, if the child is not born of an incestuous or adulterous relationship.[2] Pursuant to Haitian law, the beneficiary was legitimated upon the voluntary recognition of paternity by the petitioner, Mr. Smith, when he acknowledged paternity of his son Child Smith in the attached copy of Child Smith's civil-issued birth registration act.

Article I of the Haitian Presidential Decree of January 27, 1959, provides in pertinent part:

Article I. Natural filiation shall give rise to the same obligations as those deriving from legitimate filiation. Nonetheless, proof of natural filiation may result only from voluntary recognition or from judicial recognition in the case where the latter is authorized by law.

The petitioner expressed his voluntary recognition of Child Smith as his natural son in the civil-registered birth certificate issued on Child Smith's behalf by the National Archives of Haiti, that was originally submitted with form I-730. As such, pursuant to the Civil Code of Haiti, and in accordance with 8 CFR §204.2(d)(2)(ii), Child Smith meets the definition of a legitimated child articulated at INA §101(b)(1)(C). Furthermore, the evidentiary requirements necessary to prove the petitionable relationship, which are listed at 8 CFR §204.2(d)(2)(ii), have also been satisfied since the beneficiary's birth certificate contains the statutorily necessary "acknowledgement," referenced in Article I. of the Haitian Presidential Decree in order to confer legitimate status on an out-of wedlock child. Therefore, please conclude that because the beneficiary is a "legitimated" child pursuant to

[1] See *Matter of Richard*, 18 I&N Dec. 208 (BIA l982), affirming that, "We have held that when the country where a beneficiary was born and resides eliminates all legal distinctions between legitimate and illegitimate children, all subsequently born children are deemed to be the legitimate offspring of their father for immigration purposes . . . The 1959 Haitian Presidential Decree would appear to abolish all distinctions between children born in and out of wedlock . . . Under these circumstances we find that under the law of Haiti at the time of the beneficiary's birth, a child born out of wedlock was deemed to be the legitimate off-spring of his natural father."

[2] *Matter of Mesias*, 18 I. & N. Dec. 298 (BIA 1982).

INA §101(b)(1)(C), no evidence of a parent child relationship is necessary in order to approve the pending I-730 petition of Child Smith.

Please review the enclosed documentation, which is being submitted by the petitioner at this time, in compliance with the request issued by your office:

1) **Tuition Certificate**: Please review the enclosed certificate and English translation, which certifies that the petitioner, Mr. Smith, paid enrollment and tuition fees for the beneficiary, Child Smith, for the academic years of 2008-2009.
2) **Sworn Affidavit**: Please review the enclosed sworn affidavit by the petitioner, which describes the parent/child relationship between himself and Child Smith, since Child Smith's birth.
3) **Western Union Money Transfer Receipts**: The following receipts represent money transfer transactions from the petitioner to the beneficiary in Haiti. Please note that the "recipient" identified on most of the transfers is Brother Smith or Sister Smith. Brother and Sister are the petitioners siblings, and currently provide for Child Smith. As adults with identification, Brother and Sister are able to receive money transfers without difficulty, and use the funds to provide for Child Smith.
    a. Money transfer receipt from remitter, Mr. Smith, to recipient, Brother Smith, in Haiti, in the amount of $150.00, and dated 09/10/2009.
    b. Money transfer receipt from remitter, Mr. Smith, to recipient, Brother Smith, in Haiti, in the amount of $200.00, and dated 10/09/2009.
    c. Money transfer receipt from remitter, Mr. Smith, to recipient, Brother Smith, in Haiti, in the amount of $200.00, and dated 11/06/2009.
    d. Money transfer receipt from remitter, Mr. Smith, to recipient, Brother Smith, in Haiti, in the amount of $100.00, and dated 12/05/2009.
    e. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $50.00, and dated 12/20/2009.
    f. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $150.00, and dated 12/24/2009.
    g. Money transfer receipt from remitter, Mr. Smith, to recipient, Brother Smith, in Haiti, in the amount of $150.00, and dated 12/31/2009.

h. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $120.00, and dated 01/04/2010.
i. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $100.00, and dated 01/09/2010.
j. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $150.00, and dated 01/18/2010.
k. Money transfer receipt from remitter, Mr. Smith, to recipient, Brother Smith, in Haiti, in the amount of $200.00, and dated 01/22/2010.
l. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $100.00, and dated 02/06/2010.
m. Money transfer receipt from remitter, Mr. Smith, to recipient, Brother Smith, in Haiti, in the amount of $150.00, and dated 12/31/2009.
n. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $120.00, and dated 01/04/2010.
o. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $100.00, and dated 01/09/2010.
p. Money transfer receipt from remitter, Mr. Smith, to recipient, Sister Smith, in Haiti, in the amount of $150.00, and dated 01/18/2010.
q. Money transfer receipt from remitter, Mr. Smith, to recipient, Brother Smith, in Haiti, in the amount of $200.00, and dated 01/22/2010.

l. Money transfer receipt from remitter, [redacted] to recipient, [redacted], in Haiti, in the amount of $100.00, and dated 02/06/2010.

Finally, it is important to note that the RFE issued by your office appears to disregard the stated policy of USCIS, in view of the catastrophic humanitarian disaster that devastated Haiti on January 12, 2010, to render expedited processing and humanitarian consideration of Haitian benefits petitions with current priority dates. In a USCIS National Stakeholders meeting conducted on January 21st, 2010, DHS announced that Haitian expedite requests for family petitions would receive "favorable consideration (i.e.approval)," in cases where a visa number is readily available. This policy was later re-stated and emphasized in a DHS issued document titled, "Haitian Relief Measures, Questions and Answers," at question number eight, concerning expedited processing of Haitian relative petitions. In the present case, your office has disregarded the expedite request that was submitted with the present petition, despite explicit reference to the fact that the beneficiary lives in Port-au-Prince. Additionally, your office issued an evidentiary request with a mere thirty-day deadline for compliance. For the father of Haitian children who are living in a tent on the outskirts of Port-au-Prince, this RFE illustrated a total disregard for the humanitarian circumstances presently afflicting the country, and an apparent ignorance of the fact that documentary evidence for Haitians from Port-au-Prince and surrounding area is all but impossible to retrieve since the infrastructure of that city was totally obliterated on January 12th when 200,000 people lost their lives there. The beneficiary of the present petition lost his home during the earthquake and now lives under a tarp outside of the decimated city of Port-au-Prince.

It is disappointing that despite representations of good-will and consideration of the Haitian disaster, your office gave the petitioner a thirty day deadline to retrieve virtually impossible evidence from Haiti, and ignored the expedite request which might have alleviated some of the suffering of his children.

Please conclude that [redacted] is eligible for reunification benefits with his father and approve the pending I-730 petition submitted on his behalf on February 25, 2010. Thank you for your consideration of [redacted]'s case.

Best regards,

Heather Scavone

Staff Attorney for Immigration Services/ Associated with [redacted], Representative of Record

[redacted]

[redacted]

[redacted]

[redacted]

Case Study No. 4

- **Evidentiary Issues:**
    - Parent/Child relationship; requests for information that aren't statutorily necessary
- **Corrective Measures Requested:**
    - Please furnish any and all documentation you have to demonstrate a bona fide parent child relationship. Also, in your sworn statement you said that you did not know the whereabouts of your child, please explain how you reconnected with your child.
- **Corrective Measures Sent:**
    - Sent explanatory letter and affidavit of petitioner.
- **Notes**
    - The evidence requested is not statutorily necessary because the relationship petitioned is biological so evidence of a "parent/child relationship" is unnecessary.
    - INA § 207(c)(2)(A): "a spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of any refugee who qualifies for admission under paragraph (1) shall…be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee."
    - Beneficiary meets definition of child under INA § 101(b)(1)(D) as an out of wedlock child. Statute states, "a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person.
    - The statutory definition does not require the existence of a bona fide parent/child relationship when a natural mother is petitioning for a natural child. Evidence in this case need only comply with the evidentiary requirements listed at 8 CFR § 204.2(d)(2)(iii). The statute states, "primary evidence for an illegitimate child or son or daughter. If a petition is submitted by the mother, the child's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted by the purported father of a child or son or daughter born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child

relationship was established when the child or son or daughter was unmarried and under twenty-one years of age."

Model Rebuttal No. 4:

Re: Request For Evidence, I-730 Refugee Relative Petition
Petitioner: Ms. Jones
Beneficiary: Child Jones

Dear Sir or Madam:

On February 5, 2010 your office issued a Request For Evidence in connection with the pending I-730 submitted by Ms. Jones on behalf of her daughter, Child Jones. Your office has requested the following information in order to continue processing the pending petition:

1) In your sworn statement you said that you did not know the whereabouts of your daughter. Please explain the situation in which you connected back with her.
2) In addition, you must comply with the following in order to establish that a bona fide parent/child relationship exists or existed between Ms. Jones and Child Jones. Please furnish any and all documentation you have to demonstrate that such a relationship exists or existed.

Please review the enclosed documentation which is being submitted by the petitioner at this time in response to the request issued by your office:

I. **Sworn Affidavit of Petitioner, Explaining the Reconnection with Beneficiary**:

Please review the enclosed, sworn affidavit of Ms. Jones, which explains how she became separated from the beneficiary during the civil conflict in Liberia in the mid-1990s. The petitioner's statement discloses that her daughter was born after she herself was the victim of rape at age fourteen. It also

describes the sad circumstances of the separation of mother and daughter during a rebel attack in Monrovia, as well as their eventual reconnection nearly a decade later, when an acquaintance of the family brought news that Child Jones was alive in a refugee camp in the Ivory Coast. The petitioner explains that she has not physically seen or touched her daughter Child Jones since 1996, when their separation occurred. Ever since the petitioner learned that Child Jones was still alive, she has been in frequent communication with her and sent money to provide for her well-being as they await their eventual reunion. Please accept this sworn statement from the petitioner in compliance with the request issued by your office.

II. **Evidence of Bona Fide Parent/ Child Relationship**:

Your office has requested that the petitioner submit all available evidence in order to establish that a bona fide parent/child relationship exists between the petitioner and beneficiary. Because the petitionable relationship between Ms. Jones and Child Jones is that of a biological mother to her biological child, evidence of a "parent/child relationship," is statutorily unnecessary.

INA §207(c)(2)(A) states the following with respect to eligibility for derivative refugee benefits:

> "A spouse or child (as defined in section **101(b)(1)(A)**, **(B)**, **(C)**, **(D)**, or **(E)**) of any refugee who qualifies for admission under paragraph (1) shall . . . be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee."

The beneficiary meets the definition of a child pursuant to INA §101(b)(1)(D) as an "out-of-wedlock child." INA §101(b)(1)(D) states in pertinent part:

> "a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person."

This statutory definition of the existing petitionable relationship between Ms. Jones and Child Jones does not require the existence of a bona fide parent/child relationship. Only in the event that the petitioner is the natural *father* of an out-of-wedlock child, does the statutory definition require existence and proof of a bona fide parent/child relationship. No such requirement exists with respect to a petitioning mother for her natural child. Evidence to prove the petitionable relationship between a natural mother and her out-of-wedlock child need only comply with the evidentiary requirements listed at 8 CFR §204.2(d)(2)(iii).

8 CFR §204.2(d)(2)(iii) states in pertinent part:

> " Primary evidence for an illegitimate child or son or daughter. If a petition is submitted by the mother, the child's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted by the purported father of a child or son or daughter born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child rel ationship was established when the child or son or daughter was unmarried and under twenty-one years of age."

Pursuant to the cited provisions of 8 CFR and the INA, it is not necessary to provide proof of a bona fide parent/child relationship in order to approve the pending I-730 petition for Child Jones, submitted by her natural mother, Ms. Jones.

Case Study No. 5

- **Evidentiary Issues:**
    - Lack of civil issued documentation; non-disclosure of relative on prior benefits application; burden of proof; and country conditions
- **Corrective Measures Requested:**
    - RE NON-DISCLOSURE: Records indicate that you are filing this petition on behalf of a relative whom you did not identify as your relative in previous immigration matters. Approval is contingent on support by clear and convincing evidence to establish that the claimed relationship between you and the beneficiary actually exists. Please submit a statement to explain non-disclosure in addition to evidence of relationship.
- **Corrective Measures Sent:**
    - RE NON-DISCLOSURE: Sent explanatory letter.
- **Notes**
    - RE NON-DISCLOSURE: USCIS did not indicate where and on which record the petitioner did not disclose a child, and did not include a copy. In this case the petitioner was illiterate in English and native language and attested to never failing to mention the child in question. Likely, the form in question was the I-590, which the petitioner maintains that all children were listed. Because of illiteracy, the petitioner signed the form based on the representations of the interviewing officer as to the content. Petitioner stated that child was mentioned during interview and all other USCIS matters. Petitioner cannot submit statement to explain non-disclosure because it did not occur. It was possible for a clerical error due to only four spaces on Form I-590 for children (petitioner has much more than four), in which case there must be a handwritten or typed addendum. Also, there is not a question asking the actual number of children to verify names of children with the amount listed. Petitioner has multiple children with similar names, and due to illiteracy, cannot spell any of the children's names. It's reasonable that one of the children may have been left off of the form during the interview. Also, Somalia is ranked first as "World's Most Failed State," by Failed States Index in Foreign Policy Magazine published by the Washington Post. This makes civil documentation completely unavailable in Somalia even secondary documentation is unavailable. Furthermore, Department of State Foreign Affairs Manual, Appendix C, states the following in reference to document availability in Somalia: "unavailable.

There is no competent civil authority in Somalia. The Government of Somalia ceased to exist in December of 1990. Since that time the country has undergone a destructive and brutal civil war, in the course of which most records were destroyed. Those few records not destroyed are in the hands of private individuals or are otherwise not retrievable. There are no police records, birth certificates, school records etc., available from Somalia. There are no circumstances under which immigrant visa applicants can reasonably be expected to recover original documents held by the former Government of Somalia."

- RE BURDEN OF PROOF: The burden of proof requested was incorrect. Per 8 CFR § 207.7(e), when the petitioner has not failed to identify a relative in a previous immigration matter, the burden of proof remains the statutorily prescribed burden of "by the preponderance of evidence," NOT "clear and convincing."
- 8 CFR § 207.7 DERIVATIVES OF REFUGEES (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 accompanying or following-to-join benefits. Where possible this will consist of the documents specified in Sec. 204.2(a (1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.

Model Rebuttal No. 5:

Re: Request for Evidence, I-730

Petitioner: Ms. Williams

Beneficiary: Child Williams

Dear Sir or Madam:

On January 11th 2010, your office issued a Request For Evidence in connection with the pending I-730 filed by Ms. Williams on behalf of her son, Child Williams. Your office has requested the following information in order to continue processing the pending petition:

1) Please submit a clear, recent photograph for the beneficiary.
2) A review of USCIS records indicates that you are filing this petition on behalf of a relative whom you did not identify as your relative in previous immigration matters. Therefore, this petition can be approved only if it is supported by clear and convincing evidence to establish that the claimed relationship between you and the beneficiary actually exists. In addition, please submit a statement to explain why you did not identify the beneficiary as your relative in previous immigration matters. Clear and convincing evidence may include, but is not limited to:
    a. Hospital records which name the child and both parents,
    b. Medical records which name the child and both parents,
    c. School records which name the child and both parents,
    d. Census records which name the child and both parents,
    e. Church records in the form of a certificate under the seal of the church where the baptism, dedication, presentation or comparable rite occurred within two months after birth, showing the date and place of the child's birth, date of religious ceremony, and the names of the child's parents.
3) To facilitate communication with the overseas office/consulate, you may wish to provide:
    a. Your current phone number,
    b. Your e-mail address, if available,

c. The beneficiary's overseas phone number, and the beneficiary's overseas e-mail address, if available.

Please review the following documentation and information which is being submitted by the petitioner at this time in compliance with your request:

I. **Photograph of Beneficiary**:

Please review the enclosed photograph of the beneficiary, Child Williams. This is the clearest and most recent photo of the beneficiary that is available.

II. **Clear and Convincing Evidence of Relationship**:

The Request for Evidence issued by your office on January 11th 2010 states that "[a] review of USCIS records indicates that you are filing this petition on behalf of a relative whom you did not identify as your relative in previous immigration matters. Therefore, this petition can be approved only if it is supported by clear and convincing evidence to establish that the claimed relationship between you and the beneficiary actually exists."

Your office has failed to identify the USCIS record in which the beneficiary was allegedly not disclosed by the petitioner, or to provide a copy of this record for mine and the petitioner's review. Without more specific information from your office, it is extremely difficult to address this evidentiary issue with any degree of competence. The petitioner has never had any formal education, and is illiterate in her native language as well as in English. She maintains unequivocally that she has never failed to mention her son, Child Williams, in any prior immigration matters.

Although we cannot be sure, we can assume that your office may be referring to form I-590 as the "USCIS record," wherein Child Williams was not disclosed as the petitioner's son. The petitioner is adamant that she listed all eleven of her children during her I-590 interview. She insists that because she cannot read, she signed form I-590 based on the representations of the interviewing officer as to its content. She insists that she has never failed to include Child Williams as her son in any prior matter, including her I-590 interview. Based on the petitioner's emphatic assertion that she has never failed to mention Child Williams in any USCIS matter, it is impossible for her to

"submit a statement to explain why [she] did not identify the beneficiary as [her] relative in previous immigration matters."

Based on this information, please accept the petitioner's explanation that she has never failed to disclose the beneficiary as her relative. Please consider that the omission of the beneficiary's name may have been due to clerical error on the part of the individual who filled out the prior USCIS record. It should be noted that form I-590 is particularly troublesome in regards to the listing of children on the application. Form I-590 has only four spaces to include an applicant's children. Any additional children must be listed on a typed or hand-written addendum. The petitioner has eleven children, necessitating an addendum in her case. Additionally, form I-590 does not ask the applicant to identify how many children s/he has. Because there is no question that asks the applicant to disclose the number of children, the reviewing officer who completes the form cannot reconcile the names of children with the number of children in order to screen for errors of omission. In this regard, form I-590 is particularly error-prone, specifically concerning the listing of an applicant's children.

Finally, the petitioner has three sons with relatively similar names; Child Williams, Child Williamson, and Child Willis. Due to her illiteracy, she does not know how to spell the names of any of her children. It would be reasonable to conclude that the interviewing officer may have omitted one of these relatively similar names during interview.

In view of the above explanation, it is unreasonable to raise the petitioner's burden of proof to that of "clear and convincing evidence," in this case. Ms. Williams maintains that she has never failed to list her son, Child Williams, in any immigration matter, and she is therefore unable to provide a statement explaining why she failed to mention him on a prior USCIS application. Furthermore, your office's failure to provide a copy of the document that allegedly contains the omission makes an informed rebuttal of this allegation impossible. As such, the petitioner's burden of proof pursuant to 8 CFR §207.7(e), must be to establish the underlying qualifying relationship "by a preponderance of the evidence," and not by the heightened burden of "clear and convincing evidence."

It is also crucial to consider the historical realities of Somalia as you evaluate the evidence that has already been submitted in support of Child Williams' pending I-730 petition. In both 2008 and 2009, Somalia has been ranked number one, as the "World's Most Failed State," by the *Failed States*

Index.[3] While civil documentation is totally unavailable in Somalia, even the types of secondary documentation suggested in the RFE issued by your office are unavailable. The Department of State Foreign Affairs Manual, Appendix C, states the following in reference to document availability in Somalia:

> "Unavailable. There is no competent civil authority in Somalia. The Government of Somalia ceased to exist in December of 1990. Since that time the country has undergone a destructive and brutal civil war, in the course of which most records were destroyed. Those few records not destroyed are in the hands of private individuals or are otherwise not retrievable. There are no police records, birth certificates, school records etc., available from Somalia. There are no circumstances under which immigrant visa applicants can reasonably be expected to recover original documents held by the former Government of Somalia."

Based on the FAM's stated unavailability of documentation for Somalia, even the types of secondary documentation listed by your office are unobtainable. School, hospital and census records are non-existent in Somalia, and cannot be obtained in support of this petition. The original birth record submitted in support of Child Williams' I-730 petition is the only document that the petitioner has in support of her qualifying relationship to the beneficiary. The local, quasi-governmental entity that issued the birth record is not recognized as an authorized civil entity, but it is the only article of supporting documentation that can be produced in this case. In view of this information, please approve the pending I-730 for Child Williams in the absence of compelling documentary evidence.

III. <u>Addresses and Phone Numbers to Facilitate Communication with the Overseas Consulate:</u>

Up to date contact information for the petitioner and beneficiary is as follows:

1) Petitioner's current phone number:

[3] Foreign Policy Magazine, "Failed States Index," published June 2009, by the Washington Post. Available at: http://www.foreignpolicy.com/articles/2009/06/22/2009_failed_states_index_interactive_map_and_rankings

2) Petitioner's e-mail address: The petitioner does not have an e-mail address. Please use the following e-mail address, which is that of the attorney of record, in any e-mail correspondence that relates to this case: www.555.com
3) Beneficiary's overseas phone number and e-mail address: Regrettably, the beneficiary does not have a working phone number or e-mail address overseas. Please feel free to contact the attorney of record in connection with all consular processing matters.

Upon your review of the requested documentation please resume processing of the I-730 petition file by Ms. Williams on behalf of her son. The petitioner has sustained a long and difficult separation from her husband and from nine of her eleven children, including Child Williams. During Ms. Williams' separation from her children, one of her daughters sustained horrific injuries from an explosive device detonated near her home in Mogadishu. A second child has persistently suffered debilitating pain due to insufficient medical treatment for physical disabilities that he's had since birth. All of her children are suffering from extreme malnutrition, and possibly, starvation. The petitioner was with me in my office when she received the attached photo of the beneficiary, Child Williams. I watched her literally fall into a heap on the floor in my office, sobbing, as she cried, "This skinny boy cannot be my son! It can't be my son! Look at his face! He is disappearing! His eyes look dead!" I would be extremely grateful for a swift and compassionate adjudication of this case. The reunification of Ms. Williams and her husband and children would not only be equitable, but life-giving to this family. Please exercise your discretion favorably in view of the noted documentary deficiencies, and approve the enclosed I-730 for Child Williams.

Case Study No. 6

- **Evidentiary Issues:**
    - Non-disclosure of relative on prior benefits application; burden of proof;
- **Corrective Measures Requested:**
    - RE NON-DISCLOSURE: Persuasively explain the discrepancies in your refugee application and your current statements and petition. (i.e. Submit a persuasive explanation as to the non-disclosure of the beneficiary on form I-590.)
    - RE BURDEN OF PROOF: Due to your non-disclosure of the beneficiary, submit clear and convincing evidence of the petitionable relationship existing between the petitioner and beneficiary. (i.e., clear and convincing rather than preponderance of the evidence.)
- **Corrective Measures Sent:**
    - RE NON-DISCLOSURE: Referred to the petitioner's prior-submitted affidavit explaining the non-disclosure and argued that non-disclosure of an unborn fetus doesn't constitute "non-disclosure" in the first place. (The petitioner in this case had affirmatively submitted an affidavit with the original I-730 petition that explained how he had not included his wife and child on form I-590 because his father was dying and JVA had instructed him not to disclose his dependents in an effort to medically expedite the case.)
    - RE BURDEN OF PROOF: Explained that it is improper to raise the burden of proof in this case since non-disclosure didn't occur.

Model Rebuttal No. 6:

Re:	Request for Evidence, I-730 Refugee Relative Petition
Petitioner:	MCCLURE, Fred K.
Petitioner Alien No.:	A 000-000-000
Receipt Number:	SRC-1111111111
Beneficiary:	MCCLURE, Jason

June 2, 2011

Dear Sir or Madam:

On May 4, 2011 your office issued a Request For Evidence in connection with the I-730 petition filed by Mr. Fred McClure on behalf of his son, Jason McClure. The Request For Evidence issued by your office states the following with respect to the pending petition:

> "If you can persuasively explain the discrepancies in your refugee application and your current statements and petition and submit a copy of your marriage certificate, this petition can be approved only if it is supported by clear and convincing evidence to establish that the claimed relationship between you and the beneficiary actually exists."

As such, your office has effectively made the following evidentiary demands of the petitioner:

1) Submit a persuasive explanation as to the non-disclosure of the beneficiary on form I-590.
2) Submit clear and convincing evidence of the petitionable relationship existing between the petitioner and beneficiary.
3) Submit a copy of the marriage certificate of Fred McClure and Hope K. McClure.

Please review the enclosed information and documentation which the petitioner is submitting at this time in compliance with the request issued by your office:

I. **Persuasive Explanation of Non-Disclosure of Beneficiary on form I-590**:

Your office has erroneously concluded that the petitioner failed to disclose his infant son, Jason, on form I-590, Registration for Classification as Refugee. The absence of the beneficiary's name on form I-590 cannot be classified as non-disclosure since the beneficiary's birth occurred subsequent to the signature of form I-590. Since the beneficiary was not yet alive on the date that the petitioner signed form I-590, the absence of the beneficiary's name is not an omission, but is an articulable fact that was correct on the date of signature.

The beneficiary was born on July 28, 2010. The alleged non-disclosure of the beneficiary refers to form I-590, which your office states was affirmed by the petitioner and approved on May 17, 2010, two months before the beneficiary's birth. It is unreasonable to refer to the absence of Mr. McClure's unborn fetus on form I-590 as misrepresentation or non-disclosure. An unborn fetus cannot be listed on form I-590 since prior to birth, the fetus's birth date, gender and name are unknown. As such, the Service's conclusion that the petitioner failed to identify the beneficiary on form I-590 is erroneous. The beneficiary was not yet a viable, living baby on the date of approval of form I-590 and therefore, could not be listed there.

Your office has also requested that the petitioner "persuasively explain" the non-disclosure of his wife, Hope McClure, on form I-590. A full explanation will follow, however it must be noted that a petitionable relationship exists between the petitioner and his infant son, Jason, regardless of the existence of any petitionable relationship between the petitioner and his wife, Hope McClure. The existence or absence of a lawful, spousal relationship between the petitioner and his wife does not affect Jason McClure's eligibility for derivative refugee benefits under INA §207(c)(2), since, whether legitimate or illegitimate, Jason meets the definition of a child articulated at INA 101(b)(1). As such, the non-disclosure of

the petitioner's spouse on form I-590 is not material to the adjudication of Jason McClure's pending I-730.

The prior-submitted, sworn affidavit already provided by the petitioner persuasively explains the fact of the non-disclosure of Hope McClure, on form I-590, and is summarized herein for your consideration. The petitioner's sworn testimony explains that his father was critically ill when he was notified to appear for his I-590 interview. He further explains that personnel from the Joint Voluntary Agency (JVA) had instructed him to omit his wife's name during interview since adding new parties to the refugee claim at that late stage of processing would delay the departure of all case members, including his father, who needed immediate access to Western medicine. Nonetheless, his father died in a hospital in Greensboro, NC, on January 21, 2011, less than three months after the family's arrival in the United States. (Please see enclosed death certificate for Mr. McClure Sr.)

It is of great importance to note that the JVA is an agent of the U.S. State Department, subcontracted to facilitate processing of P-1, P-2 and P-3 refugee cases. This relationship between the U.S. State Dept. and the JVA is outlined in 9 FAM Appendix O[4]. After JVA processing, cases are ultimately adjudicated by USCIS or U.S. Consular staff. The significance of a JVA staff member advising the petitioner not to disclose his wife's name in the interest of ensuring medical expedite of his father's case is tantamount to a U.S. Consular officer advising the petitioner to omit information on his I-590. A JVA officer acts on behalf of the U.S. State Department, in a quasi-adjudicatory capacity with respect to I-590 cases. ***Effectively, it is as if a consular officer told the petitioner not to disclose his wife on form I-590.*** Under these circumstances, the petitioner's non-disclosure is certainly understandable since he was simply complying with the instructions of the officers who were in control of his case.

[4] 9 FAM Appendix O, 500 which defines Overseas Processing Entity as, "A voluntary agency under cooperative agreement with the Department, a U.S. mission contractor, or international organization that helps process refugees for U.S. resettlement. Sometimes known formerly as a Joint Voluntary Agency (JVA)." Available at: http://www.state.gov/documents/organization/88049.pdf

Your office has indicated that the foregoing explanation is, “not sufficient to justify approval of this petition.” Your office mischaracterizes the entire nature of the petitioner’s non-disclosure by claiming that, “You stated that you were advised by a JVA who came to the refugee camp that if you claimed a wife, your refugee registration would take longer than if you were single. You also stated that your father was sick.” This distorted recapping of the petitioner’s testimony by your office mischaracterizes his explanation for two reasons. 1) It implies that the reason the petitioner omitted his wife’s name was a selfish one in order to speed up his own case processing, and 2) it classifies his father’s condition as mere sickness, when in fact, it was terminal illness as evidenced by the attached death certificate. In actuality, the petitioner’s omission of his wife’s name was in order to speed the processing of his ***father’s case***, whom he feared would die without access to treatment, and not to speed his ***own*** case as alleged by your office. The fact that the petitioner’s father died only a few months later corroborates both the validity of his fear and the veracity of his explanation.

Please Consider that the foregoing “persuasively explains,” the petitioner’s omission of the beneficiary’s name on form I-590. Under the circumstances, the nondisclosure does not constitute a basis for denial of the present petition. Firstly, the nondisclosure of the petitioner’s wife was ***not*** material to the benefit sought—namely, refugee benefits pursuant to INA §207. Whether the petitioner was married at the time of his I-590 interview had no bearing on his eligibility for benefits as a PA refugee. His eligibility for admission to the U.S. pursuant to INA §207, and his ability to meet the definition of a refugee at INA §101(a)(42)(A) are totally unaffected by his marital status. Secondly, the non-disclosure was sanctioned by an agent of the U.S. State Dept. in order to medically expedite the case. It is inherently reasonable that the petitioner followed the advice of this State agent, who had apparent authority over his case. Finally, the petitioner’s objectively reasonable explanation of the non-disclosure is corroborated by the fact that his father tragically died shortly after arrival in the US. As such, please conclude that the petitioner’s explanation

persuasively explains the discrepancy between forms I-590 and I-730. In light of this explanation, an approval decision would be equitable.

II. Clear and Convincing Evidence of Petitionable Relationship:

The Request For Evidence issued by your office instructs the petitioner to submit clear and convincing evidence of the petitionable relationship existing between him and the beneficiary, Jason McClure. It is statutorily inappropriate to raise the petitioner's burden of proof in this case from that of "preponderance of the evidence," to that of "clear and convincing evidence," for two reasons. 1) By failing to provide the petitioner with a copy of form I-590—the record containing the alleged adverse information—your office is noncompliant with 8 CFR 103.2 (b)(8)(iv), which requires that the Service provide a petitioner with "sufficient information to respond," to a Request For Evidence issued under the Act. 2) **The omission of the beneficiary's name from form I-590 does not constitute nondisclosure since the beneficiary was not yet born on the date that form I-590 was approved**. As such, the burden of proof in this case must remain the statutorily prescribed, "preponderance of the evidence," standard. It is a misapplication of Service regulations to raise the petitioner's burden of proof in this case.

8 Code of Federal Regulations states in pertinent part:

> *8 CFR §103.2 (b)(8)(iv) Process . A request for evidence or notice of intent to deny will be in writing and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and **sufficient information to respond**.*
>
> *8 CFR §103.2 (b)(16) Inspection of evidence . An applicant or petitioner **shall be permitted to inspect the record of proceeding** which constitutes the basis for the decision, except as provided in the following paragraphs.*

Because your office has not supplied the petitioner with a copy of form I-590, the petitioner has been deprived of the ability to "inspect the record of proceeding" which constitutes the

basis for the proposed denial of the pending I-730. This failure to comply with 8 CFR §103.2 (b)(16) means that the Service is not justified in raising the petitioner's burden of proof to the evidentiary threshold of "clear and convincing evidence."

Furthermore, as previously explained, the allegation by the Service that the petitioner failed to identify Jason McClure on form I-590 is incorrect. It would be a misapplication of Service law to raise the petitioner's burden of proof based on the non-disclosure of a relative who could not have been disclosed on form I-590 under any circumstances since he was not yet alive to be disclosed. For the above reasons it is inappropriate to raise the petitioner's burden of proof beyond the statutorily prescribed threshold of "preponderance of the evidence," which is articulated at 8 CFR §207.7(e) and which governs I-730 adjudications.

Please conclude that the birth certificate previously submitted in connection with this case evidences the father-child relationship existing between petitioner and beneficiary, and clearly meets the petitioner's burden of proof by a preponderance of the evidence.

III. <u>Marriage Certificate of Fred McClure and Hope K. McClure:</u>

Additionally, your office has requested the marriage certificate of Fred McClure and Hope McClure. Enclosed please find the marriage certificate of Fred McClure and Hope McClure, which evidences their marriage on November 12, 2009, in Kiziba Refugee Camp, in the town of Kibuye, in the Karongi district of Western Rwanda. Additionally, please review the enclosed sworn affidavits of marriage by Nancy Neighbor and Susie McClure, who were present at the marriage of Fred McClure and Hope McClure.

IV. <u>Timely Filed Rebuttal to Service RFE:</u>

The petitioner's rebuttal to the Request For Evidence issued by your office is being delivered via overnight post and will be received by your office on June 4, 2011. Pursuant to 8 CFR §103.5a(b) when a petitioner "is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing." Your office effectuated service by mail in the present case on May 4, 2011. The prescribed responsive filing period by your office for this rebuttal is 30 days. Pursuant to 8 CFR §103.5a(b) three days must be added to the prescribed period for a total of 33 days. As such, the present rebuttal must be received by your office on or before June 6, 2011 in order to be timely-filed by petitioner. Please consider the present rebuttal timely-filed since your office received it prior to June 6th.

As the supervising attorney at Elon Law School's pro-bono Humanitarian Immigration Law Clinic, I am compelled to raise a concern with your office that relates to the timely-filing of the present petition as well as to the reunification benefits of countless refugee and asylee children that your office serves. Namely, it is distressing and disappointing that the Texas Service Center appears to consistently issue 30-day compliance periods for **all** RFE's associated with refugee/asylee relative petitions. In the present case, obtaining the marriage certificate requested by your office came at great expense and hardship to the petitioner, who is an indigent Congolese refugee resettled from Rwanda to North Carolina less than a year ago. Your office's decision to issue the present evidentiary request with a mere 30 day compliance period is extremely difficult to understand since you are statutorily permitted to allow 12 weeks for compliance pursuant to 8 CFR §103.2 (b)(8)(iv). I-730 petitioners are among the most disadvantaged individuals petitioning for any type of USCIS benefit. In this case, the thirty-day RFE necessitated a perilous journey by the petitioner's twenty-one year old wife, through extremely rugged and mountainous terrain in rural Rwanda. Our office represents indigent refugees and asylees with family reunification benefits entirely free of charge and we have observed this long term and disturbing trend by your office. By contrast, the Nebraska Service Center issues 87 day RFE's in almost all cases and reserves 30 day deadlines for NOIDs. I implore you to consult with the Nebraska

Service Center in order to standardize the Service treatment of these vulnerable petitioners and cease causing immeasurable hardship on refugee children and pro-bono legal representatives alike. No justice is done by needlessly depriving refugees of an adequate response period to Service RFEs.

V. Conclusion:

Upon your review of the enclosed information and documentation, please approve the pending I-730 submitted by Fred McClure on behalf of his son, Jason McClure. An approval decision in this matter would promote the reunification of a young family and facilitate their integration into a society where they no longer have to fear persecution. Thank you for your consideration of this case.

Best regards,

Heather Scavone, Esq.
Elon University School of Law
Humanitarian Immigration Law Clinic
PO Box 5848
Greensboro, NC 27435
(336) 279-9354

Case Study No. 7

- **Evidentiary Issues:**
    - Cultural marriage; parent/child relationship; voluntary DNA; name discrepancy
- **Corrective Measures Requested:**
    - RE CULTURAL MARRIAGE: the marriage certificate in support of the petition is a traditional marriage, which is not legal in Guinea and therefore, not a valid marriage for immigration purposes. Provide a written rebuttal.
    - RE PARENT/CHILD RELATIONSHIP: the petition for the child requires further evidence for a positive ID because of different names given for child.
- **Corrective Measures Sent:**
    - RE CULTURAL MARRIAGE: sent explanatory letter; marriage certificate from Embassy in Conakry
    - RE PARENT/CHILD RELATIONSHIP: sent explanatory letter and voluntary DNA test
- **Notes**
    - RE CULTURAL MARRIAGE: petitioner and beneficiary had a cultural marriage one year prior to conducting a legal marriage with witnesses in a church. The officer does not indicate any section of a Guinean Family Code that would indicate the marriage to be insufficient. There is a deteriorated judicial infrastructure in Guinea and resources to the Family Code are unattainable for rebuttal.
    - RE PARENT/CHILD RELATIONSHIP: sent explanation for name discrepancies and did DNA testing through LabCorp which confirmed the parent/child relationship.

Model Rebuttal No. 7:

Re: Notice of Intent to Deny I-730 Petition
Petitioner: Mr. White
Beneficiary: Child Whiite

Dear Sir or Madam:

On July 28, 2009 your office issued a Notice of Intent to Deny the previously approved I-730 petition for Child Whiite, filed by his father, Mr. White. Your office cites that the following information constitutes sufficient grounds for denial in this case:

1) Consular officers report that the marriage certificate presented is not valid for Immigration purposes.
2) Further positive identification of the beneficiary has not been established.

In additional correspondence attached to the NOID, the Vice Consul in Conakry supplies additional information:

1) The marriage certificate in support of the petition for Ms. Aminata White is a traditional marriage, which is not legal in Guinea and therefore, not a valid marriage for immigration purposes.
2) The petition for the child has the child's name different than the name given by Ms. White. His given name is either Plutoronomy or Plutoronomie. As a matter of fact, Mr. White, the petitioner, also has a surname different than the child, Whiite. Under these circumstances, no positive ID of the child is possible.

At this time please review the enclosed materials and explanations, which are being submitted by the petitioner in order to overcome the cited grounds for denial in the NOID issued by your office on July 28th 2009. Although your office cites the invalidity of the petitioner's marriage to Aminata White as a ground for denial, it does so in error. The qualifying relationship between Mr. White and his son exists regardless of whether the beneficiary was born in wedlock. Additionally, any question

as to the identity of the four year old beneficiary can be resolved by affirmative DNA testing and by the enclosed explanation of various, erroneous spellings of the child's name. Because both grounds for denial can be overcome by persuasive evidence, please reinstate the original approval decision in this case. Additionally, please allow for sufficient time to receive DNA results confirming the petitioner's paternity before making a final decision on this case.

Your office states that the I-730 petition for Child Whiite may be denied based on the fact that the marriage between the petitioner and the beneficiary's mother was a cultural marriage, invalid for immigration purposes. The petitioner continues to assert the validity of his marriage, however, even if the Service has concluded that the marriage is not valid for immigration purposes, the petitioner still has a qualifying relationship to the beneficiary pursuant to the corresponding provisions of 8CFR and the INA.

Concerning eligibility for derivative refugee status, 8 CFR §207.7(a) states in pertinent part:

> "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, shall be granted refugee status if accompanying or following-to-join the principal alien."

INA §101(b)(1) provides that "the term 'child' means an unmarried person under twenty-one years of age," and specifically includes out-of-wedlock children within this definition at § 101(b)(1)(D):

> "[A] child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;"

Therefore, even if the Service has concluded that the marriage between Aminata White and Mr. White is not valid for immigration purposes, a qualifying relationship still exists between the petitioner and beneficiary since Mr. White and Child Whiite have a bona-fide parent child relationship. At this time, please review the attached evidence of the parent-child relationship between Mr. White and his four-year-old son:

1) Transcript from *Dele International School* for Pluto Musa Whiite, a.k.a. "Child Whiite," indicating that his father is "Mr. White."
2) Correspondence from Fundex Inc., confirming thirty-nine money transfers from Mr. White to Aminata White, the beneficiary's mother, during the period of February, 2007 to July, 2009. These money transfers to the beneficiary's mother provide for the living

expenses, schooling, and medical care for the beneficiary. Although the petitioner made many such transfers prior to 2007, he did not begin using Fundex Inc., for the transfers until 2007, and has no prior receipts from these transfers.

3) Photographs of the beneficiary wearing clothes purchased for him with funds sent by the petitioner.
4) Photographs of the beneficiary on his fourth birthday, in evidence of the regular correspondence between petitioner and beneficiary.

In addition to the above documentation, the petitioner has elected to conduct voluntary DNA testing in order to provide additional evidence of his qualifying relationship to the beneficiary. Please review the enclosed correspondence from the AABB accredited DNA testing agency, LabCorp. The correspondence from LabCorp indicates that Mr. White conducted a DNA specimen collection with LabCorp on August 25th 2009, and still awaits results from the test. A test kit was sent to the U.S. Embassy in Conakry on August 24th in order to conduct specimen collection from the beneficiary. Labcorp has indicated that it still awaits the specimen from the beneficiary in order to report the results of the voluntary DNA testing. Please delay final adjudication of this case until your office can fully examine the extremely pertinent DNA evidence that is pending completion.

Upon your review of the evidence in support of the parent-child relationship between Mr. White and his son, please conclude that a qualifying relationship exists in this case, and that the stated ground for denial of the petition based on invalidity of the petitioner's marriage certificate has been sufficiently rebutted.

Secondly, your office has cited that the previously-approved I-730 for Child Whiite may be denied based on the fact that, "[f]urther positive identification of the beneficiary has not been established." Although the consular officials in Conakry have identified a spelling discrepancy with the beneficiary's name, it is unreasonable to conclude that this spelling error makes it impossible to establish the four-year-old beneficiary's identification. Upon your review of the following, pertinent explanation of the spelling discrepancies, please agree that Mr. White's identity has been established by a preponderance of the evidence.

Please review the attached, sworn affidavit by the petitioner, wherein he concedes that his young son's name has a number of alternate spellings on documents and in practice within his family. The petitioner's affidavit explains that he intended for his son to be named "Plutoronomy," in honor of the fifth book of the Old Testament, however the French-speaking medical staff in

Guinea, insisted on translating the name to its French equivalent, “Plutoronomie.” As such, the child’s name has legally been “Plutoronomie,” since birth, even though both of his parents and all of his friends and relatives refer to him as “Plutoronomy.” Additionally, the French-speaking staff recorded the beneficiary’s surname as “Whiite,” which is clearly a misspelling of the correct name, “White.” As such, the beneficiary has a name that is used in practice, “Plutoronomy White,” and a different name, “Plutoronomie Whiite,” that is his legal name, even though it is considered to be incorrect by his parents. It should be clear from this reasonable explanation of the two different spellings of the name, that the discrepancies are the result of clerical error rather than fraud. It is unreasonable to conclude that this four-year-old child has assumed aliases in order to practice deceit in his interactions with the U.S. Embassy in Conakry.

The beneficiary in this case is a very small child of Liberian national origin who was born in Guinea during his parents’ displacement from their home-country of Liberia. In his sworn affidavit, the petitioner makes the very pertinent observation that he, as the principal applicant, was granted refugee status in the total absence of identity documentation. The petitioner’s own identity was established through nothing other than his own sworn testimony during his I-590 interview. Although the political climate in Guinea now is clearly more favorable than it was when the petitioner was assessed for refugee status, the fact remains that the beneficiary is a very small child, displaced by war. Despite the admitted presence of a spelling error in this child’s name, your office should be able to establish a positive identification of this four-year old boy.

Please conclude that the preponderance of the evidence shows that “Child Whiite” and “Child White” are two legitimate alternate names for the beneficiary. Although the two names do illustrate the presence of clerical error, they do not preclude identification of the beneficiary. Just as the use of a family nickname does not prohibit positive identification of an individual, the use of the beneficiary’s two different but reasonably similar names does not preclude his positive identification as the young son of the petitioner.

At this time we would be most grateful if your office would delay final adjudication of the I-730 for Child Whiite until your office has received the pending DNA test results. We do not anticipate that it will take more than thirty days to complete the testing and report the results. Please note that LabCorp has indicated that it will immediately forward the test results to your attention once they’ve been determined. It would be equitable and in the interest of a fair adjudication to wait for the DNA test results to be reported by LabCorp before making a final decision in this matter. Thank you for your consideration of this case.

Case Study No. 8

- **Evidentiary Issues:**
    - Cultural adoption
- **Corrective Measures Requested:**
    - Submit a clear and legible copy of the final adoption decree; evidence the child has been in the legal custody of adoptive parents for at least two years prior to grant of asylum or admission as a refugee (legal custody requires a legal process by a court or other recognized government entity which is authorized to award legal custody. Acceptable evidence of legal custody is a final adoption decree or a written award of custody by the court or recognized government entity); and submit evidence the child has resided with the adoptive parent(s) for at least two years prior to grant of asylum or admission as a refugee.
- **Corrective Measures Sent:**
    - Sent affidavits; Liberian Domestic Relations Code §§ 4.51-4.75; money transfer receipts;
- **Notes**
    - RE CULTURAL ADOPTION: beneficiary was adopted by cultural adoption practices in war-time Liberia, therefore there is no final adoption decree as evidence. Despite no formal adoption decree, beneficiary meets definition of child pursuant to INA 101(b)(1)(E): (E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household : Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or (ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;
    - Cultural adoption constitutes lawful adoption in Liberia, and the adoption of beneficiary must only have been legal under the laws of the country where the adoption was effectuated. The petitioner is a member of an ethnic minority group during documented

persecution of that group, which makes them unable to benefit from statutory adoption process in Liberia.

- Matter of Kwok 14 I&N, Dec. 127, 130 (BIA 1972): "we also reaffirm our long-standing rule that the validity of an adoption for immigration purposes is governed by the law of the place where the adoption occurred."
- Kaho v. Ilchert, 9th Circuit found that "the BIA has expressly held that it is not necessary for an adoption to be recognized by a juridical act before it can be recognized as valid for immigration purposes." "for an adoption to be valid under section 101(b)(1)(E), an adoption need not conform to the BIA's or Anglo-American notions of adoption; the adoption need only be recognized under the law of the country where the adoption occurred."

Model Rebuttal No 8:

Re: Request For Evidence, Refugee Relative Petition
Petitioner: Mr. Green
Beneficiary: Child Green

Dear Sir or Madam:

On May 1st 2009 your office issued a Request For Evidence in connection with the pending I-730 for Child Green, filed by her father, Mr. Green. Your office has requested the following information in order to continue processing the pending application:

1) Please provide a full and complete address for the beneficiary, Child Green (sic). Include the street name, house or apartment number, city, state, country and postal code.
2) Submit a clear and legible copy of the final adoption decree for Mr. Green (sic), which has been registered with the proper civil authorities.
3) Submit evidence that the child has been in the legal custody of the adoptive parent(s) for at least two years prior to the grant of asylum or admission as a refugee. Legal custody requires a

legal process by a court or other recognized government entity which is authorized to award legal custody. Acceptable evidence of legal custody is a final adoption decree or a written award of custody by the court or recognized government entity.

4) Submit evidence the child has resided with the adoptive parent(s) for at least two years prior to grant of asylum or admission as refugee.
5) In addition, please submit a statement listing the names of all individuals who lived in the same household with the child during the custody/residence period, and indicate how each person is related to the child. Also, please indicate whether the child's natural parent(s) lived in the household.

At this time, please review the enclosed information and documentation which is being submitted by the petitioner in compliance with the request issued by your office:

I. <u>Full and Complete Address for Beneficiary</u>:

The residential address for the beneficiary is incapable of receiving mail, however the beneficiary has been able to provide the following mailing address, checked regularly by the beneficiary's caretaker:

c/o Frederika Timbuctoo
International Organization for Migration (IOM) UNHCR Compound Haider Building, Mamba Point, UN Drive Monrovia, Liberia

II. <u>Final Adoption Decree for Child Green Registered by Civil Authorities:</u>

Because the beneficiary was adopted pursuant to cultural adoption practices during war-time Liberia, there is no final adoption decree in evidence of Child Green's legal adoption by her father, Mr. Green. Despite the absence of a formal adoption decree, Child Green meets the definition of a child pursuant to INA 101(b)(1)(E).

The Service should recognize the legal customary adoption of the beneficiary in this case for two reasons. Firstly, customary adoption constitutes lawful adoption in Liberia, and precedent dictates

that the adoption of the beneficiary must only have been legal under the laws of the country where the adoption was effectuated. Secondly, because the petitioner is a member of the Muslim-Mandingo ethnic minority during a period of well-documented persecution of that group, he was patently unable to benefit from the seldom-used statutory adoption process that exists in the Liberian Domestic Relations Act. Under these circumstances, even if a statutory adoption could have been effectuated during peace-time in Liberia, it could not have been effectuated during civil-war, by a member of a highly persecuted ethnic minority.

Because customary law is given legal effect in Liberia, the customary adoption of Child Green should be recognized for purposes of establishing a qualifying relationship to the petitioner, Mr. Green. It is well established that the validity of an adoption is governed by the laws of the country where it was effectuated. Please see *Matter of Kwok,* "[w]e also reaffirm our long-standing rule that the validity of an adoption for immigration purposes is governed by the law of the place where the adoption occurred."[5] In the present case, the petitioner does not contend that a statutory adoption of Child Green was ever conducted. Rather, he asserts that a legal customary adoption was conducted. Although your office has indicated that the only acceptable proof of the adoption of Child Green is a court-ordered final adoption decree, the BIA has clearly articulated that a legal adoption can occur according to customary practices, and in the absence of any juridical act. In *Kaho v. Ilchert*, the 9th Circuit Court of Appeals found that "[t]he BIA has expressly held that it is not necessary for an adoption to be recognized by a juridical act before it can be recognized as valid for immigration purposes."[6] The court goes on to state that, "[f]or an adoption to be valid under section 1101(b)(1)(E), an adoption need not conform to the BIA's or Anglo-American notions of adoption; the adoption need only be recognized under the law of the country where the adoption occurred."[7] As such, it should only be necessary to demonstrate that the customary adoption of the beneficiary was in fact legal in Liberia, when it occurred in the year 1993.

Despite the existence of a seldom-used statutory adoption process, customary adoption is the norm in Liberia, and was the only viable way to effectuate an adoption in the 1990s, during the midst of Liberia's bloody civil conflict. A copy of Title 9, Liberian Domestic Relations Code, §§4.51-4.75, is attached for your review. The judicial process outlined in the code is laughable in view of the historical realities of that region during the years surrounding the adoption of the beneficiary.

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[5] *Matter of Kwok* 14 I&N, Dec. 127, 130 (BIA 1972).

[6] *Kaho v. Ilchert*, 765 F.2d 877 (9th Cir. 1985).

[7] *Id.*

Although a statutory process for adoption admittedly existed in 1993 in theory, it did not exist in practice. There is a wealth of empirical data available to corroborate the petitioner's claim that customary adoptions in Liberia are given legal effect, and that there was essentially no functioning judiciary to effectuate "statutory" adoption during the years surrounding the beneficiary's adoption. Excerpts from the following reports and studies are attached in support of this claim:

a. *Liberia: Resurrecting the Justice System*[8]: Gives a detailed assessment of the relationship between statutory law and customary law in Liberia. Explains that most Liberians "rely on customary justice because the statutory system is often non-existent." The report continues to explain that, "locally elected town-chiefs, clan-chiefs and paramount-chiefs enjoy original jurisdiction in customary law cases."
b. *United Nations Report on the Situation of Human Rights in Liberia, November 2006- January 2007*[9]: This report is issued quarterly by the current UN mission in Liberia. It summarizes the continuing practices of "trial by ordeal," and the debilitated state of the judiciary in that country, even at present. In the absence of a functioning judiciary, citizens rely on local and customary law. "Serious challenges to the effective operation of the judicial system continu[e] to undermine the rule of law and the protection of fundamental human rights."
c. *United Nations Security Council Fifteenth Progress Report of the Secretary General on the United Nations Mission in Liberia*[10]*:* The Security Council's report gives a dire summary of the state of the judicial system in Liberia. "The judicial system is constrained by limited infrastructure, shortage of qualified personnel, lack of capacity to process cases, poor management and lack of the necessary will to institute reforms." "There are recurring reports of court officials who continue to apply rules and procedures in an inconsistent manner, fail to observe minimum human rights standards, and engage in corrupt practices. A weak judiciary forces the general public to rely on customary law."

Finally, please consider the petitioner's underlying refugee claim as you evaluate the validity of the adoption of Child Green. The petitioner was unlawfully detained and tortured for more than a year by the government of Charles Taylor due to the fact that he is a member of the Muslim-Mandingo ethnic minority. Please see the attached record of his detention, documented by the International Committee of the Red Cross. The petitioner's membership to this highly persecuted ethnic minority caused him to be targeted by the former government of Liberia. It is not reasonable to assume that the petitioner would have had equal access to the civil court system, even if there had been a competent judiciary in existence during the years surrounding Child's adoption.

[8] *Liberia: Resurrecting the Justice System;* International Crisis Group Africa Report No. 107, 6 April, 2006.
[9] *United Nations Mission in Liberia: Quarterly Report on the Human Rights Situation in Liberia, November 2006-January 2007.*
[10] *United Nations Security Council Fifteenth Progress Report of the Secretary General on the United Nations Mission in Liberia:* August 8, 2007. s/2007/479.

In order to fairly adjudicate this case, your office must consider the available evidence in view of the historical realities of Liberia during the 1990s. Mr. Green cannot prove that a statutory adoption of the beneficiary was carried out, but he can show by a preponderance of the evidence that a customary adoption took place. As illustrated in the *Kaho* and *Kwok* cases, immigration courts have often recognized customary adoptions as bona fide adoptions for the purpose of establishing a qualifying relationship. Please adjudicate Mr. Green's case in keeping with precedent decisions involving customary adoptions.

The documentation below is being submitted in evidence of the bona fide, customary adoption of Child Green by the petitioner, Mr. Green:

1. Sworn Affidavit of Yomamma Green, who knew the petitioner and beneficiary in Liberia, at the time that the adoption took place, because he was the petitioner's neighbor;
2. Sworn Affidavit of Frangelico Smith, who knew the petitioner and beneficiary in Liberia, at the time that the adoption took place, because he was the petitioner's neighbor;
3. Sworn Affidavit of Towntotown Anderson, who knew the petitioner and beneficiary in Liberia, at the time that the adoption took place, because he was the petitioner's neighbor;
4. Sworn Affidavit of Teryaki Jones, who knew the petitioner and beneficiary in Liberia, at the time that the adoption took place, and who is the cousin of the petitioner;
5. Sworn Affidavit of the petitioner, Mr. Green, which describes in specific detail, the details of the customary adoption of his daughter Child Green;

Please conclude that no final adoption decree is necessary to prove the qualifying relationship between Mr. Green and Child Green because Child was adopted through customary adoption practices. Despite the absence of a formal adoption decree, Child Green meets the definition of a child described in INA §101(b)(1)(E).

III. <u>Evidence of Two Years of Legal Custody by Adoptive Parent:</u>

Because a legal, customary adoption of the beneficiary occurred in 1993, the petitioner's legal custody of the beneficiary began in 1993 and continues to present. The prior-discussed decisions in the *Kaho* and *Kwok* cases support the assertion that the petitioner's legal custody of the beneficiary began in 1993, when the customary adoption occurred. Although your office has indicated that,

"[a]cceptable evidence of legal custody is a final adoption decree or a written award of custody by the court or recognized government entity," the *Kaho* and *Kwok* decisions clearly demonstrate that legal custody subsequent to a legal customary adoption would not require civil-issued documentation.

Since the customary adoption of Child Green occurred on the date of her birth, March 12th 1993, the petitioner's legal custody of Child Green also began on that date. The petitioner's legal custody of the beneficiary therefore began twelve years prior to the date of his admission to the United States as a refugee.

IV. <u>Evidence of Two Years Cohabitation Prior to Admission as Refugee</u>:

The beneficiary lived with the petitioner, in his legal custody from March of 1993 until 1996, and then again from mid-1997 until July 16, 2002, when the petitioner was imprisoned by Charles Taylor's government. The only available evidence to prove that the beneficiary cohabited with the petitioner during these periods, is the sworn affidavit of the petitioner, and the proof of financial support that has continued since the petitioner's separation from the beneficiary. Even the usual types of secondary evidence that would typically prove cohabitation are unavailable due to the fact that the cohabitation occurred during a period of violent civil war. School records do not exist because the children did not go to school during the period of cohabitation. Insurance policies do not exist because health, car, and life insurance policies were little used by the public at large, and because most private insurance companies were insolvent during the civil war. No documents of title are available to the petitioner for any of the property that he owned in Liberia. We regret that more evidence is not available, but the petitioner arrived in the United States with one bag of possessions. A lifetime of documentation was left behind and destroyed. Again, we would ask you to consider the available evidence in view of the particular facts of this case. It is acknowledged that Mr. Green's evidence would be insufficient for approval of an I-730 if the period of cohabitation had occurred in a stable country during peacetime, but the facts of this case call for consideration of the political realities that the petitioner was faced with when the adoption took place.

Please review the petitioner's sworn affidavit, which recounts the circumstances of the periods of cohabitation between himself and the beneficiary. Additionally, please review the numerous money-transfer receipts that document the consistent financial support that the petitioner has rendered to Mr. Green and his two other children who remain in Liberia. Please

additionally review the enclosed correspondence dated June 26, 2007 from Ms. Undercoverlover Smith, which acknowledges receipt of $1,100 for Mr. Green's three children, Child 1, 2, and 3.

Please give due consideration to the secondary evidence submitted evidence of the period of cohabitation of the petitioner and beneficiary. The regulations which govern supporting documentation associated with I-730s require greater flexibility than the regulations which govern I-130 adjudication.

8 Code of Federal Regulations, §207.7 (e) states in pertinent part:

> 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 . . . *Where possible* this will consist of the documents specified in 204.2 (a) (1) (i) (B), (a) (1) (iii) (B), (a) (2),(d)(2) and (d)(5).

Please evaluate the specific vocabulary of 8 CFR, 207.7 (e). The regulations stipulate that *where possible,* documentary evidence will consist of the documents listed in 8 CFR §204, which lists the documentation required for an approvable I-130. This indicates that I-730 petitions are approvable even in the absence of the types of documentation required for I-130 approval.

V. Names/ Relations of Individuals in Household During the Custody/Residence Period:

The petitioner's attached, sworn affidavit contains a comprehensive list of all individuals who lived in the house during the periods of cohabitation with the beneficiary.

Conclusion:

The adjudication of a relative petition based on a qualifying relationship of customary adoption poses a significant adjudicatory dilemma. It is understandable that petitions based on this qualifying relationship must be closely scrutinized for fraud since there is an inherent lack of civil documentation for such cases. The consequences of ignoring the existence of a valid qualifying relationship in cases of legal customary adoption however, are grave. Customary adoptions are most likely to occur when a civilian population has lost its functioning judiciary. When a population is plagued by civil war for years on end, it follows that degradation of the judicial system will naturally occur. Additionally, the same civil conflict that devastates a country's judicial system, simultaneously generates more orphans than would occur during peace-times. There is a dangerous and tragic convergence of issues that appears in the historical timeline of places such as Liberia. A war renders

the legal system useless, yet the war creates a greater need for adoption because children are left parentless as a result of escalating civilian deaths.

If refugee relative petition adjudications fail to acknowledge the validity of cultural adoptions under the specific circumstances described above, it means that no children adopted during wartime in the absence of a functioning judiciary can ever receive family reunification benefits. This is a tragic and inequitable conclusion.

Mr. Green's case epitomizes this dilemma. Mr. Green adopted the child of his murdered brother, in the absence of a functioning judiciary, pursuant to customary adoption practices. The civil conflict that killed his brother resulted in Mr. Green's eventual imprisonment and brutal torture by the government of the former President of Liberia, Charles Taylor. Mr. Green was found by the UNHCR and the by U.S. Consular officers to have a well-founded fear of persecution. His account of persecution was deemed credible. Mr. Green has even faced his former persecutors in federal court in the U.S., testifying against Charles Taylor's own son in response to a federal subpoena. (See attached subpoena.) Mr. Green continues to deliver credible testimony in court, under oath, at the request of the US government. If his testimony is credible with respect to the prosecution of war criminals in federal court, it should also be deemed credible when it pertains to his stated desire for reunification with his adopted child. Mr. Green's adoption of a war-orphaned child illustrates that he is socially responsible. If it weren't for the practice of customary adoption in Liberia during the war, thousands more children would have died. The fact that there is little evidence to document these adoptions is a natural consequence of the circumstances that cause the civilian deaths that create displacement, and ultimately create refugees.

Our office has provided Mr. Green with representation at no cost because we found him to be credible, and his case to be representative of a larger problem that we see in refugee reunification cases. Case law supports the approval of I-730s based on a qualifying relationship of customary adoption when the totality of the circumstances establish 1) a credible petitioner, and 2) that customary adoption is legal under the laws of the country where the adoption occurred. Please render a compassionate and informed adjudication in this matter. Please approve the I-730 petition filed by Mr. Green on behalf of his adopted daughter, Child Green. Thank you for your consideration of this matter.

Best regards,
Heather Scavone, Esq.

Case Study No. 9

- **Evidentiary Issues:**
    - Lack of civil issued documentation; sufficiency of secondary documentation; non-disclosure of relative on previous benefits application; parent/child relationship
- **Corrective Measures Requested:**
    - Submit clear and convincing evidence that the claimed relationship between the petitioner and beneficiary exists; a copy of the birth certificate registered with proper civil authorities; submit a statement explaining why petitioner did not identify beneficiary in previous immigration matters.
- **Corrective Measures Sent:**
    - sent explanatory letter; send DNA test results
- **Notes**
    - RE LACK OF CIVIL ISSUED DOCUMENTATION: 8 CFR 204.1(f)(1): when it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM)."
    - No documentation available so affidavits and DNA test results were sent in.

Model Rebuttal No. 9:

Re: I-730, Notice of Intent to Deny
Beneficiary: Child Blue
Petitioner: Ms. Blue

Dear Sir or Madam:

On December 10th 2008, your office issued a Notice of Intent to Deny the pending I-730 petition filed by Ms. Blue, on behalf of her son, Child Blue. Your office has requested the following information and documentation in connection with the pending petition:

1) Clear and convincing evidence that the claimed relationship between the petitioner, Ms. Blue, and the beneficiary, Child Blue, exists,
2) A copy of the birth certificate for Child Blue, registered with the proper civil authorities,
3) In order to establish that a bona fide parent/child relationship existed between Ms. Blue and Child Blue prior to Child Blue's 21st birthday, you must submit the oldest available evidence to establish the birth and parentage of Mr. Blue, including, but not limited to hospital, medical, school, and baptismal records,
4) One clear and recent photograph for Mr. Blue,
5) A statement to explain why the petitioner did not identify Mr. Blue as her relative in previous immigration matters.

Please review the following explanation and accompanying documentation which is being submitted by the petitioner at this time, in response to the Notice of Intent to Deny issued by your office.

1) **Clear and Convincing Evidence of Claimed Relationship**:

In order to establish by clear and convincing evidence the existence of claimed relationship between the petitioner, Ms. Blue, and her son, Child Blue, the petitioner is conducting affirmative DNA testing. Please review the attached letter from LabCorp, which confirms that Ms. Blue has arranged for DNA specimens to be collected from her son, Child, in Abidjan, in order to prove that she is his biological mother. Ms. Blue conducted her specimen collection on January 5, 2008, and her son will be conducting his specimen as soon as the host medical facility in Abidjan has received the collection packet. We have requested that LabCorp and the overseas test facility expedite processing of this case so that the results can be sent to your office as soon as possible. In order to meet the high threshold of "clear and convincing evidence," the petitioner was compelled to do DNA testing so that the claimed biological relationship can be confirmed. As such, please defer adjudication of this case until your office has received the test results. Please agree that a fair adjudication of this case requires that your office defer adjudication briefly, so that the test results can be evaluated by the adjudicating officer.

2) **Birth Certificate Registered with Proper Civil Authorities**:

The Notice of Intent to Deny issued by your office asks for the petitioner to submit a birth certificate for Child Blue, registered with the proper civil authorities. No civilly issued record of birth is available for the beneficiary, Child Blue.

The U.S. State Department Foreign Affairs Manual Reciprocity Schedule for Liberia indicates that primary documentation is not available in Liberia with the single exception of police clearance documents. The specific language in the report says that "persons resident in Liberia can obtain Police Clearance by contacting the Records and Identification Section of the Liberia National Police Headquarters at Capital Hill, Monrovia, Liberia . . . *No other civil documents are available due to civil unrest*."[11] It is standard practice for USCIS to refer to the FAM to determine primary document availability.

Section 11.1(f) of the U.S.C.I.S. Adjudicator's Field Manual dictates that where the FAM shows unavailability of civil documentation, the petitioner need not obtain a statement of unavailability from the issuing authority in order for USCIS to consider secondary evidence.

> "Note that Appendix C to the Department of State's Foreign Affairs Manual . . . provides country-specific information on availability of various foreign documents. If this Appendix shows that a particular record is generally not available in a particular country, USCIS may accept secondary evidence without requiring the written statement from the issuing authority."

Additionally, 8CFR 204.1(f)(1), states in pertinent part:

> "When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM)."

The FAM indicates that civilly issued documentation such as civilly-registered records of birth, is not available to residents of Liberia. In keeping with the standard review procedures followed by USCIS in regards to secondary evidence, please afford recognition to the secondary evidence that Ms. Blue submitted previously to your office. Because the FAM indicates unavailability

[11] 9 FAM, Appendix C Reciprocity Schedules Country Report on Liberia,

of the requested documentation, please review the previously submitted affidavits of birth for Child Blue. Refugee reunification petitions are frequently adjudicated in light of secondary evidence, and such adjudications are sanctioned by 8 CFR § 201.1(f)(1).

The petitioner, like many other Liberian refugees resettled in the United States, has no civilly issued documentation for herself or any of her children. The absence of such documentation did not prevent Ms. Blue from being assessed for PA status and ultimately being resettled in the United States with her two other children who were present with her in the refugee camp prior to resettlement. It would be an inconsistent application of Service policy to deny the reunification petition of this derivative beneficiary solely based on document unavailability, when the PA had no civil documentation at any time, for either of the other derivative beneficiaries.

Please therefore accept the previously submitted affidavits, and the above-referenced affirmative DNA test results, as evidence of the qualifying relationship between Ms. Blue and her son Child, even in the absence of civil documentation of Child's birth.

3) **Proof of Bona Fide Parent/Child Relationship**:

Your office has requested that the petitioner establish that a bona fide parent/child relationship exists or existed between Ms. Blue and Child Blue, prior to Child's twenty-first birthday. Your office suggests compliance with this requirement by submission of hospital birth records, medical records, school records, census records, and correspondence between the parties. Such documents should include the child's name and the names of both parents.

It is statutorily unnecessary to provide proof of a parent/child relationship prior to the beneficiary's twenty-first birthday in this case. The beneficiary, Child Blue, is the illegitimate child of the petitioner, resulting from her out-of-wedlock relationship with the beneficiary's father, Sugadaddy Smith. Proof of a parent/child relationship is required only in cases where the petitioner is the *father* of an illegitimate child.

Under the Section titles "Derivatives of Refugees," 8 CFR 207.7, states in pertinent part:

> *(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 accompanying or following-to-join benefits. Where possible this will consist of the documents specified in § **204.2(a(1)(i)(B)** , **(a)(1)(iii)(B)** , **(a)(2)** , **(d)(2)** , and **(d)(5)** of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.*

Accordingly, in the section titled "Primary evidence for an illegitimate child or son or daughter," 8 CFR 204.2(d)(2)(iii) states the following:

> *If a petition is submitted by the mother, the child's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted by the purported **father** of a child or son or daughter born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child relationship was established when the child or son or daughter was unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare.*

As such, it is clear from the Code of Federal Regulations that evidence for the illegitimate child or son or daughter of a refugee, for the purposes of determining eligibility for derivative refugee status, only require proof of a bona fide parent/child relationship prior to the child's twenty-first birthday, in cases where the *father* is the petitioner. In this case, Ms. Blue is the mother of the beneficiary, and proof of a bona fide parent/child relationship is not required by the governing federal regulations.

Additionally please evaluate the specific vocabulary implemented in 8 CFR, 207.7 (e). The regulations stipulate that *where possible* documentary evidence will consist of the documents listed in section 204.2(d)(2)(iii). This suggests that I-730 petitions can be approved even in the absence of

these types of documentation. Ms. Blue's inability to obtain a civilly-issued birth certificate for the beneficiary has already been addressed in this response. Section 207.7 provides additional justification for the acceptance of sworn affidavits due to primary document unavailability. Your office has historically accepted sworn affidavits as acceptable documentation for Liberian I-730 petitioners in the past. Please do so again in the case of Child Blue.

4) **Photograph of Beneficiary**:

Your office has requested one (1) clear, recent photograph for Child Blue. Enclosed please find a photograph of Child Blue, submitted in compliance with this request.

5) **Statement of Explanation**:

Your office has also requested that the petitioner submit a statement to explain why she failed to identify her son, Child Blue, as her relative in prior immigration matters. Please review the attached, sworn statement, submitted by the petitioner in compliance with this request.

The Notice of Intent to Deny issued by your office indicates that the petitioner did not include Child Blue on form I-590, and purports to have included a copy of form I-590 for the petitioner's review. No copy of the I-590 was included in the correspondence issued from your office however, so the petitioner is unable to review the I-590 or comment on its content in connection with this apparent discrepancy.

Your office specifically cites the absence of Child's name from OPE/ Ghana forms I and III, and from the Pre-Screening questionnaire. Additionally, your office notes that the petitioner did not include Peter's name on form I-485, which was submitted by Ms. Blue's with the help of our office.

Ms. Blue's explanation for the absence of Child's names on the OPE forms is contained in the attached sworn statement by Ms. Blue. She claims that she does not remember being questioned by Ms. Nosey Inquisitioner about missing children. She only understood Ms. Inquisitioner to inquire about children with her in the refugee camp, and not children that were lost or separated from her. Ms. Blue admits that when she participated in prescreening interviews with OPE staff—a Ghanian lady, not Ms. Inquisitioner —that she remembers being specifically asked about missing or dead children, and she says that she disclosed Child Blue's name at that time. The OPE Ghana forms I and III appear to have been completed by Ms. Nosey Inquisitioner, because the initials "N.I." appear at

the bottom of those forms. Additionally, “NOC” appears handwritten on form III. If “NOC” stands for “No Other Children,” it would appear that Ms. Inquisitioner did indeed ask the petitioner if there were missing or dead children not present with her in the camp. The petitioner has no explanation for this particular notation, except for the possibility of miscommunication. Ms. Blue maintains that she did not perceive that the questions related to her children included non-present children. Based on Ms. Blue’s account, it appears that Ms. Nosey Inquisitioner may have properly inquired about all of Ms. Blue’s children, although Ms. Blue only understood the question to pertain to children physically with her in the refugee camp.

The correspondence from your office also indicates that Ms. Blue may have included the beneficiary as a half-brother on OPE form III. When questioned about this discrepancy, Ms. Blue explained that Child Blue is not only her son’s name, but is also the name of her father “Child Blue.” She maintains that she does not have any half siblings named Child Blue, but that her father and son are both named Child Blue, and Child Blue, respectively.

Finally, your office references the absence of the beneficiary’s name from form I-485, submitted by Ms. Blue in November of 2006. In this particular instance, our agency must accept partial responsibility for the absence of Child’s name through inexcusable administrative error. Ms. Blue filed the I-730 petition for Child with assistance from our office in September of 2006. Only two months later, the same staff member who assisted with the I-730, assisted Ms. Blue with submission of the I-485. It is clear from our case file that our records already reflected Child as Ms. Blue’s son, and this was overlooked when form I-485 was filled out. Nonetheless, the staff member who assisted Ms. Blue with the compilation of form I-485, asked Ms. Blue about her living children. Ms. Blue did not include Child’s name when questioned by our staff member. Upon reexamination of this situation, Ms. Blue has explained to me that she understood our staff member to be inquiring only about children here in America, and not missing or lost children. This explanation by Ms. Blue is particularly revealing about the absence of Child’s name, in general, in the Service record. While our office deeply regrets the carelessness by our staff that contributed to Child’s name being left off of form I-485, it appears that Ms. Blue has a pattern of misperception with this particular line of questioning. Although it is certainly the fault of our office that we did not cross-reference all documents in Ms. Blue’s file in order to ensure consistency between documents, our practice of questioning clients about present and missing children is always adhered to. If Ms. Blue failed to understand that this question from our staff member applied to all of her children, it sheds light on the absence of Child’s name from the OPE forms as well. Ms. Blue should have understood the

question to include her missing children as well as those present with her at the time of questioning. A reasonable and intelligent person in her position would have understood the question to include other children. However, at the point that Ms. Blue neglected to affirmatively include Child as one of her children on form I-485, she had already made unequivocal statements to our staff that Child was her son. Our office erred in overlooking the existence of Child's name in our records, but there is no apparent reason why Ms. Blue would perceive that Child should not be included on form I-485, when interviewed by our staff.

In view of this pattern of misunderstanding displayed by Ms. Blue, I hope you will agree that the absence of Child Blue's name in prior applications was not deliberate, but was the result of Ms. Blue's difficulty in understanding a repeated line of questioning. She has misunderstood the same question on more than one occasion, under very similar circumstances. Please carefully review Ms. Blue's attached, sworn statement of explanation to get a better sense of her state of mind and potentially, her cognitive limitations.

Conclusion:

Upon your review of the explanation and documentation provided herein, please approve the pending I-730 application for Child Blue. Your office's concern regarding the absence of the beneficiary's name in previous immigration matters is understandable. Please agree that in this case, the discrepancy was not a calculated or deceptive move by the petitioner, but rather an unfortunate error caused in part by the petitioner's inability to accurately understand a repeated line of questioning, and in part by agency error for which our office has admitted responsibility. Positive DNA results confirming the biological relationship between Ms. Blue and her son should meet the high threshold of clear and convincing evidence. In this case it would be equitable to briefly suspend adjudication until the DNA test results can be reviewed by your office. We would be most grateful for your careful consideration of the facts in Ms. Blue's case, and ultimately, an approval decision regarding Child Blue's pending I-730. Thank you for your time and attention to this matter.

Case Study No. 10

- **Evidentiary Issues:**
    - Humanitarian extension;
- **Corrective Measures Requested:**
    - This was not RFE case, this is Motion to Reconsider.
- **Corrective Measures Sent:**
    - sent brief and Red Cross tracing sheet
- **Notes**
    - 8 CFR § 207.7(d): Filing . A refugee may request accompanying or 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. The Form I-730 may only be filed by the principal refugee. Family members 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 before February 28, 2000 or within 2 years of the refugee's admission to the United States, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Form I-730 has been approved, provided that the relationship of spouse or child continues to exist and approval of the Form I-730 petition has not been subsequently revoked. There is no fee for filing this petition.
    - A father timely filed an I-730 for a child, but was not the principal refugee, so the petition was denied. The mother (principal refugee) submitted a late I-730 requesting humanitarian extension which was denied for two reasons: petitioner failed to provide a copy of the Red Cross notification that child was alive; and a lack of knowledge of Immigration laws and Regulations does not warrant discretionary extension of the two-year filing deadline.
    - Denial was erroneous because Red Cross notification was given and on service record at time of denial. There is also additional evidence from Red Cross indicating when they notified petitioner that child was living and the whereabouts.

Model MOTIC No. 10:

In the Matter of:	)
	)
Ms. Yellow	)
	)
	)
	)
	)

PETITIONER'S MOTION TO RECONSIDER:

The petitioner, pursuant to the provisions of 8 CFR §207.7(d), requests that the I-730 for Child Yellow be reconsidered. The petitioner's motion is based on the fact that the denial decision of the refugee family petition for Child Yellow was incorrect based on the evidence of record at the time of the initial decision, and additionally, that the denial was based on an incorrect application of Service policy.

The petitioner, Ms. Yellow, submitted a late-filed I-730 on behalf of her son, Child Yellow, on March 5, 2007 with a request for humanitarian extension of the two-year filing deadline. Ms. Yellow's request for extension was based upon the fact that her husband had already timely-filed an I-730 for Child Yellow on July 17, 2006. The timely-filed I-730 was denied pursuant to 8 CFR §207.7 because Ms. Yellow's husband was not the principal refugee. Ms. Yellow was in fact the principal refugee, and therefore the only individual eligible to submit an approvable I-730 petition for Child Yellow. Because only the principal refugee is eligible to file for derivative beneficiaries, the initially submitted I-730 filed by Ms. Yellow's husband was properly denied. Ms. Yellow subsequently submitted a late-filed I-730 on Child Yellow's behalf requesting humanitarian extension based on the fact that good-faith, timely submission of the prior-filed petition was a humanitarian circumstance

warranting extension of the two-year deadline. Your office denied the petition and request for extension based on two conclusions:

1) Ms. Yellow failed to provide a copy of the Red Cross notification that informed her that her son Child Yellow was alive and residing in Sierra Leone.
2) A lack of knowledge of Immigration Laws and Regulations does not, within itself warrant discretionary extension of the two-year filing deadline.

Although it is conceded that requests for humanitarian extension are discretionary, Ms. Yellow's request for humanitarian extension was improperly denied for two reasons; 1) the Red Cross notification cited in the denial decision was not in fact absent, but was evidence of record at the time of the denial decision, and 2) the denial was based on an incorrect application of Service policy with regard to the types of reasons which merit humanitarian extension in a refugee family reunification case.

1) **Evidence of Record was present at time of denial decision:**

The denial notice issued by your office on October 2, 2008 states that the petitioner "fail(s) to provide a copy of the Red Cross notification [that informed petitioner that her son was alive.]" In fact, a copy of this notification was included with Ms. Yellow's petition. Please carefully review the original petition submitted and you will note that one of the additional enclosures was a letter written on 5"x7" paper that is labeled "4. MESSAGE Family and/ or private news," in the top left hand corner, and signed and dated at the bottom by "Contact Person," on September 19, 2005. This contact message was hand-delivered by Red Cross personnel to the petitioner's residential address on January 10, 2006. Although it is unclear why the alleged absence of this document would have an adverse effect on the petitioner's request for humanitarian extension, it is nonetheless cited as a reason for denial in the denial notice issued by your office. As such, because the document was already present in the service record, denial of the humanitarian extension

on the basis of failure to include this document was incorrect. Because the discretionary nature of a request for humanitarian extension is connected to a petitioner's credibility in general, we can assume that your office referenced the absence of this document because it found the petitioner to be not credible on some level. Therefore, the fact that the document was already present in the service record at the time of denial should serve to bolster the credibility of the petitioner and support a favorable exercise of discretion. The unfavorable exercise of discretion evidenced by the adjudicator's denial of the humanitarian extension must therefore be reconsidered.

Please also review the enclosed additional information that has been obtained in support of the veracity of the petitioner's statement that the Red Cross notified her of the fact that her son was living and of his whereabouts. Attached you will find a cover letter from the Red Cross as well as Red Cross staff case notes, indicating that the petitioner received news that her son was alive by hand-courier on January 10, 2006, via the *International Family Tracing Services of the Red Cross*.

In view of the fact that that the Red Cross letter was already present in the service record at the time of denial, and in view of the additional supporting documents that verify the accuracy of the petitioner's account as it relates to the Red Cross notification, please conclude that the I-730 submitted on behalf of Child Yellow must be reviewed at this time. Upon review of the facts, please make a favorable exercise of discretion and approve Ms. Yellow's request for humanitarian extension of the deadline.

2) **Denial Based on an Incorrect Application of Service Policy:**

The denial issued by your office on October 2, 2008 states that "a lack of knowledge of the Immigration Laws and Regulations does not, within itself, warrant discretionary extension of the two year filing deadline." Case law supports that egregious ignorance of immigration law resulting in untimely filing of the I-730, does not merit humanitarian extension of the two-year deadline. Those cases must be distinguished from the case of the petitioner, Ms. Yellow. Ms. Yellow made a good faith effort to comply with immigration

regulations by seeking representation from Lutheran Family Services in the Carolinas, to assist with filing an I-730 for her son. She reasonably believed that she had complied with the two-year filing deadline because her husband submitted an I-730 for Child Yellow prior to the two-year anniversary of Mr. and Ms. Yellow's arrival in the US as refugees.

Historically, USCIS has not granted humanitarian extension of the filing deadline to petitioners whose untimely filing was due to egregious ignorance of immigration law and regulations. In the case of *Julienne Mounkam v. Terry E. Way*, the U.S. District Court held that the petitioner's late-filed I-730 did not merit an extension of the filing deadline because the petitioner "indicated that [she] was not aware that [she] had to file an I-730 within two years of being granted asylum."[12] In this case, the late-filing petitioner had not made a good faith effort to comply with the filing deadline, and admitted to not having read the full instructions on form I-730. This clearly constitutes "a lack of knowledge of the Immigration Laws and Regulations [which] does not, within itself, warrant discretionary extension of the two year filing deadline." Similarly, in *Helal K. Farag v. USCIS and DOS*, a late-filing petitioner's request for humanitarian extension was denied where the petitioner had timely filed I-730 petitions at an incorrect address, and failed to timely resubmit applications when he was notified of the filing error.[13] In this case the petitioner submitted I-730s to the U.S. Embassy in Cairo, Egypt, rather than filing them with the Nebraska Services Center as required. Before the expiration of the filing deadline, Embassy staff notified the petitioner of the filing error and he failed to re-file with the correct office. It is clear that in both of the above referenced cases, favorable discretion was not warranted because the petitioners were complacently ignorant of immigration laws and regulations. That is not the case with Ms. Yellow, who made a good faith effort to comply with immigration laws and was time-barred from re-filing based on the date of denial of the I-730 previously submitted by her husband.

In any event, our office is responsible for counseling the petitioner that her husband should submit the I-730 rather than herself. Our office was fully knowledgeable of the 8 CFR

[12] Julienne Mounkam v. Terry E. Way, No. CV 04-58-TUC-HCE (2007), at 8-9.
[13] Helal K. Farag v. USCIS and DOS, 531 F. Supp. 2d 602, at 605.

§207.7(d) requirement that only a PA can petition for a derivative I-730 beneficiary, but no evidence existed in the available service record to indicate that Mr. Yellow was not the PA. No documents that are easily accessible to a refugee indicate whether a refugee is a principal applicant. Although your office's denial of Mr. Yellow's timely-filed I-730 cites that "Service Records indicate that you are not the principal applicant," no service records were actually included in the denial to illustrate this fact. A refugee's I-94, issued at the POE, which confers refugee status under INA §207 similarly does not indicate whether a refugee is the PA or a derivative. The employment authorization document issued by DHS does not indicate whether a refugee is a PA. It is unreasonable to expect that a refugee or a refugee advocate would be able to know which spouse is the principal applicant when a couple arrives together pursuant to INA §207. Even an investigatory channel such as requesting a FOIA to obtain a copy of a refugee-applicant's original I-590 is not a reasonable way to obtain this information because FOIAs consistently take a year or more to produce, and the I-730 is extremely time-sensitive, as evidenced by the current dilemma.

It is important to note that certain situations do not pose this problem of identifying the PA. If one spouse arrives in the US in the absence of the other spouse, it is clear that the prior-arriving spouse must be the PA. Additionally, when a parent arrives under INA §207 with one or more children, the biological relationships of the arriving refugees confirm that the parent must necessarily be the PA. (Because children can be derivatives pursuant to 8 CFR 207, but parents cannot.) When a married couple arrives at the same port of entry, on the same date under INA §207, it is impossible to tell which party, the husband or the wife, is the principal applicant.

As such, our agency's error in concluding that Mr. Yellow was the principal applicant, rather than Ms. Yellow, was an excusable error that should not have resulted in a total denial of reunification benefits for our client and her son. It was not, as stated in the denial, "a lack of knowledge of immigration laws and regulations, within itself," that was responsible for the filing error. Rather, it was the practical impossibility of complying with the law within the two-year statutory period that caused the error. Because the error was

on the part of our agency, and not on the part of the petitioner, I implore you to reconsider Ms. Yellow's petition for her son, Child Yellow.

Please note that the present situation puts our agency in a very difficult situation regarding client advocacy. Because we do not have access to documentation which would reveal whether a husband or wife is a principal applicant, and because there is a two-year filing deadline for refugee family reunification petitions, Ms. Yellow's situation indicates that we should "double-file" for derivatives when we are unsure of which party is the PA, in order to ensure timely filing. Submitting I-730s from both husband and wife, with the knowledge that at least one of the petitioners is ineligible to file for reunification benefits appears to ensure a safer outcome for our clients. However, we have been specifically instructed by the NSC not to "double-file" as it is clear that double-filing will result in an increased processing burden in the NSC and the needless adjudication of frivolous petitions. Unless your office can offer guidance on this dilemma, we will be forced to balance the conflicting interests of ineffective assistance on the one hand, and frivolous filing on the other. Please honor the spirit of the "humanitarian extension" provision by reconsidering Ms. Yellow's I-730 for her son.

Pursuant to 8 CFR §207.7(d), Service policy is to grant an extension of the two-year filing deadline "for humanitarian reasons." The unfavorable exercise of discretion with regard to Ms. Yellow's request for extension is in conflict with this policy because in Ms. Yellow's case, humanitarian reasons abound. Ms. Yellow's late-filed I-730 does not indicate a "lack of knowledge of immigration laws and regulations," as stated in the denial. It is clearly distinct from other cases wherein USCIS has justifiably denied late-filed petitions based on this ground. Service policy with regard to the humanitarian extension exception is not to accommodate frivolous requests. Ms. Yellow's case however, does not represent a frivolous request. It was timely-filed in good faith and would be punitive and a mean-spirited application of the law to disallow reunification between this young man and his parents and remaining living siblings.

Conclusion:

Ms. Yellow has been separated from her son Child Yellow since 1990. The miraculous reconnection of mother and son through the Red Cross International Family Tracing Service will have been virtually futile if your office does not exercise favorable discretion with regard to the humanitarian extension request. It is true that Ms. Yellow is now a permanent resident eligible to file an I-130 for Child Yellow as a 2-B preference relative with an eight year wait for a current priority date. That eight year wait will mean that Child Yellow will have been separated from his family for 26 years by the time that an immigrant visa is available. Immigrants who come to the United States via a family-based visa make informed decisions about whether they can tolerate separation from adult children that they are leaving behind in the country of origin. Refugees resettled in the United States do not have the luxury of making such informed decisions because they arrive out of necessity. I hope you will agree that in this case, it would be equitable to grant a humanitarian extension of the filing deadline in order to promote family unity. Not long after Ms. Yellow's arrival in the US, her five year old son Abraham tragically died from complications arising from a rare disease. Although the struggles that she endured in Liberia and the horrifying loss of her young son are irremediable tragedies, Ms. Yellow's perpetual separation from Child Yellow is a tragedy that can be remedied. Please therefore reconsider the request for humanitarian extension of the two-year filing deadline for the I-730 submitted by Ms. Yellow on behalf of her son, Child Yellow and render a favorable adjudication in this case. Your consideration of this matter is greatly appreciated.

Case Study No. 11

- **Evidentiary Issues:**
    - Proxy marriage; and consummation
- **Corrective Measures Requested:**
    - None requested, materials sent were precautionary
- **Corrective Measures Sent:**
    - sent photographs taken just before consummation and marriage certificate
- **Notes**
    - 8 CFR § 207.7(a) eligibility for derivative refugee benefits. 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, shall be granted refugee status if accompanying or following to join the principal alien.
    - INA § 101(a)(35): the term "spouse," "wife," or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.
    - Petitioner and beneficiary were married by proxy and consummated their marriage, therefore it is a petitionable relationship.

Model Cover Letter No. 11:

Dear Adjudicating Officer:

Please accept the enclosed I-730, Refugee/Asylee Relative Petition, and consider it for processing. The enclosed petition is being filed by Mr. Mr. X on behalf of his wife, Ms. X, pursuant to 8 CFR §207.7(a):

8 CFR §207.7(a) states the following with respect to eligibility for derivative refugee benefits:

> 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, shall be granted refugee status if accompanying or following-to-join the principal alien.

Furthermore, INA §101(a)(35)of the INA defines a spouse as follows:

> The term "spouse", "wife", or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, **unless the marriage shall have been consummated.**

A qualifying spousal relationship exists between the petitioner and the beneficiary. Mr. X and Ms. X were married by proxy on February 11, 2008. Ms. X meets the definition of a spouse pursuant to INA §101(a)(35) because the marriage was consummated. By the clear language of INA §101(a)(35), a proxy marriage that has been consummated creates a petitionable relationship. Please review the enclosed copy of the marriage certificate for Mr. X and Ms. X, as well as the enclosed photographs of the couple, which were taken just prior to the consummation of their marriage. Please conclude that the enclosed documentation proves the existence of a petitionable relationship between Mr. X and Ms. X by a preponderance of the evidence.

Upon your review of the enclosed I-730 petition and supporting documentation, we would be most grateful for an approval decision in this matter. Thank you for your consideration of Mr. X's case. Please do not hesitate to contact us if you have questions or require additional explanation and documentation.

Case Study No. 12

- **Evidentiary Issues:**
  - Lack of civil issued documentation; request for information that isn't statutorily necessary; burden of proof; affidavits used; country conditions
- **Corrective Measures Requested:**
  - Two (2) Affidavits attesting to beneficiary's birth, marriage to petitioner, and to the termination of beneficiary's prior marriage.
- **Corrective Measures Sent:**
  - Explanatory brief, no additional documentation submitted.
- **Notes**
  - It is statutorily unnecessary to prove the event of a beneficiary's birth in connection with an I-730 petition filed by a PA refugee on behalf of a derivative *spouse*. While proof of birth is clearly material to prove the petitionable relationship between a PA refugee and her *child*, proof of the event of a beneficiary's birth is immaterial to the petitionable relationship between a PA refugee and her *spouse*.
  - The statutory evidentiary requirements for an approvable I-730 articulated at 8 CFR §207.7(e), require proof of termination of prior marriages, "where possible." Under the circumstances of this case, it would be unreasonable, and statutorily noncompliant to require that the petitioner provide proof of termination of the beneficiary's prior marriage, since it is not possible for her to obtain any such documentation. The petition is approvable despite the fact that it is impossible to obtain primary evidence, secondary evidence or even affidavits.
  - The U.S. State Department has asserted unequivocally that IV and NIV applicants cannot be reasonably expected to have access to any primary documentation in evidence of petitionable relationships. The State Department Foreign Affairs Manual states the following with respect to document availability in Somalia, "Unavailable. There is no competent civil authority in Somalia. The Government of Somalia ceased to exist in December of 1990. Since that time the country has undergone a destructive and brutal civil war, in the course of which most records were destroyed. Those few records not destroyed are in the hands of private individuals or are otherwise not retrievable. There are no police records, birth certificates, school records etc., available from Somalia.

There are no circumstances under which immigrant visa applicants can reasonably be expected to recover original documents held by the former Government of Somalia." (9 FAM Appendix C.)

- The petitioner's burden of proof in the present case is to demonstrate the existence of the qualifying relationship "by a preponderance of the evidence." Accordingly, the petitioner need only provide evidence of the claimed relationship that indicates that it is 51% likely that she has a petitionable, spousal relationship to the beneficiary.

Model Rebuttal No. 12:

Re: Request For Evidence, I-730 relative petition
Petitioner: DARLING, Annie
Beneficiary: DEAR, Jim

Dear Sir or Madam:

On November 16th 2010, your office issued a Request For Evidence in connection with the pending I-730 filed by Ms. Annie Darling on behalf of her husband, Mr. Jim Dear. Your office has requested the following information in order to continue processing the pending petition:

1) Please submit two written statements (affidavits), sworn to or affirmed by at least two persons who were living at the time and who have personal knowledge of Jim Dear 's birth, marriage to Annie Darling , and legal termination of his previous marriage. The persons making the affidavits may be your relatives and need not be citizens of the United States. However, affidavits written by you or the beneficiary are not acceptable. Each affidavit should contain the following information regarding the persons making the affidavit; his/her full name and address; his/her date and place of birth; his/her relationship to you, if any; full information concerning the event; and complete details concerning how he/she acquired knowledge of the event. These affidavits should address the facts at issue.

Please review the following information which is being submitted at this time in response to the Request For Evidence issued by your office. Upon your review, please approve the pending I-730 petition for Jim Dear.

I. **Sworn Affidavits of Marriage of Annie Darling to Jim Dear** :

Please accept the prior-submitted sworn affidavits of Ms. Fannie Friendly and Ms. Special Someone in satisfaction of this request. The affidavits of marriage executed by the two referenced affiants were submitted on April 23, 2010, along with the I-730 petition for Mr. Jim Dear that is presently pending with your office. As such, because the request by your office for affidavits of marriage is already satisfied by evidence of record, please conduct a substantive review of the prior-submitted affidavits of Ms. Fannie Friendly and Ms. Special Someone, which contain the full name and addresses of the affiants; the dates and places of birth of the affiants; a description of the affiants' relationships to the petitioner; full information concerning the marriage of Annie Darling to Jim Dear; and complete details concerning how the affiants acquired knowledge of the event of the marriage of Annie Darling to Jim Dear. In both cases you will note that the affiants are long-time family friends of the petitioner, and that they lived in the same neighborhood as the petitioner and her family prior to the eventual evacuation of all parties from Somalia due to civil war. As such, please accept the prior submitted affidavits of marriage in satisfaction of your office's present request for "two written statements (affidavits) . . . by at least two persons who were living at the time and have personal knowledge of Jim Dear's . . . marriage to Annie Darling ." Because the requested evidence is already evidence of record in connection with this case, it would be unreasonable to require the petitioner to submit additional affidavits of marriage.

II. **Sworn Affidavits of Birth of Jim Dear** :

There are no living persons known to the beneficiary who were living at the time of Jim Dear's birth and who have knowledge of the event of his birth. The unavailability of affidavits of birth for the beneficiary however, should have no bearing on the adjudication of the present petition since proof

of the birth and parentage of Jim Dear is immaterial to the existence of the petitionable relationship existing between him and the petitioner.

It is statutorily unnecessary to prove the event of a beneficiary's birth in connection with an I-730 petition filed by a PA refugee on behalf of a derivative *spouse*. While proof of birth is clearly material to prove the petitionable relationship between a PA refugee and her *child*, proof of the event of a beneficiary's birth is immaterial to the petitionable relationship between a PA refugee and her *spouse*. Federal regulations specify by exclusive listing, the evidentiary requirements for a refugee relative petition.

8 CFR §207.7(e) states, in pertinent part:

> "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."

Pursuant to applicable Federal regulations, the petitioner, Annie Darling, must therefore prove 1) that she is a refugee, and 2) that the claimed spousal relationship between herself and Jim Dear , exists. The spousal relationship is a contractual one, dictated by the laws of the country where the petitioner and beneficiary were married. The absence of proof of the beneficiary's birth record—either through civil documentation, secondary evidence or affidavits—is totally irrelevant to the existence of a spousal relationship. Whether or not the beneficiary has a birth certificate or affidavit of birth has absolutely no probative value with respect to the existence of a spousal relationship between himself and the petitioner. There can be no doubt that the beneficiary was actually born, since he is indeed, alive today. Whereas a birth record is clearly probative in order to show the existence of a petitionable relationship between a petitioning PA refugee and her child, it is not probative with respect to a spousal relationship between a PA refugee and her husband since it can prove neither a biological relationship, nor a contractual marriage relationship. A birth record serves to prove paternity and age. Neither Jim Dear's age, nor his parentage are material to proving the existence of the spousal relationship.

Because evidence of Jim Dear's birth is immaterial to the existence of the petitionable relationship between him and his petitioning spouse, your office's request for affidavits of birth for Jim Dear is statutorily unnecessary.

III. **Sworn Affidavits of Termination of the Prior Marriage of Jim Dear** :

Regrettably, there are no living persons known to the beneficiary who were alive at the time of Jim Dear 's divorce from his prior spouse and who have personal knowledge of that event. The present petition is approvable even in the absence of affidavits of termination of the beneficiary's prior marriage. Although form I-130 petition for alien relative statutorily requires proof of termination of prior marriages in order to evidence a petitionable, spousal relationship, the statutory requirements for proving a petitionable spousal relationship in connection with an I-730 refugee relative petition do not require evidence of termination of prior marriages. Refugee relative petitions are approvable even in the absence of ideal documentation due to the acknowledged hardships that face displaced persons who have fled persecution. Pursuant to 8 CFR §207.7(e), an I-730 refugee relative petition may be approved even if it lacks the type of supporting evidence that would ordinarily be required to prove the same qualifying relationship in the case of an I-130 alien relative petition.

8 CFR §207.7(e) states, in pertinent part:

> ". . . 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 accompanying or following-to-join benefits. ***Where possible*** this will consist of the documents specified in § **204.2(a(1)(i)(B)** , **(a)(1)(iii)(B)** , **(a)(2)** , **(d)(2)** , and **(d)(5)** of this chapter."

The deliberate language of the federal regulation stipulates that evidence to prove the petitionable relationship for an I-730 will be the same type of evidence necessary to approve an I-130—"where possible." The qualifying words, "where possible," acknowledge that it is not always possible for a petitioning refugee to have access to the type of documentation that would otherwise be necessary for proving the qualifying relationship between petitioner and beneficiary. Your office must approve

Jim Dear 's I-730 in the absence of documentation of termination of his prior marriage if you determine that under the circumstances, it is not possible for him to obtain the documents specified in 8 CFR §204.2(a)(2).

8 CFR §204.2(a)(2), requires the following evidence to prove a petitionable, spousal relationship:

> "A petition submitted on behalf of a spouse must be accompanied by a recent ADIT-style photograph of the petitioner, a recent ADIT-style photograph of the beneficiary, a certificate of marriage issued by civil authorities, and proof of the legal termination of all previous marriages of both the petitioner and the beneficiary."

Taken in the context of I-730 adjudications, the statutory instruction to the adjudicator therefore mandates that documentation necessary to prove the relationship between a petitioning relative and her beneficiary spouse consists of; a photograph of petitioner and beneficiary, a certificate of marriage, and proof of legal termination of prior marriages for both petitioner and beneficiary, "where possible." The clear language of the federal regulation excuses the petitioner from providing documentation of the spousal relationship where it is impossible to do so.

Please review the applicable statute and apply it in the context of the current case. If your office deems that it is not possible for Annie Darling to provide proof of termination of the prior marriage of her spouse, then your office *must* excuse her from this requirement, pursuant to 8 CFR §207.7(e). The following facts support a conclusion that in this case, it is impossible for the petitioner to provide proof of the termination of Jim Dear's prior marriage:

1) <u>No primary documentation to prove termination of marriage is available in Somalia, under any circumstances</u>. The U.S. State Department has asserted unequivocally that IV and NIV applicants cannot be reasonably expected to have access to any primary documentation in evidence of petitionable relationships. The State Department Foreign Affairs Manual states the following with respect to document availability in Somalia, "Unavailable. There is no competent civil authority in Somalia. The Government of Somalia ceased to exist in December of 1990. Since that time the country has undergone a destructive and brutal civil war, in the course of which most records were destroyed. Those few records not destroyed

are in the hands of private individuals or are otherwise not retrievable. There are no police records, birth certificates, school records etc., available from Somalia. There are no circumstances under which immigrant visa applicants can reasonably be expected to recover original documents held by the former Government of Somalia." (9 FAM Appendix C.)

2) No secondary documentation to prove termination of marriage is available in Somalia, under any circumstances. According to the State Department's country specific report pertaining to Somalia, "[t]here is no organized system of criminal justice in Somalia, nor is there any recognized or established authority to administer a uniform application of due process. Enforcement of criminal laws is, therefore, haphazard to nonexistent. *Locally established courts operate throughout Somalia under a combination of Somali customary and Islamic Shari'a law, some of which may be hostile towards foreigners*." Divorces performed in Somalia pursuant to customary Shari'a law do not generate any documentation, and no lawful courts exist whereby an individual could civilly register a divorce. Divorce performed by an Imam pursuant to Shari'a law generates no secondary evidence such as church records, that might be used in evidence of the termination of a beneficiary spouse's prior marriage.
3) No sworn affidavits are available to prove termination of marriage in the present case, under any circumstances. In the absence of primary and secondary documentation, the only way for the petitioner to provide documentation of the termination of Jim Dear's prior marriage is through sworn affidavits. All known witnesses to the termination of Jim Dear's prior marriage, which occurred in 1977, are dead or missing. The termination of Jim Dear's marriage occurred in Somalia. The petitioner, beneficiary, and their children all fled Somalia during the ongoing civil war. The beneficiary currently lives in Kenya, and cannot return to Somalia due to the continued violence there. It is unreasonable and uncivil to expect a refugee to return to the country of persecution in search of living affiants. Because all known witnesses to the event in question are missing or dead, it is not merely improbable, but it is impossible for the petitioner to obtain affidavits in evidence of the termination of Jim Dear's prior marriage.

Based on the above information, it would be reasonable for your office to conclude that in this case, it is not possible for Annie Darling to provide proof of the termination of the prior marriage of Jim Dear. The statutory evidentiary requirements for an approvable I-730

articulated at 8 CFR §207.7(e), require proof of termination of prior marriages, “where possible.” Under the circumstances of this case, it would be unreasonable, and statutorily noncompliant to require that Annie Darling provide proof of termination of Jim Dear ’s prior marriage, since it is not possible for her to obtain any such documentation. It is incumbent on the Service to adjudicate Mr. Jim Dear’s I-730 pursuant to the language of the applicable federal regulation.

It should also be noted that the petitioner’s I-590 Application for Refugee Status was approved in the total absence of any documentation—primary, secondary or otherwise—pertaining to the applicant’s identity or to the identities of the two accompanying derivative children who came with her to the United States. A review of the petitioner’s alien file will reveal that the U.S. adjudicator overseas found Annie Darling to be credible, both with respect to her claim of well-founded fear, and with respect to her assertion that the accompanying derivatives were her legitimate children. The fact of the petitioner’s unfortunate separation from her spouse and other nine children during Somalia’s brutal and ongoing civil war provides no reasonable basis for elevating the documentary requirements with respect to the petitioner’s other minor children and spouse. Accordingly, if her other derivatives were approved in a total absence of primary or secondary documentation, so should the present case deserve favorable consideration in the absence of such documentation.

As such, because evidence of the termination of Jim Dear’s prior marriage is statutorily unnecessary pursuant to 8 CFR §207.7(e), please approve the pending I-730 for Jim Dear even in the absence of the requested affidavits of legal termination of his previous marriage.

IV. **Observance of Correct Evidentiary Standard**:

Please ensure that the pending I-730 petition for Jim Dear is adjudicated according to the appropriate evidentiary standard. The petitioner's burden of proof in the present case is to demonstrate the existence of the qualifying relationship "by a preponderance of the evidence." Accordingly, the petitioner need only provide evidence of the claimed relationship that indicates that it is 51% likely that she has a petitionable, spousal relationship to the beneficiary, Jim Dear.

8 CFR §207.7(e) states, in pertinent part:

> "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."

The Service has long interpreted the "preponderance" standard to entail, in terms of probability, that the petitioner's burden is to show that factors in favor of benefits eligibility are "more likely than not." In mathematical probability terms, the petitioner's burden of proof is to show that the petitionable relationship is at least 51% likely to exist. "The 'preponderance of the evidence' standard requires that the evidence demonstrate that the applicant's claim is 'probably true,' where the determination of 'truth' is made based on the factual circumstances of each individual case." (Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm. 1989).)

As such, the correct application of this evidentiary standard to the facts of this case require that Annie Darling show, based on the totality of the circumstances, that she is "probably"

married to Jim Dear. The following factors support a conclusion that, more likely than not, Annie Darling is indeed married to Jim Dear:

1) Jim Dear and Annie Darling have eleven (11) children together,
2) Two affiants with personal knowledge of their marriage have sworn, under penalty of perjury, as to the existence of the marriage between Jim Dear and Annie Darling,
3) Annie Darling has consistently disclosed her husband, Jim Dear, in prior immigration matters,

At a minimum, the totality of the circumstances indicate that it is 51% likely or more, that Annie Darling is married to Jim Dear. Please therefore ensure that the adjudication of this case is consistent with the "preponderance" standard.

CONCLUSION:

Upon your review of the facts of this case, please issue a favorable decision in the matter of the I-730 petition of Mr. Jim Dear. Despite the fact that no new documentary evidence is being submitted at this time, all requests made by your office in the RFE dated November 16, 2010 have been addressed with legally sufficient explanations. In sum, the absence of affidavits of birth for the beneficiary is immaterial to the issue of eligibility for an I-730 beneficiary whose relationship to the petitioner is that of a "spouse," as defined by INA §101(a)(35). Furthermore, the absence of affidavits of termination of marriage does not provide a basis for denial since 8 CFR §207.7(e) requires that a petitioner submit this documentation "when possible," whereas it was clearly impossible in this case. Finally, the totality of the circumstances strongly support a conclusion that, "more likely than not," a petitionable, spousal relationship exists in the present case. Please therefore approve the pending I-720 of Mr. Jim Dear. Your attention to this matter is greatly appreciated.

Best regards,
Heather Scavone, Esq.

Case Study No. 13

- **Evidentiary Issues:**
    - Request for information that is not statutorily necessary
- **Corrective Measures Requested:**
    - This is notice of intent to deny case: This Service is in possession of adverse information that you may not be aware of regarding your Refugee/ Asylee Relative Petition filed on behalf of beneficiary. The United States Consulate in Accra, Ghana states that during the beneficiary's interview, the beneficiary seemed confused by questions as to when he was separated and reunited from his mother. According to the beneficiary, at the age of 13 or 14 his mother relinquished custody of him but he never lost contact with her and saw her and her sister depart for U.S. This is in direct contrast to the petitioner's declaration that the beneficiary's whereabouts were unknown. The petition may be denied based upon the above information. However, you are hereby granted thirty days from the date of this letter to submit to this office a written rebuttal to the adverse information.
- **Corrective Measures Sent:**
    - Sent explanatory letter and supporting affidavits
- **Notes**
    - The NOID issued states that the Service possesses adverse information regarding present petition. Your office has referenced alleged inconsistencies between the petitioner's testimony at her I-590 interview, and the beneficiary's testimony at his consular interview as a basis for denial of the prior-approved I-730 filed. The "adverse information" that your office has referenced does not provide a basis for denial of the I-730 for two reasons; 1) an objectively reasonable explanation reconciles the alleged inconsistencies, and 2) the inconsistencies, even left unexplained, do not pertain to any issue material to eligibility for the benefit sought.
    - Your office has asserted that the beneficiary misrepresented some aspect of his upbringing and seemed "confused," about the details of his childhood during interview. A number of possible explanations exist to justify the beneficiary's confusion. Significantly, the beneficiary hasn't seen the petitioner in nineteen years. He cannot be expected to remember the facts of their separation that occurred when he was three

years old. Additionally, he was raised for a significant period of time by the petitioner's half-sister, of the same first name.

- The original approval decision in this case must be upheld because the "adverse information" that your office cites as a basis for denial of this case does not pertain to any issue material to eligibility for the benefit sought. Whether the details of the petitioner's separation from the beneficiary establish that they were separated when the beneficiary was three years old or when he was thirteen years old, is totally immaterial to the legitimacy of the underlying petitionable relationship.
- INA §207(c)(2)(A), states the following with respect to eligibility for derivative refugee benefits: "A spouse or child (as defined in section 101(b)(1)(A) , (B) , (C) , (D) , or (E)) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 101(a)(42) , be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee . . ."
- Accordingly, the beneficiary meets the definition of a child articulated at INA §101(b)(1)(D): "a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;"
- Pursuant to the INA and corresponding federal regulations, the petitionable relationship of a mother to her out-of-wedlock child only requires that the mother be the "natural" mother of the child, and does not require a custodial relationship, bona fide parent-child relationship, or any period of mandatory cohabitation between petitioner and beneficiary. Effectively, the circumstances of separation from her son nineteen years ago are immaterial to the existence of the petitionable relationship of a "natural" mother to her biological child. Whereas the father of an out-of-wedlock child would be burdened with the material evidentiary requirement of proving a bona fide parent-child relationship, no such requirement exists for a natural mother. As such, the information that your office has cited as being "adverse" to the present petition, cannot truly be classified as adverse since it is entirely immaterial to the existence of the qualifying relationship, and does not otherwise pertain to eligibility.

Model Rebuttal No. 13:

Re: Notice of Intent to Deny, I-730 Relative Petition

Petitioner: Ms. Purple

Beneficiary: Child Purple

Dear Sir or Madam:

On June 11th your office issued a Notice of Intent to Deny the prior-approved I-730 petition submitted by Ms. Purple on behalf of her son, Child Purple. Your office has cited the following reason as a basis for denial of the prior-approved petition:

1) This Service is in possession of adverse information that you may not be aware of regarding your Refugee/ Asylee Relative Petition filed on behalf of Child Purple. The United States Consulate in Accra, Ghana states that during the beneficiary's January 6, 2010 interview, the beneficiary seemed confused by questions as to when he was separated and reunited from his mother. According to the beneficiary, at the age of 13 or 14 his mother relinquished custody of him but he never lost contact with her and saw her and her sister depart for U.S. This is in direct contrast to the petitioner's declaration that the beneficiary's whereabouts were unknown. The petition may be denied based upon the above information. However, you are hereby granted thirty days from the date of this letter to submit to this office a written rebuttal to the adverse information.
2) Please supply USCIS with the beneficiary's current foreign address.

Please review the enclosed explanation and documentation which is being submitted by the petitioner at this time in response to the Notice of Intent to Deny issued by your office.

I. Adverse Information Pertaining to Form I-730 :

The petitioner's enclosed sworn affidavit explains the details surrounding her separation from the beneficiary, Child Purple, when he was less than three years old. A review of the contents of the affidavit reveals that Ms. Purple gave birth to Child Purple when she was only seventeen years old, and that shortly after his birth she suffered a breast infection that prohibited her from continuing to breastfeed him. Subsequent to sustaining this infection, the petitioner allowed her older half-sister, Ms. Purple Welley, to care for and raise Child Purple during his infancy. Under the circumstances, as a child-mother with a problematic health condition, this decision was certainly understandable.

Unfortunately, Child Purple's father died of cholera near the beginning of the civil conflict in Liberia, and the petitioner fled to Ghana during the erupting chaos. Subsequent to her flight to Ghana, the petitioner never saw Child Purple again. She lived for almost fifteen years as a refugee in Ghana, and was unable to confirm Child Purple's whereabouts or even whether he was still alive during those years. It was not until she had arrived in the U.S. as a refugee that the petitioner learned that her son Child Purple was still alive. The petitioner's testimony reveals that she did not know where Child Purple was when she conducted her I-590 interview in Accra, and that she advised the consular office of this fact during interview.

In sum, the petitioner and beneficiary were separated around 1991, when Child Purple was about three years old, and they have never seen each other since the date of their separation. The petitioner has sustained a nineteen year separation from her son since that time.

The NOID issued by your office on June 11th states that the Service possesses adverse information regarding present petition. Your office has referenced alleged inconsistencies between the petitioner's testimony at her I-590 interview in 2004, and the beneficiary's testimony at his consular interview in January of 2010, as a basis for denial of the prior-approved I-730 filed on behalf of Child Purple. The "adverse information" that your office has referenced does not provide a basis for denial of Child Purple's I-730 for two reasons; 1) an objectively reasonable explanation reconciles the alleged inconsistencies, and 2) the inconsistencies, even left unexplained, do not pertain to any issue material to eligibility for the benefit sought.

Firstly, please consider that the inconsistencies your office has highlighted between the petitioner's testimony six years ago, and her son's consular testimony a few months ago, can be reasonably explained. Child Purple was not raised by the petitioner, Ms. Purple. He was raised for a considerable time during his childhood, by the petitioner's half-sister, Ms. Purple Welley. Both women, his biological mother and his de facto foster mother, are biologically related to each other,

and even share the same first name. Your office has asserted that the beneficiary misrepresented some aspect of his upbringing and seemed "confused," about the details of his childhood during interview. A number of possible explanations exist to justify the beneficiary's confusion. Significantly, the beneficiary hasn't seen the petitioner in nineteen years. He cannot be expected to remember the facts of their separation that occurred when he was three years old. Additionally, he was raised for a significant period of time by the petitioner's half-sister, also named Ms. Purple. The beneficiary's comment about the custodial arrangement relinquished by his "mother" at age 13 or 14 could have referred to his de facto foster mother, Ms. Purple Welley, or the petitioner, Ms. Purple. Furthermore, your office stated that the beneficiary's comment that he saw his mother and sister depart for the U.S. is in contrast to the petitioner's statement during her I-590 interview, that she didn't know his whereabouts. To clarify, the beneficiary was not present when the petitioner departed Ghana for the United States. Rather, the beneficiary has seen *pictures* of his mother and younger sister, that were taken during a group departure from Ghana of Liberian refugees being resettled in United States. These pictures played a significant role in the reestablishment of contact between the petitioner and beneficiary after their extremely long physical separation. The beneficiary's story of separation and reunification is, in itself, quite confusing. The fact that the beneficiary "seemed confused" about the details of his separation from his mother when he was questioned by a consular officer during interview, is understandable under these circumstances. Please accept the prior explanation in satisfaction of the discrepancies between the beneficiary's recent testimony, and his mother's testimony six years ago.

Finally, the original approval decision in this case must be upheld because the "adverse information" that your office cites as a basis for denial of this case does not pertain to any issue material to eligibility for the benefit sought. Whether the details of the petitioner's separation from the beneficiary establish that they were separated when the beneficiary was three years old or when he was thirteen years old, is totally immaterial to the legitimacy of the underlying petitionable relationship.

INA §207(c)(2)(A), states the following with respect to eligibility for derivative refugee benefits:

> "A spouse or child (as defined in section **101(b)(1)(A)**, **(B)**, **(C)**, **(D)**, or **(E)**) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section **101(a)(42)**, be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee . . ."

Accordingly, the beneficiary meets the definition of a child articulated at INA §101(b)(1)(D):

> "a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;"

Pursuant to the INA and corresponding federal regulations, the petitionable relationship of a mother to her out-of-wedlock child only requires that the mother be the "natural" mother of the child, and does not require a custodial relationship, bona fide parent-child relationship, or any period of mandatory cohabitation between petitioner and beneficiary. Effectively, the circumstances of Ms. Purple's separation from her son nineteen years ago are immaterial to the existence of the petitionable relationship of a "natural" mother to her biological child. Whereas the father of an out-of-wedlock child would be burdened with the material evidentiary requirement of proving a bona fide parent-child relationship, no such requirement exists for a natural mother. As such, the information that your office has cited as being "adverse" to the present petition, cannot truly be classified as adverse since it is entirely immaterial to the existence of the qualifying relationship, and does not otherwise pertain to eligibility.

II. **Beneficiary's Overseas Address**:

The beneficiary's overseas address is as follows:

Child Purple
Zone 555, House #55 K
Budjumbura Refugee Camp
GHANA

III. **Conclusion**:

In consideration of the above information, please reaffirm the prior-issued approval decision in this case. Upon your affirmation of the prior decision we would be most grateful if Visa-93 processing could resume in Accra. One of the beneficiary's siblings was resettled in the United States only two months ago, and this family is anxious to end the seemingly perpetual separation that they have sustained since 1991. Thank you for your assistance with this matter.

Case Study No. 14

- **Evidentiary Issues:**
    - Humanitarian extension
- **Corrective Measures Requested:**
    - RFE was sent requesting information to establish parent/child relationship
- **Corrective Measures Sent:**
    - Sent in humanitarian extension request
- **Notes**
    - A mother timely filed an I-730 for her child with a request that adjudication be deferred due to not knowing where the beneficiary was or if the child was even alive at the time of filing. The mother had to file because the two year deadline was approaching and she could not confirm anything about her child. The office sent a request for humanitarian extension when the mother found out that the child was alive and knew the location so that the mother could comply with the RFE.

Model Cover Letter No. 14:

Re:	I-730, Humanitarian Extension Request
Petitioner:	Ms. Brown
Beneficiary:	Child Brown

Dear Sir or Madam:

Please review the enclosed I-730 for Child Brown, which is being submitted with a request for a humanitarian extension of the two-year filing deadline pursuant to 8 CFR §207.7(d). The petitioner, Ms. Brown, timely-filed an I-730 for her daughter Child Brown on August 7, 2006, with a request that adjudication on that petition be deferred due to the fact that the petitioner did not know the beneficiary's whereabouts, or even whether the beneficiary was alive at the time of filing. Rather than allowing for deferred adjudication, the Nebraska Service Center denied this petition without prejudice on July 27, 2007 due to the petitioner's failure to respond to an RFE issued by that office on November 16, 2006.

Please grant a humanitarian extension of the filing deadline in this case because the petitioner timely-filed a prior I-730 for the beneficiary, and because the petitioner's inability to comply with the stated RFE was due to humanitarian hardship.

Pursuant to 8 CFR §207.7(d), Service policy is to grant an extension of the two-year filing deadline for late-filed I-730 petitions, "for humanitarian reasons." Humanitarian hardship warrants a favorable exercise of discretion in this case because the petitioner did not know if her daughter was dead or alive at the time of the issuance of the RFE, and could not therefore submit the requested DNA test results in connection with the timely-filed I-730. Because the petitioner did not have a reliable address for the beneficiary, or even know if she was living, it was impossible for the beneficiary to submit to specimen collection for the purposes of conducting a DNA parentage test. The beneficiary was later located in a refugee camp in Sierra Leone, and has subsequently completed affirmative DNA testing which shows that the petitioner is the biological mother of the beneficiary. At this time please review the enclosed documentation and process the attached I-730 petition for Child Brown pursuant to the humanitarian hardship provision of 8 CFR §207.7(d).

Enclosed, please find the following documentation:

1) Form I-730 on behalf of Child Brown,
2) Form G-28, Notice of Entry of Appearance of Ms. Smarty Pants, Esq., as Attorney of Record,
3) Photograph of Child Brown,
4) DNA test results confirming the petitionable, parent-child relationship between Child Brown and Ms. Brown,
5) Receipt notice for prior I-730, dated August 7, 2006, timely-filed on behalf of Child Brown,
6) Denial notice for prior I-730, indicating denial due to abandonment pursuant to 8 CFR 103.2(b)(13),

7) Copy of form I-590, Registration for classification as refugee, indicating that the beneficiary is the petitioner's daughter, and that her whereabouts were unknown at the time of the petitioner's initial refugee interview in 2004.

Ms. Brown has been separated from her daughter since 1992. The miraculous reconnection of mother and daughter after fifteen years of separation will have been virtually futile if your office does not exercise favorable discretion with regard to the humanitarian extension request. It is true that Ms. Brown is now a permanent resident eligible to file an I-130 for Child Brown as a 2-B preference relative with an eight year wait for a current priority date. That eight year wait will mean that Child Brown will have been separated from her family for 26 years by the time that an immigrant visa is available. Immigrants who come to the United States via a family-based visa make informed decisions about whether they can tolerate separation from adult children that they are leaving behind in the country of origin. Refugees resettled in the United States do not have the luxury of making such informed decisions because they arrive out of necessity. I hope you will agree that in this case, it would be equitable to grant a humanitarian extension of the filing deadline in order to promote family unity. Ms. Brown made a good faith effort to comply with the two year filing deadline by submitting a timely-filed I-730 on August 7, 2006. Her inability to locate her daughter prevented her from complying with the request for DNA testing within the allotted timeframe.

A review of Ms. Brown's I-590 application will reveal that she has three deceased children. Additionally, her husband died prior to her application for refugee status in the United States. Although the struggles that she endured in Liberia and the horrifying loss of her spouse and three of her children are irremediable tragedies, Ms. Brown's perpetual separation from Child Brown is a tragedy that can be remedied. Please therefore approve the request for humanitarian extension of the two-year filing deadline for the I-730 submitted by Ms. Brown on behalf of her daughter, Child Brown, and render a favorable adjudication in this case. Your consideration of this matter is greatly appreciated.

Case Study No. 15

- **Evidentiary Issues:**
  - Non-disclosure of relative on prior benefits application
- **Corrective Measures Requested:**
  - Relative was not mentioned on Form I-590, submit clear and convincing evidence to establish that claimed relationship exists and submit a statement explaining why beneficiary was not identified. Enclosed was copy of I-590.
- **Corrective Measures Sent:**
  - sent explanatory letter and affidavits
- **Notes**
  - Reviewing the I-590 form reveals that the petitioner did disclose beneficiary, but it may have been missed by the adjudicator. There were corrections made to the form prior to signing. The corrections were not obvious, but were still there on the form. Because the corrections are on the form it is not reasonable to conclude that the petitioner failed to disclose the relative.

Model Rebuttal No. 15:

Re: Request for Evidence, I-730 Refugee Relative Petition

Petitioner: Mr. Red

Beneficiary: Mrs. Red

Dear Sir or Madam:

On August 5, 2009 your office issued a Request for Evidence in connection with the pending I-730 petition filed by Mr. Red on behalf of his wife, Mrs. Red. Your office has requested the following information in order to continue processing the pending petition:

1) You have failed to include Mrs. Red on form I-590, Registration for Classification as Refugee. Therefore this petition can be approved only if it is supported by clear and convincing evidence to establish that the claimed relationship exists.
2) In addition to the clear and convincing evidence to establish that the claimed relationship between yourself and the beneficiary exists, you must submit a statement to explain why you did not identify the beneficiary as your relative in your previous immigration matters.
3) Please submit the ORIGINAL marriage certificate of MR. RED and MRS. RED which has been registered with the civil authorities.
4) You may submit voluntary DNA testing to help in establishing the relationship between yourself, your spouse and your children.

Please review the enclosed information which the petitioner is submitting at this time in compliance with the request issued by your office.

I. **Failure to Include the Beneficiary on form I-590**:

Your office has stated that the petitioner failed to include his wife, Mrs. Red, on form I-590, when he interviewed with a U.S. Consular Officer on October 30, 2006. Due to the omission of the beneficiary's name on form I-590, your office has requested that the petitioner submit clear and convincing evidence to prove that a qualifying relationship exists between himself, and Mrs. Red .

A careful review of form I-590 will reveal that the petitioner did in fact disclose his wife's name on that form during the review process, prior to signature. The signature line on form I-590 indicates that when the petitioner swore to the contents of the form, he acknowledged that, "corrections (1) to (2) were made by me or at my request." The first enumerated correction is marked adjacent to question number 7 on form I-590, in the field labeled, "name of spouse." The original, typed answer in this field indicates, "none." The correction which was made by the petitioner upon review of the document is not written out in full next to question number 7. Rather, there is a small number "1" that has been written and circled, presumably by the Consular Officer who reviewed form I-590 with Mr. Red. Unfortunately there is no written elaboration next to the altered field to indicate how the petitioner's answer to question number 7 changed during review of the form. It should be clear however, that if the petitioner wished to correct the original written answer from "none," to

something else, the only possibility is that he ultimately revealed the name of his spouse in that field.

Please review Service records to determine whether a separate attachment to the petitioner's form I-590 reveals the corrected answer. In some cases, amended answers on form I-590 appear on a separate sheet of paper, attached as an addendum. This is also the case where the subject of the form has more than five children. Because there are only five spaces for an individual's children to be listed, additional children are often listed on an attached sheet of paper. In this case, since two corrections are enumerated on the signature page and on form I-590 itself, we must assume that somewhere there exists a record of the full content of the two stated corrections. Because one of the corrections applies to question 7, which asks for the applicant's spouse's name, we must conclude that the original printed answer, "none," was incorrect, and was amended by Mr. Red prior to signature of form I-590. Since none of the enclosures furnished by your office reveal the content of the corrections, it is incorrect for the Service to conclude that Mr. Red did not reveal the name of his wife, Mrs. Red , on form I-590. At most, the Service can conclude that Mr. Red amended the answer, "none," prior to signature, and gave a different answer.

We would ask that your office consider the second itemized correction on form I-590, to further illustrate the point that the full contents of this form are not visible on the two pages that your office has produced for the petitioner's review. The second itemized correction appears adjacent to question number 11, which asks for the names and birth dates of the children of the petitioner. A hand-written "2" appears in this box, and has been circled, indicating that the applicant's second correction upon review of form I-590 applies to this section. Again however, there is no indication as to what the correction entails, or how the original answer should be changed. It seems likely that the correction pertained to the birth dates and place of birth for the petitioner's twin daughters, Trouble and Doubletrouble. Trouble and Doubletrouble were born on July 27, 2002, in Danane, Cote D'Ivoire. Form I-590 indicates that the twins were born on July 26, 2004, in Nzerkoree, Guinea. Although we can speculate as to the nature of the second itemized correction, there is no way to actually confirm the content of either correction since neither correction (1) nor (2) is otherwise articulated on the two pages of Form I-590 that your office has provided in connection with the Request for Evidence.

Please conclude that based on the ambiguities created by the presence of the two itemized corrections to form I-590, it is not reasonable to infer that Mr. Red failed to include his wife Mrs. Red on that form. Rather, it appears that Mr. Red gave more that one answer when asked about his

marital status and spouse's name, and that the two potentially critical changes he made to the form were not preserved in the record. The only conclusion that can be drawn from form I-590 is that Mr. Red may have initially indicated that he didn't have a spouse, but that he changed that answer prior to swearing to the accuracy of form I-590. Based on this explanation, please reconsider the assertion that Mr. Red failed to include his wife Mrs. Red in a prior immigration matter.

II. **Statement Explaining Absence of Beneficiary's Name in Prior Immigration Matters**:

Your office has also requested that the petitioner submit a statement to explain why he did not identify the beneficiary as his relative in a previous immigration matter. Please review the petitioner's enclosed, sworn affidavit, which explains that he did disclose his wife's name during the I-590 interview process. The petitioner recalls discussing the non-availability of his marriage certificate with the Consular Officer and being under the impression that if he couldn't produce a marriage certificate, he couldn't answer affirmatively that he was married on form I-590. He also recalls making corrections to the completed form prior to signing it. Please consider the petitioner's sworn statement in light of the previous explanation, and conclude that the absence of Mrs. Red 's name on form I-590 is more likely to be attributable to administrative error than it is to be attributable to the petitioner's omission of her name during interview.

III. **Original Marriage Certificate of Mr. Red and Mrs. Red** :

Your office has requested the original marriage certificate of Mr. Red and Mrs. Red , registered by the proper civil authorities. Your office has indicated that according to the Department of State's Foreign Affairs Manual, marriage certificates are available in Cote D'Ivoire. On the contrary, the FAM contains an adamant statement of document unavailability for the region in Cote D'Ivoire where the petitioner and beneficiary were married. Because the FAM indicates that marriage certificates from Danane and other regions outside of the U.N. "zone of confidence," are unavailable due to widespread theft and destruction, please accept the prior-submitted affidavits of marriage as secondary evidence of the petitioner's marriage to the beneficiary.

With reference to availability of documents in Cote D'Ivoire, Appendix C of the Department of State's Foreign Affairs Manual states in pertinent part:

> **"ALERT:** All Civil Documents originating from the Northern half of the country (above the UN Forces-monitored Zone of Confidence) should be treated as suspect. Due to loss, theft, and destruction of many civil records registries in the North during the period of rebel control, many of these documents are unverifiable. It is recommended that you contact post via email at: ConsularAbidja@state.gov if you encounter any such documents."

Please review the attached map of Cote D'Ivoire, which was created by the United Nations, and which indicates the geographical areas within that country that comprise the U.N. "zone of confidence." You will note that the city of Danane, where the petitioner and beneficiary were married, lies just to the north of the zone of confidence. The FAM alert cited above specifically states that any civil documentation generated from areas north of the zone of confidence should be treated as suspect since little or no legitimate documentation is available from those areas. It is also of note that when the petitioner and beneficiary were married in 2001, they were displaced Liberian refugees in Cote D'Ivoire, and not Ivorian citizens. The access of foreign-born refugees to the barely existent civil-registry system in the North of the Cote D'Ivoire would have been admittedly less that that of native-born Ivorians.

In view of the specific alert articulated in Appendix C of the FAM with respect to document availability in Cote D'Ivoire, and in consideration of the geographical location of Danane, please consider the requested marriage certificate to be unavailable.

Because the marriage certificate for Mr. Red and Mrs. Red is unavailable, please accept the prior-submitted affidavits of marriage as secondary documentation of their marriage. Section 11.1(f) of the Adjudicator's Field Manual dictates that where the FAM shows unavailability of civil documentation, USCIS may consider secondary evidence of the claimed relationship, even in the absence of a statement of non-availability. Specifically, the handbook notes that, "[t]he Department of State's Foreign Affairs Manual . . . provides country-specific information on availability of various foreign documents. If this Appendix shows that a particular record is generally not available in a particular country, USCIS may accept secondary evidence without requiring the written statement from the issuing authority."

The secondary evidence submitted previously by the petitioner in evidence of his relationship to the beneficiary, therefore deserves consideration. Please re-evaluate the prior-submitted sworn affidavits of Ms. Blank and Ms. Blank, who were both witnesses to the marriage of Mr. Red and Mrs.

Red . Please give due consideration to the secondary evidence submitted in support of the petitioner's marriage to his wife, Mrs. Red .

It is inconsistent with Service policy to entirely disregard secondary evidence when adjudicating a refugee relative petition. The regulations which govern supporting documentation associated with I-730s require greater flexibility than the regulations which govern I-130 adjudication.

8 Code of Federal Regulations, §207.7(e) states in pertinent part:

> 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 . . . Where possible this will consist of the documents specified in 204.2 (a) (1) (i) (B), (a) (1) (iii) (B), (a) (2),(d)(2) and (d)(5).

Please evaluate the specific vocabulary of 8 CFR, 207.7 (e). The regulations stipulate that *where possible,* documentary evidence will consist of the documents listed in 8 CFR §204, which lists the documentation required for an approvable I-130. This indicates that I-730 petitions are approvable even in the absence of the types of documentation required for I-130 approval. In accordance with the provisions of 8 CFR §207.7(e), please consider the prior-submitted affidavits of marriage as the only available evidence of the marriage of Mr. Red to Mrs. Red .

IV. Voluntary DNA Testing:

Finally, your office has suggested that the petitioner may affirmatively conduct DNA testing to establish the qualifying relationship between himself, his spouse, and his children. Please review the enclosed copies of positive results of a three-way DNA parentage test conducted by AABB accredited DNA testing laboratory, LabCorp. The original, sealed results have been forwarded directly from LabCorp to your office, but the enclosed copies reveal that Mr. Red and his wife Mrs. Red are both the biological parents of Trouble and Doubletrouble.

V. **Conclusion**:

Upon your review of the enclosed information please conclude that petitioner has demonstrated the existence of a qualifying relationship by marriage, to the beneficiary, Mrs. Red . Mr. Red's family has endured a sustained and difficult separation. Mr. Red did not see his wife or daughters for several years after they were separated during fighting in Nzerkore. During their separation, Mrs. Red and the twin daughters were resettled as refugees in Australia. Mr. Red was later resettled in the United States without even being sure as to where his wife and daughters were. Although it is regrettable that so little documentation exists in support of the claimed relationship between Mr. Red and Mrs. Red, it is certainly understandable in consideration of the unique circumstances of this case. Please review all of the available information carefully and conclude that an approval decision in this case would be equitable and would bring about the highly desirable result of family reunification. Thank you for your consideration of this matter.

Case Study No. 16

- **Evidentiary Issues:**
    - USCIS denied initial request for humanitarian extension and a Motion to Reopen was submitted to rebut Service argument that extension not warranted under the circumstances.
- **Corrective Measures Sent:**
    - I-290B plus accompanying brief.
- **Notes**: This case represents an ineffective assistance of counsel argument for humanitarian extension of the filing deadline. If a notario, BIA rep., attorney, or congregational cosponsor gives erroneous legal advice to a refugee and she misses the filing deadline as a result, consider using this argument.

Model Motion to Reopen No 16:

In the Matter of:	)
	)
FLANDERS, Rudolph	)
	)
A 000-000-000	)
	)
SRC-000000000	)

PETITIONER'S MOTION TO REOPEN AND RECONSIDER

The petitioner, Rudolph Flanders, requests that the I-730 for his wife, Fanny Flanders, be reopened and reconsidered. Pursuant to 8 CFR §103.5(a)(2), "a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence." The petitioner hereby respectfully submits a sworn affidavit that

states new facts about the case. Pursuant to 8 CFR §103.5(a)(3), "a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision." The petitioner respectfully challenges the Service's argument in denying the petition and suggests that the denial decision is flawed because it is based on an incorrect application of Service policy. Considering the argument laid out in the present Motion in light of Mr. Flanders's sworn affidavit, the petitioner respectfully requests that the Service reopen and reconsider the I-730 petition.

I. THE SERVICE'S DENIAL DECISION

In its denial notice dated November 29th, 2011, the Service stated the following with respect to Mr. Flanders's I-730:

a. The petitioner states that Form I-730 was not filed within the two-year filing period because he was never informed of the two-year deadline.
b. Humanitarian consideration of late-filed I-730 cases is decided on a case-by-case basis. "When determining if the two-year filing period should be extended for humanitarian reasons, USCIS determines if there is compelling evidence to establish that the *petitioner* was prevented from filing during the required two-year filing period (emphasis added)."
c. The petitioner shows no evidence to indicate that he was prevented from filing Form I-730 during the two-year deadline.
d. All refugees are informed at time of entry that they need to file for their beneficiaries within two year of entry.
e. Because the petitioner failed to provide compelling reasons or evidence to establish he was prevented from timely-filing, Form I-730 is denied.

This reasoning, while understandable, contains multiple flaws which must be addressed in light of the evidence of record and Mr. Flanders's sworn affidavit. A careful review of this affidavit

and thoughtful consideration of the argument laid out below ought to merit reconsideration of the case and an ultimate approval of Form I-730.

II. INCORRECT APPLICATION OF SERVICE POLICY WARRANTS RECONSIDERATION

Service policy is to permit extension of the I-730 filing deadline where humanitarian reasons are present. The decision issued by your office misconstrues Service policy by adding arbitrary requirements to the controlling federal regulation 8 CFR §207.7(d). The denial decision notes that "the petitioner states that Form I-730 was not filed within the two-year filing period because he was never informed of the two-year deadline." Furthermore, it states that in consideration of humanitarian extensions for I-730s, "USCIS determines if there is compelling evidence to establish that the *petitioner* was prevented from filing during the required two-year filing period (emphasis added)." Due to the reference to an added emphasis, we are lead to conclude that the adjudicator is quoting from a source in reference to prevention of filing. However, it is unclear where, if anywhere, the adjudicator is quoting from in his/her reference to how USCIS determines when to grant favorable consideration of a humanitarian extension. Service policy with regard to extension of the two-year deadline is notably limited in scope: the filing deadline may be extended for "humanitarian reasons." 8 CFR §207.7(d) gives no specific details as to the process of humanitarian extension evaluation, noting only that "a separate Form I-730 must be filed for each qualifying family member before February 28, 2000 or within 2 years of the refugee's admission to the United States, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons." It does not expound on the definition of "humanitarian reasons" or offer further explanation as to what those might entail. The Adjudicator's Field Manual, which regulates procedure of I-730 adjudication, offers similarly open-ended guidance: "If USCIS determines that valid humanitarian reasons exist for extending the filing deadline, it may do so. (There is no set limit on the length of extension which may be granted.)"[14] No further discussion is included. Given the lack of statutory guidance in considering the merits of humanitarian extension requests, it appears that discretion is given to the officer in determination of what constitutes a "valid humanitarian reason." In this case, the adjudicator states that the petitioner needs to show "compelling evidence" to establish that he was "prevented" from filing during the two-

[14]Adjudicator's Field Manual, Section 21.10(c)

year period. Without references to regulations, statutes, or instructions, it appears that this must be the adjudicator's own personal guideline for consideration of humanitarian extension requests. While conceding that this consideration is discretionary and the petitioner must satisfactorily convince the adjudicator of the merits of his own request, the petitioner now respectfully asks for a careful review of his submitted affidavit, which does indeed show that he was prevented from filing due to his falling victim to ineffective legal assistance. A further review of the facts of the case reveals that Mr. Flanders does indeed have a convincing, valid humanitarian reason for not filing within the two years and an undeniably compelling case for granting an extension of the deadline. The adjudicator's finding that Mr. Flanders has not established eligibility to file an I-730 therefore constitutes an incorrect application of Service policy.

III. PETITIONER'S PREVENTION OF FILING DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL

In his sworn affidavit, Mr. Flanders states that "two or three months" after his arrival date in February 2009, he approached Max Botch, the immigration specialist at Refugees R US, his refugee resettlement agency, for assistance in filing petitions for his wife and children in Nepal. He was told that in order to establish eligibility to file, he needed to procure a marriage certificate and other documentation from Nepal. At this time he was never informed of the two-year deadline. Obtaining documents from authorities in Nepal proved to be exceedingly difficult, and ultimately the two-year filing deadline passed without Mr. Flanders's knowledge that a deadline even existed. Mr. Botch, the petitioner's legal representative, conspicuously failed to inform Mr. Flanders of the two-year deadline. In doing this, not only did he deprive Mr. Flanders of the knowledge he needed to comply with USCIS regulations, he essentially prevented him from filing the I-730 by giving him erroneous counsel. As the petitioner states in his affidavit, "I relied on what I considered to be the expert advice of an immigration law professional. I believed I was in the process of complying with the instructions given to me in order to get my family here." Mr. Flanders made good-faith efforts to bring his wife and children here soon after he arrived in the U.S., and reasonably believed he was complying with USCIS regulations. The misleading counsel that he was rendered by Mr. Botch—that he needed a marriage certificate and birth certificates for his family *before* he was able to file—effectively

prevented Mr. Flanders from timely-filing his I-730 petitions as he relied on this counsel to his detriment.

As a recently-arrived refugee, Mr. Flanders relied on his resettlement agency, Refugees R Us, for guidance and assistance in all areas of life. As with virtually all refugees, Mr. Flanders was persecuted in his home country and was forced to flee, enduring enormous suffering before being resettled to the U.S. Upon his arrival in the U.S., he required a great amount of assistance from Refugees R Us to navigate the complexities of life in America, learn English, get a job, and become a self-sufficient member of society. As in all other aspects of life, he relied on his agency and its immigration specialist to provide him with accurate, useful information concerning his situation, and did not have the skills or means to undertake extensive research on his own. As such, his victimization through ineffective legal counsel is entirely understandable, and deeply regrettable. He made good-faith efforts to file for his wife and children within the requisite time period, but relied on the advice of his immigration specialist to his own disadvantage. Mr. Botch had the responsibility to inform his client of the two-year deadline and failed to do so. In doing so, he effectively prevented Mr. Flanders from complying with USCIS regulations—which he was not informed about—and filing within the two-year deadline—which he never knew about.

IV. REFUGEES' LACK OF INFORMATION AT TIME OF ENTRY

In the denial decision, the Service states that "all refugees are informed at time of entry that they need to file for their beneficiaries within two years of entry." This is simply untrue. Our office currently represents more than 500 refugees a year with immigration legal benefits, provides consultations to over 700 per year, and has filed over 100 I-730 petitions with the Texas Service Center since February. Not once, in our extensive experience in this matter, have we ever seen any kind of document or notice given to refugees at their time of entry that informs them of the two-year filing deadline. As with virtually every other matter, refugees rely on their resettlement agencies for guidance on this issue, and many agencies do inform their clients of the two-year deadline through presentations and workshops. As mentioned above, Mr. Flanders was never informed of the deadline by his agency, nor was he ever given any written statement or notice about the two-year deadline. *Asylees* are informed about the two-year deadline in their asylum approval letters; *refugees* receive no such letter. Mr. Flanders is a

refugee. If the Service feels it did not make this statement in error we would greatly appreciate a copy of the notice wherein Mr. Flanders was informed of the two-year deadline or some specific reference to the documentation that proves this. Our extensive history in refugee work and Mr. Flanders's own testimony show the Service's assertion to be false, and lend credibility to Mr. Flanders's claim that he was *never* informed of the two-year deadline until his initial meeting with our office on June 16th, 2011—after the deadline had already passed.

V. COMPELLING REASONS FOR REUNIFICATION PRESENT

Beyond the evidence that Mr. Flanders was prevented from filing due to ineffective assistance of counsel, further case facts ought to persuade the adjudicator that a discretionary grant of humanitarian consideration is warranted. Mr. Flanders, with our office's help, has already undergone DNA testing for his two children. The results came back with an affirmative match for both. Beyond this, Mr. Flanders has managed, after a long and arduous process, to obtain civil documentation from his wife concerning their marriage and their parenthood of both children. He also has a number of photographs and a letter from his young son. Taken together, this evidence easily surpasses the Service's standard of proof of the "preponderance of the evidence" in I-730 cases, and even the next level of "clear and convincing evidence." This proof—DNA evidence coupled with appropriate civil and secondary documentation—establishes Mr. Flanders's relationship to his wife and children "beyond a reasonable doubt"—the evidentiary threshold normally used in high-stakes criminal proceedings.

As such, it has already been proven beyond a reasonable doubt that Mr. Flanders is truly related to his family in Nepal. Having suffered greatly due to past persecution in his native Bhutan, Mr. Flanders continues to suffer due to the prolonged separation from his wife and children he experiences daily. Yes, as a lawful permanent resident, he is eligible to file I-130s for his family as a 2A preference category with an estimated 3-4 year wait for a current priority date. That 3-4 year wait will mean that he will not have seen his family in nearly 7 years by the time the reunification process is completed. The harm inflicted on Bhutanese refugees—including ethnic cleansing, statelessness, and ongoing discrimination—is an irremediable tragedy. The prolonged separation between Mr. Flanders and his wife and children is a tragedy that can be remedied. Please review the facts of the case and determine that a reopening and reconsideration of the petition is warranted.

Please do not hesitate to contact me for further information about this case.

Thank you for your understanding in this matter.

Best regards,

Andrew J. Haile

BIA-Accredited Immigration Counselor

Elon University School of Law

Humanitarian Immigration Law Clinic