



Documents for Parole in Place (PIP) Under Keeping Families Together

Last Updated: September 23, 2024

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On August 20, 2024, USCIS published a notice in the Federal Register to implement the parole in place process under the “Keeping Families Together” program.¹

USCIS published *Frequently Asked Questions* to provide further guidance and has held multiple public engagements to describe eligibility and the online filing of the I-131F, the form published for this program.² USCIS also published a very helpful [I-131F filing guide](#) that many advocates have been using to prepare their clients’ applications prior to beginning the online filing process.³

The program has been challenged by litigation and currently a pause on adjudication of applications is in effect. Advocates will need to monitor further litigation developments.⁴ During the pause ordered by the court, USCIS will continue to accept and review PIP filings, but the agency will not make any approvals. USCIS will also continue to schedule biometrics and applicants should attend biometrics appointments if so notified. It is unclear what will happen to the program ultimately as multiple appeals and motions are in play.

¹ USCIS, *Notice of Implementation of the Keeping Families Together process*, 89 Fed. Reg. 161 (Aug. 20, 2024).

² USCIS, *Frequently Asked Questions about Keeping Families Together* (last updated Sept. 9, 2024), <https://www.uscis.gov/keepingfamilies-together/faq>.

³ USCIS, *Filing Guide for Form I-131F, Application for Parole in Place for Certain Noncitizen Spouses and Stepchildren of U.S. Citizens*, <https://www.uscis.gov/sites/default/files/document/guides/USCIS-Filing-Guide-Form-I-131F.pdf>.

⁴ On Aug. 26, 2024, the United States District Court for the Eastern District of Texas, in *Texas v. Department of Homeland Security*, Case Number 24-cv-306, administratively stayed DHS from granting parole in place under Keeping Families Together. On September 11, 2024, the Fifth Circuit Court paused proceedings in the district court and scheduled oral arguments in the case on October 10, 2024. For more detail on the litigation see AILA:

<https://www.aila.org/library/texas-and-other-states-file-lawsuit-challenging-keeping-families-together-program>.

However, since document preparation is a time-consuming and essential key to applicant success in qualifying for the program, potential applicants can continue to gather and scan in their needed documents even during the stay period ordered by the court. This advisory will review the documentation requirements for PIP in this program and give practice tips on how to gather and present these documents.

Practitioners may also want to consider a cover letter as a supplemental document to file with the online evidence that accompanies the documentation. Cover letters can be useful to provide a roadmap to the application, detailing all the evidence submitted and summarizing in a few words what aspect of the eligibility each document supports.

Overview of Eligibility Requirements

This advisory will not review the PIP program's eligibility requirements, which are described in detail in the Federal Register notice and USCIS's [Frequently Asked Questions](#). But to summarize, the documentation provided with the I-131F must establish eligibility by proving that:

The applicant who is the spouse of U.S. citizens is present in the United States without admission or parole; has been continuously physically present for at least 10 years as of June 17, 2024; has no disqualifying criminal history or other factor deemed to be threat to public safety, national or border security; and submits biometrics for background checks.

Also eligible for the program are stepchildren of U.S. citizens if they can show that:

- They are present in the United States without admission or parole;
- they have been continuously physically present since June 17, 2024 through the date of filing;
- are under 21 on June 17, 2024;
- are the stepchild of a U.S. citizen as of June 17, 2024;
- have no disqualifying criminal history; and submit biometrics for background checks.

Format for Documentation

Because the filing of the I-131F form for PIP in this program is solely online, supporting documents must be presented in certain formats and uploaded to the online application form. The acceptable file formats are JPG, JPEG, PDF, TIF or TIFF. The correctly formatted documents must be clear and legible and may not include any password-protected files.

Instructions for the I-131 filing guide include reminders that while it is helpful to name files (examples: residence evidence or discretion evidence) such file-naming must all be in English alphabet letters. Although the file could be named a foreign word such as “certificado” it cannot contain letters from a foreign alphabet because the online platform will reject it. The names of files can include numbers, spaces, periods, hyphens, underscores, and parentheses, but no other characters. No more than five documents can be uploaded at a time, and the uploaded documents cannot exceed 12 MB per file.

Supporting Documents

The I-131F filing guide and online form give further guidance on what supporting documents should be filed with the application. The Federal Register notice implementing the program also provides further detail on evidence that will help establish eligibility for PIP.⁵ The burden of proof on applicants is a preponderance of the evidence, which means that the adjudicator should approve if there is a greater than 50% chance that the documents provided prove eligibility.

Bars to Eligibility

Certain facts will render an applicant ineligible for PIP: any felony conviction, and specified offenses whether or not classified as felonies.⁶

Also, all pending charges of a crime are bars. An applicant can only apply for PIP once those charges are resolved.

Rebuttable Presumptions of Ineligibility

There are some special circumstances in the PIP program that create a rebuttable presumption of ineligibility, such as all other criminal convictions that are not an outright bar to eligibility. These other offenses can be outweighed by mitigating circumstances, as described below. Even juvenile adjudications, which are not considered convictions

⁵ USCIS, *Notice of Implementation of the Keeping Families Together process*, 89 Fed. Reg. 161, page 67472 (Aug. 20, 2024).

⁶ In addition to any felony conviction, a conviction for the following crimes whether or not a felony will bar an applicant from PIP: murder, torture, rape, or sexual abuse; offenses involving firearms, explosive materials, or destructive devices; offenses related to peonage, slavery, involuntary servitude or trafficking; aggravated assault; offenses relating to child pornography, sexual abuse or exploitation of minors, or solicitation of minors; domestic violence, stalking, child abuse, child neglect or child abandonment; and controlled substances, other than simple possession of 30 grams or less of marijuana. For an excellent resource on crimes and PIP see Immigrant Defense Project’s *Community FAQ: Eligibility for Keeping Families Together Parole-in- Place if You or Your Family Member Has Had Contact with the Criminal Legal System* (Aug. 23, 2024), https://www.immigrantdefenseproject.org/wp-content/uploads/IDP-Community-FAQ_-KFT-Parole-In-Place-ENGLISH.pdf.

for immigration purposes, will create a rebuttable presumption of ineligibility. Arrests or criminal charges that do not result in a conviction will not trigger the presumption of ineligibility.

Also, an applicant with an unexecuted final order of removal is presumptively ineligible but will have an opportunity to present extenuating factors that may outweigh the presumption on a case-by-case basis.

Evidence of Identity

The Federal Register notice list the following as required proof of identity for the applicant:

- Valid state or country driver's license or identification;
- Birth Certificate with photo identification;
- Valid passport; or
- Any government issued document bearing the requestor's name, date of birth and photo.

A footnote in the Federal Register states that expired documents may be provided in conjunction with other documents.⁷

The filing guide for Form I-131F also states that the following may prove identity:

- Any school-issued form of identification with photo; or
- Any other official identity document with photo.

As instructed, the identity document(s) need to be clearly and legibly scanned or photographed in one of the acceptable formats, and then uploaded to the online I-131F. The filing guide explicitly states that expired documents are acceptable.

Evidence of Spouse or Stepparent's Citizenship

This program is specifically for certain spouses or stepchildren of U.S. citizens. The applicant must provide evidence of the U.S. citizenship of the spouse or stepparent to qualify. The Federal Register notice lists these documents for this purpose:

- U.S. birth certificate (if a citizen by birth);
- Certificate of Naturalization (if naturalized);
- Certificate of Citizenship;
- Form FS -240, Consular Report of Birth Abroad;
- Or a biographical page of a U.S. passport.

⁷ USCIS, *Notice of Implementation of the Keeping Families Together process*, 89 Fed. Reg. 161, page 67472, fn. 156 (Aug. 20, 2024).

Evidence of Relationship

Keeping Families Together is a program for certain spouses or stepchildren of U.S. citizens and the required familial relationship must be supported by documents provided with the application. To prove that the applicant is the spouse, the following documents are listed:

- A current marriage certificate showing that a legally valid marriage took place on or before June 17, 2024;
- Any divorce or annulment decree or death certificate, if applicable, showing that prior marriages by applicant and their U.S. citizen spouse were terminated;
- And, for widows, a death certificate of a U.S. citizen spouse.
- For stepchildren, the filing guide lists the following documents:
- Birth certification with your noncitizen parent's name; or
- Death certificate, if applicable, or your U.S. citizen stepparent or your noncitizen parent.

Legally valid marriage is a subject much explored by the field of family immigration law and the same principles apply with PIP. A marriage is generally legally valid if it is legal under the requirements of the law where the marriage was celebrated, which may be in a foreign country or under a particular state's laws. A certificate of marriage from civil authorities is required. In some instances, the law of foreign countries must be researched to determine what is required to form a valid marriage or to terminate one.⁸

The Federal Register notice makes clear that PIP will follow the general rules on legal marriage as established by case law and the INA. Generally, civil unions or domestic partnerships that provide less than the legal rights and responsibilities of a marriage by a civil authority will not be a valid marriage. Marriages that are contrary to public policy will not be recognized, such as polygamous marriages, proxy marriages, marriages involving minors or close relatives. And a marriage is not valid if one or both of the parties is not legally free to marry because they did not terminate a prior marriage.⁹

⁸ For more information on legally valid marriages, see the U.S. Department of State's Foreign Affairs Manual, 9 FAM 102.8-1 and USCIS's Policy Manual (PM) on Marriage and Marital Union for Naturalization, 12 USCIS-PM G.2 (A).

⁹ USCIS, *Notice of Implementation of the Keeping Families Together process*, 89 Fed. Reg. 161, page 67470. (Aug. 20, 2024).

Some jurisdictions have laws that certify common-law marriage.¹⁰ USCIS will recognize such marriages if the marriage took place in such a jurisdiction and the applicant can demonstrate that the requirements for common law marriage in that place were met. This will often require researching the law and providing USCIS with evidence of that law and the applicant's compliance with it when presenting a common law marriage.¹¹

PIP in Keeping Families Together makes a special provision for widow/widowers of U.S. citizens by providing that a noncitizen may be eligible for PIP even if their U.S. citizen spouse is deceased as long as the marriage was entered into on or before June 17, 2024. The Federal Register notice points out that additional requirements will have to be met for such an applicant to later seek adjustment of status, such as having a pending or approved I-130 at the time of the U.S. citizen's death or having filed an I-360 self-petition within two years of the death of the U.S. citizen spouse. The noncitizen spouse must not have been separated from the U.S. citizen at the time of the death and must not have since remarried in order to later adjust.¹²

Evidence of Continuous Physical Presence

There are a wide variety of documents that can prove that an applicant was in the United States for the required period of time. Perhaps one of the most persuasive and useful are IRS tax transcripts, which can cover all the years that the applicant has been in the country and contain the needed information in summary form.

The central question on physical presence evidence is how much is needed. The Federal Register notice states that documentation should account for as much of the period as reasonably possible, but there is no requirement that every day or month of the period be accounted for.¹³ Until we see the progress of adjudications, we can't be certain of the volume of evidence needed, but since this is an online process with limits on capacity, it would seem advisable to present such evidence in as compact form as possible, favoring documents that cover several years, for example.

In the USCIS's filing guide to the I-131F, it states that, "you must submit sufficient documentation to establish your continuous physical presence for the entire period of

¹⁰ For preliminary research on States that recognize common law marriage see National Council of States Legislatures, *Common Law Marriage States*, <https://www.ncsl.org/human-services/common-law-marriage-by-state>. The District of Columbia also recognizes common law marriage. Each state's laws are unique, and the requirements vary so that further research must take place to discern all the requirements in that state.

¹¹ USCIS, 12 USCIS-PM G.2 (A).

¹² INA Sec. 102(b)(1)(A)(i).

¹³ USCIS, *Notice of Implementation of the Keeping Families Together process*, 89 Fed. Reg. 161, page 67470. (Aug. 20, 2024).

time required, but you do not need to submit documentation for every day, week, or month within that period. USCIS will evaluate the totality of the evidence.”

A non-exclusive list of possible documents to prove the needed physical presence for ten years as of June 17, 2024, for the spouse of a U.S. citizen, and from June 17, 2024, through date of filing for the stepchild of a U.S. citizen:

- IRS tax transcripts;¹⁴
- Rent receipts, utility bills;
- Deeds, mortgages, house contracts;
- Bank or credit card records;
- Insurance policies;
- Automobile records (DMV);
- Medical records;
- School records including letters, report cards, etc.;
- Attestations or records regarding applicant’s presence by religious groups, unions, community organization;
- Birth certificates of U.S. born children;
- Receipts for money sent in or out of the United States; and
- And “any other document” that shows physical presence for the required time period.

Specific Documents for Stepchildren of U.S. Citizens

The Federal Register notice specifies the following documents as required for noncitizens applying as stepchildren of U.S. citizens:

- Birth certificate listing name of the noncitizen parent as a natural parent;
- Proof of identity (listed above);
- Evidence of physical presence since June 17, 2024, through date of filing;
- Evidence showing a legally valid marriage between the noncitizen parent and the U.S. citizen parent that took place before June 17, 2024;
- Proof of the U.S. citizenship status of the parent; and
- Any applicable arrest records including charges and convictions.

Evidence to Support Favorable Discretion

All PIP adjudications include an element of discretion. The I-131F has a specific question on discretion that applicants must answer with at least a 750-character (not words, but letters) response as to why the applicant warrants the favorable exercise of

¹⁴ IRS, *Get Your Tax Records and Tax Transcripts*, <https://www.irs.gov/individuals/get-transcript> (2024).

discretion such that a significant public benefit or humanitarian purpose would be served by granting the application.

The Federal Register notice states that the following are positive factors that can establish that applicant merits the favorable exercise of discretion: community ties; advanced or young age; length of U.S. presence; status as a parent or caregiver of a U.S. citizen child or elderly parent or in-law; status as a caregiver for someone with disabilities, including U.S. citizen in-laws or sibling; physical or mental conditions requiring treatment in the United States; status as a victim of or witness to a crime or civil rights violation, or labor rights violation under investigation by a labor agency; impact on other family members who are U.S. citizens or LPRs; status of applicant or their U.S. citizen family member as a current or former member of the military; or other positive factors.

This is not an exclusive list thus any positive factor about applicant's situation can help to establish favorable discretion, such as employment history, community service, personal recommendations, community involvement and contributions of service to community groups.

Evidence Regarding Criminal Charges

Because applicants must establish that they are not a national security risk, and do not present a public safety or border security issue, the documentation regarding any criminal history must be complete. Applicants are instructed by the Federal Register notice to provide arrest records and court dispositions of any arrest, charge, or conviction.

On the I-131F, more specific instructions require applicants who have been arrested or charged with any felony or misdemeanor in the United States or in any other country to submit evidence regarding the arrest, charges, and results. Only minor traffic violations such as driving without a license are exempt from this requirement and only if they are not alcohol- or drug-related. Any federal state or local criminal offense must be documented. If there is a juvenile adjudication and the jurisdiction prohibits disclosure of that information, such records need not be provided.

Felony offenses are those that are punishable by a term of imprisonment exceeding one year. Misdemeanor offenses are those for which the maximum term of imprisonment is one year or less but greater than five days.

USCIS's Form I-131F instructions are that applicants must submit a court-certified copy of the complete arrest record and disposition of each incident (dismissal order, conviction and sentencing record, acquittal, etc.). If the documentation is not available, the applicant must explain why and describe their efforts to obtain the record.

If an arrest or conviction was ever vacated or set aside, sealed, or expunged or otherwise removed, the applicant must provide a certified copy of the court order or an original statement from the court that no record exists of such arrest or conviction.¹⁵

Evidence to Overcome Presumption of Ineligibility

When there are criminal convictions of any type, even when they do not create outright bars to eligibility, applicants must overcome the presumption of ineligibility. Only minor traffic offenses are excluded from this calculation. Adjudicators are instructed to weigh the seriousness of the conviction and assess it for public safety concerns. On a case-by-case basis factors that can outweigh the presumption include:

- Remoteness in time of the conviction;
- Applicant's age at the time of the offense, including whether they were a juvenile;
- Sentence or penalty imposed;
- Evidence of subsequent rehabilitation;
- Nature of the conviction, including whether it was nonviolent;
- Whether the conviction was an isolated offense;
- Existence of mental or physical condition that may have contributed to the conduct;
- Applicant's vulnerabilities/conditions requiring treatment in the United States;
- Applicant's status as a victim or witness to a crime, including domestic violence, or civil or labor rights violations;
- Applicant or their U.S. citizen spouse's status as former or current member of the U.S. military;
- Applicant's status as a primary caregiver for a U.S. citizen child, elderly parent, or in-law;
- Evidence of applicant's good character, including property and community ties or service to the community;
- Applicant's length of time in the United States;
- Applicant's status as a caregiver for an individual with disabilities; and
- Impact on family members, including family members who are U.S. citizens and LPRs.

This is a non-exclusive list, and other favorable factors may also be considered. Documents to demonstrate the above factors might begin with a detailed affidavit from the applicant describing the incident, the surrounding circumstances, the family situation, any special conditions that apply, and the impact of the noncitizen's inability to gain PIP on the family. Direct evidence of any of the facts attested to in the affidavit should be supplied as well, and supporting statements of affected family members

¹⁵ USCIS, *Filing Guide for Form I-131F, Evidence of Disposition of any Criminal Record*.

regarding the above factors would be helpful. Where there is any U.S. military history, this should be verified with direct evidence such as Department of Defense records verifying such history.

Where there is a presumption of ineligibility due to an unexecuted order of the removal, USCIS will consider the following factors to consider whether the presumption may be outweighed:

- Lack of proper notice;
- Age of the noncitizen at the time of the removal order;
- Ineffective assistance of counsel or being a victim of fraud in connection with representation;
- Extenuating circumstances such as inability to understand proceedings because of language barriers;
- Status as a victim of domestic violence;
- Extenuating personal factors such as limited resources affecting ability to appear, such as lack of housing;
- A physical or mental condition that required treatment during immigration proceedings.

Again, a detailed statement by the applicant regarding the order and the surrounding circumstances should be a starting point, supplemented by direct evidence of any of the factors attested to, where available. If problems with counsel are alleged, any complaints filed against such counsel could be helpful, or supporting statements from other sources about counsel's ineffectiveness. If there was a physical or mental condition affecting the situation, outside evaluations of that condition would be useful. If there was a domestic violence issue, any records of reports or such charges would be evidence or any counseling or shelter that offered assistance could provide corroboration.

Conclusion

USCIS in a public engagement described PIP in Keeping Families Together as a document-heavy type of application. There are many eligibility criteria which must be supported by documentary evidence to provide applicants with the best chance of success. However, since PIP is an online process and all documents must be uploaded under the required volumes, it may be best to choose the most probative documents in the various categories and proceed with those. USCIS stated in public engagements that it did anticipate issuing Requests for Evidence where deficiencies might be overcome.

The PIP program for Keeping Families Together is on pause at this time.¹⁶

Stay informed on the [Ready to Stay website](#) about further developments in the program.

This resource was put together by [Ready to Stay](#) partners, including CLINIC, Immigrant Legal Resource Center, National Immigration Project (NIP) and National Partnership for New Americans (NPNA).



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