# OVERVIEW, TIPS, AND CONSIDERATIONS WHEN APPLYING FOR KEEPING FAMILIES TOGETHER PAROLE IN PLACE FOR SPOUSES AND STEPCHILDREN OF U.S. CITIZENS

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[1] Thank you to Carolina Castaneda and Ann Block for their contributions to this advisory, including Ann Block's analysis of the criminal disqualifiers and her many online filing tips.

# I. What Is Parole in Place for Spouses and Stepchildren of U.S. Citizens and Why Apply?

In June 2024, the Biden administration announced a new parole process that would be available to certain spouses and stepchildren of U.S. citizens (USCs).[2] The process, referred to as Keeping Families Together Parole in Place (KFT PIP), is based on the broad general parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (INA), which allows the Attorney General to favorably exercise discretion to temporarily parole into the United States, on a case-by-case basis, applicants for admission for urgent humanitarian reasons or significant public benefit. Other types of parole, such as humanitarian parole, advance parole, and parole in place for military family members, are authorized under this same statutory section. Most of the time, but not always, parole facilitates legal entry into the United States from outside the country. With parole in place, a person does not actually cross a physical border, they are already within the United States at the time of both application and grant.

Individuals granted parole under this new process receive protection from removal and the ability to apply for employment authorization for up to three years. The Department of Homeland Security (DHS) does not contemplate renewal or re-parole with this process, so once the three years are up the person reverts to whatever their prior immigration situation was.[3]

Parole is not an immigration status, nor does it directly lead to getting a green card. However, since one of the main criteria for KFT PIP is that the applicant is the spouse or stepchild of a U.S. citizen, this means they also have a qualifying relationship to support a family petition and potentially may be eligible to apply for lawful permanent resident status through the family-based immigration process.[4] Further, parole (whether through this process or another type of parole), may solve the missing puzzle piece for adjustment eligibility for someone who last entered the United States without inspection, thereby enabling them to have their green card application processed entirely within the United States, through adjustment of status, rather than having to consular process, in which the green card interview is conducted abroad at a

[2] USCIS, "Fact Sheet: DHS Announces New Process to Promote the Unity and Stability of Families," (June 17, 2024) https://www.dhs.gov/news/2024/06/17/fact-sheet-dhs-announces-new-process-promote-unity-and-stability-families.

[3] With the exception of other temporary forms of immigration relief that may have expired in the interim, for instance someone who had been granted U nonimmigrant status or Deferred Action for Childhood Arrivals (DACA) prior to receiving parole under this process does not automatically revert to their U status or DACA unless they took actions to maintain that other status or situation. Note that USCIS has stated that those who have been granted parole under this process will not be approved for DACA renewal if still within the parole period (and if they wait until they are no longer within the parole period, they will likely be unable to renew their DACA after more than one year has lapsed since they last had DACA, since USCIS treats such renewals as "initial" applications and USCIS is prohibited from approving initial DACA applications under a court order that remains in effect). See note for individuals with DACA who may be considering applying for this process, *infra*.

[4] Keep in mind, however, that there are additional requirements in order to apply for a green card through the family-based process, including not being inadmissible under any grounds of inadmissibility (or if inadmissible, the applicant must be eligible for and granted a waiver). While some of the crimes-based grounds of inadmissibility are reflected in the criminal history disqualifiers for this process, being admissible is *not* a direct requirement to be granted KFT PIP. Thus, some individuals may be eligible for KFT PIP while ultimately being *ineligible* to apply for lawful permanent residence based on a family petition.

U.S. consulate or embassy. Many would-be applicants for KFT PIP are already eligible to apply for lawful permanent resident status through a family petition and may have even started the process already with the Department of State, but would prefer to adjust if able to, since consular processing involves a great deal of risk and lengthy separation from family. In this way, a grant of parole through this process can serve as a bridge to adjustment of status for someone who last entered without inspection, but otherwise meets all the requirements to adjust.

**Warning: Pending Litigation Challenging this New Process.** At time of writing, U.S. Citizenship and Immigration Services (USCIS) may accept and review applications for KFT PIP but may not issue any approvals, pursuant to a temporary administrative stay as part of a lawsuit filed by Texas and fifteen other states, trying to stop this process from going forwards. For the latest on the litigation and USCIS processing of KFT PIP applications, go to www.ilrc.me/pip.

# II. Eligibility Requirements

## A. Basic Requirements for Spouses and Stepchildren of U.S. Citizens

Below are the basic requirements for spouses and stepchildren of U.S. citizens to qualify for this process, and a comparison chart highlighting the key differences depending on if applying as a spouse or a stepchild. We will address each of these requirements in greater detail in the sections that follow.

Spouses of USCs must meet the following requirements:

1) Last entered the United States without admission or parole, i.e., last entry was without inspection (EWI);
2) Been physically present in the United States for at least the last ten years, counting from June 17, 2014 through time of filing the application;
3) Have a legally valid marriage to a USC by June 17, 2024;
4) Have no disqualifying criminal history and not pose a threat to public safety or national security; and
5) Merit a favorable exercise of discretion.

Stepchildren of USCs must meet the following requirements:

1) Last entered the United States without admission or parole, i.e., last entry was without inspection (EWI);
2) Been physically present in the United States since at least June 17, 2024 through time of filing the application;
3) Have a qualifying stepchild relationship to a USC stepparent by June 17, 2024;
4) Have no disqualifying criminal history and not pose a threat to public safety or national security; and
5) Merit a favorable exercise of discretion.

| **Spouses of USCs** | **Stepchildren of USCs** |
|---|---|
| Last entry without admission or parole | Last entry without admission or parole |
| Continuously physically present since 6/17/14 up until the present | Continuously physically present since 6/17/24 up until the present |
| Legally valid marriage to USC by 6/17/24 | Qualifying stepchild relationship to USC by 6/17/24 |
| No disqualifying criminal history, etc. | No disqualifying criminal history, etc. |
| Merit favorable exercise of discretion | Merit favorable exercise of discretion |

## B. Present Without Admission or Parole – Applies to Both

By definition parole is only available to those considered "applicants for admission," meaning they have not yet been admitted (or paroled in another way) into the United States. In other words, applicants must have last entered the United States without inspection (EWI). This requirement applies to both spouses and stepchildren.

Thus, someone who at time of last entry to the United States was admitted, even if now a visa overstay, or paroled, including advance parole or humanitarian parole, is ineligible for this process. However, this is generally good news, not bad news, because it means they have no need of this process; they already have the requisite lawful entry required to adjust status under INA § 245(a), assuming they meet all the other requirements to adjust.

## C. Continuous Physical Presence – Applies to Both, But Different Amounts of Time

Applicants for KFT PIP must show that they have been continuously physically present in the United States for a period of time that differs depending on if they are applying as a spouse or a stepchild.

Spouses of USCs must show that they have been continuously present in the United States for at least the last ten years, counting from June 17, 2014 (ten years prior to the date this process was first announced) up until time of filing the KFT PIP application.

Stepchildren, by contrast, need only show continuous physical presence since June 17, 2024 up until time of filing.

Applicants may use a variety of documents to demonstrate physical presence for the required period, including:

- Rent or mortgage statements;
- Utilities;
- Bank statements, ideally showing deposits or withdrawals at ATMs in the United States;
- School records;

- Employment records like paystubs;
- Taxes;
- Money orders, to/from the United States;
- Church records;
- Insurance documents;
- Medical records;
- Birth certificates for children born in the United States.

USCIS also describes documents that can be submitted to prove physical presence, in its *Filing Guide for Form I-131F, Application for Parole in Place for Certain Noncitizen Spouses and Stepchildren of U.S. Citizens*.[5]

**Practice Tip: How Much Documentation Do You Need to Show Physical Presence?** In general, it is advisable to avoid large gaps in time during which it is conceivable the applicant may not, in fact, have been in the United States. In its I-131F filing guide, USCIS states that applicants do not need proof for every day, week, or even month over the ten-year period[6] and some practitioners aim for roughly one document per month or at least every few months/every quarter. Documents like tax returns that span a full year, school records and employer letters that span multiple years, in addition to other documents that pertain to a shorter period of time, can also be helpful. For people who were children during at least part of the ten-year period, they may provide documents addressed to their parents or guardians as long as they can prove they, too, were living at that same address.[7] Likewise, parents might use children's school records with proof that the parent was the emergency contact or a designated parent on those records. Applicants who previously have had Deferred Action for Childhood Arrivals (DACA), which requires proof of physical presence in the United States for an even longer period of time, can submit their DACA approval notice as proof that USCIS has already found that they have established presence in the United States for at least some of the requisite time period for this process, depending how much time overlaps with this required time period.

**Practice Tip: Be Creative with Physical Presence Documents!** Other documents, besides those suggested by USCIS, may also serve to show physical presence in the United States; the key is to tie the person to 1) a specific date or time period and 2) to a location within the United States. With that in mind, social media "check ins" with geotags; Uber eats receipts; Costco or Sam's club memberships; photos that have a date in front of recognizable United States landmarks like Disneyland or a college campus, for example, can also help prove physical presence.

[5] https://www.uscis.gov/sites/default/files/document/guides/USCIS-Filing-Guide-Form-I-131F.pdf.
[6] USCIS, *Filing Guide for Form I-131F, Application for Parole in Place for Certain Noncitizen Spouses and Stepchildren of U.S. Citizens,* 15, https://www.uscis.gov/sites/default/files/document/guides/USCIS-Filing-Guide-Form-I-131F.pdf.
[7] *Id.* ("You may submit this documentation even if it only has the name of your parents or legal guardians, as long as you also submit other evidence that shows your presence at that address[.]").

## D. Qualifying Relationship – Applies to Both, But Different Relationship Requirements

### 1. Spouses of U.S. Citizens

Those applying as the spouse of a USC must have been already married, and their spouse must already have been a USC, by June 17, 2024. If both criteria—that the spouse was already a USC and that they were already legally married—were not met by June 17, 2024, then they will not qualify.

> **Example:** Jeannette has been in a long-term committed relationship with her USC partner, Kris. However, they are not legally married. If they decide to get married now, in the hopes that Jeannette, who is undocumented and last entered without inspection more than fifteen years ago, could benefit from this new process, they will be out of luck. Since they were not already married by June 17, 2024, unfortunately they do not qualify.
>
> **Example:** Emilio and Daisy have been married since 2015 and are thrilled when they hear about this new process. Emilio last entered the United States without inspection in 2010 and has been living in the United States ever since. When the process was announced Daisy already had a pending naturalization application. She was recently approved and attended her oath ceremony in July, just a few weeks after they heard about this new process. Will Emilio be able to benefit from KFT PIP?
>
> Unfortunately, no. Since Daisy was not yet a USC by June 17, 2024, even though they were already married at the time, Emilio does not meet the requirements to apply for KFT PIP.

**Common law marriages.** USCIS has stated that common law marriages may count as a legally valid marriage for this process, as long as (1) the couple married in a jurisdiction that recognized common law marriage; (2) meets the requirements for common law marriage; (3) they were in a common law marriage by June 17, 2024; and (4) if the couple now lives in a different state that does not permit common law marriages, as long as the current state of residence will honor common law marriages entered into in other jurisdictions.[8]

**If the USC spouse is now deceased.** An individual may apply for KFT PIP even if their USC spouse is no longer alive, although such applicants, looking towards adjustment, should keep in mind special requirements apply to adjust as the widow/er of a USC. These requirements include that the USC spouse died within the last two years of when they file an I-360 self-petition (unless an I-130 was already filed by the USC prior to their death, which then automatically converted to an I-360 widow/er self-petition when the USC died), they were still legally married at time of death, and the surviving spouse has not remarried.

**Practice Tip: Widow/ers of USCs Should Not Delay Filing Their I-360 Self-Petition!**
Although individuals might delay filing their KFT PIP applications given the current administrative stay halting approvals, widow/ers of USCs should not delay filing their I-360 self-petition to ensure they do not miss the two-year window to file after the spouse's death. They

[8] USCIS, "Frequently Asked Questions About Keeping Families Together," https://www.uscis.gov/keepingfamiliestogether/faq.

will still be able to file for adjustment of status later assuming they later file for and are approved KFT PIP, or in the alternative consular process, but they must file the I-360 within two years of the USC spouse's death to proceed as a widow/er.

### 2. Stepchildren of U.S. Citizens

To have a qualifying relationship with a USC stepparent, the noncitizen parent must have married the USC stepparent before the child's 18th birthday. This is the general requirement to qualify as a "child" under the INA, based on a stepchild/stepparent relationship.[9] Further, the marriage must have occurred prior to June 17, 2024, in order for that underlying relationship to support a KFT PIP request as the stepchild of a USC. Finally, the stepchild must have been unmarried and under age 21 as of June 17, 2024. Note there is a small exception to this age requirement, in which some stepchildren may apply for KFT PIP now even if age 21 or older by that date—this exception applies to those whose under-21 age was already locked in by the Child Status Protection Act (CSPA) when their USC stepparent filed an I-130 on their behalf, prior to their turning age 21.[10]

> **Example:** Alex's mother married his stepfather John, a USC, when Alex was 15 years old. Alex's stepfather filed an I-130 for Alex when Alex was 20 years old. Under CSPA, Alex's age will be forever frozen as under-21, no matter how old he is when he later submits an immigration application that is dependent on his still being considered a "child." Alex is now 23 years old but may still submit a KFT PIP application because his age was frozen by CSPA, so he is still considered to be "under 21." He must also be unmarried.

Stepchildren may apply for KFT PIP even if their noncitizen parent does not. However, if their parent *is* also applying, USCIS recommends that the parent submit first so that the child can include the parent's receipt number in their own application.

**Note: What About Biological Children of USCs?** This process only applies to stepchildren, not biological children, of USCs. It is unclear exactly why biological children of USCs are not included; it may be that this was an oversight by USCIS, or that they assumed most biological children of USCs would have already automatically acquired U.S. citizenship through the USC parent.[11]

## E. No Disqualifying Criminal History – Applies to Both

Both spouses and stepchildren of USCs must not have a disqualifying criminal history. Arrests or criminal charges alone, that do not result in a juvenile delinquency adjudication or conviction, are not disqualifying. Applicants also cannot pose a threat to national security or public safety.[12]

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[9] *See* INA § 101(b)(1)(B).
[10] *See* INA § 201(f).
[11] For more information on acquisition of citizenship and the requirements that apply depending on the child's birthdate, see https://www.ilrc.org/resources/acquisition-derivation-quick-reference-charts.
[12] *See* DHS, *Implementation of Keeping Families Together*, 89 Fed. Reg. 67459, 67471 n. 146 (Aug. 20, 2024) ("Indicators of national security concerns include, but are not limited to, participation in activities that threaten the United States or gang membership. Indicators of public safety concerns include, but are not

**Automatic disqualifiers.** Certain criminal issues will *automatically disqualify* someone from applying:[13]

- All pending charges—a person cannot apply until charges are resolved (regardless if the charge is classified as a felony or misdemeanor);
- All felony convictions (including felony driving under the influence);
- All convictions for the following, even if not a felony:
  - Murder, torture, rape, sexual assault;
  - Offenses involving firearms, explosive materials, or destructive devices;
  - Aggravated assault, domestic violence, stalking;
  - Child abuse, child neglect, child abandonment;
  - All controlled substance offenses *except* simple possession of 30 grams or less of marijuana;
  - Offenses related to slavery, peonage, involuntary servitude, and trafficking in persons;
  - Offenses related to child pornography, sexual abuse or exploitation of minors; or solicitation of minors.

If an applicant appears to have a disqualifying conviction and a post-conviction relief vacatur in compliance with *Matter of Pickering*[14] is not possible, practitioners may wish to advocate that a particular conviction does not in fact fit the definition for the disqualifying offense as established by Board of Immigration Appeals (BIA) or federal court caselaw. Many state offenses are labeled as offenses ostensibly matching the list of disqualifying convictions listed above, but in fact have been held not to comply with the federal definition of such an offense. Or, the state offense is over-inclusive, with elements reaching actions or behaviors that do not in fact trigger inadmissibility or deportability under the INA. Examples include certain offenses relating to domestic violence, child abuse, and firearms, among others. In some states a simple "offensive" touch may be enough for a conviction of a misdemeanor labelled "domestic violence," for example. Such a conviction does not fit the federal definition of domestic violence, which must actually include an element of force or violence in the criminal statute. DHS has stated that in determining which convictions would be disqualifying for KFT parole, it considered those likely to cause statutory ineligibility for adjustment of status "and decided that those criminal convictions that are disqualifying for this process would generally overlap with the statutory inadmissibility grounds."[15] However, DHS might nevertheless exercise discretion in denying a KFT parole application for any conviction with a "label" that is consistent with the list of disqualifying convictions. That practice of discretionary denials has been the case with past Deferred Action for Childhood Arrivals (DACA) adjudications by USCIS.

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limited to, serious criminal conduct or criminal history. Indicators of border security concerns include recent apprehension while attempting to enter the U.S. unlawfully or apprehension following unlawful entry after November 1, 2020 . . ."). Note, however, that there is an exception to border security concerns that applies only to stepchildren applying for KFT PIP. *Id.*

[13] *Id.*

[14] 23 I&N Dec. 621 (BIA 2003).

[15] 89 Fed. Reg. at 67476.

**Potential disqualifiers.** Other criminal convictions not listed above do not automatically disqualify an applicant but lead to a *rebuttable presumption of ineligibility* that the applicant must overcome in order to be approved.[16] This applies to all other criminal convictions that are not automatically disqualifying, except for minor traffic offenses. It includes juvenile delinquency adjudications and convictions that have been expunged, dismissed, or sealed. In its FAQs on KFT parole, USCIS states that even convictions that were vacated and no longer constitute convictions for immigration purposes will still result in a presumption of ineligibility, although the reasons for the expungement or vacatur will be factored into USCIS's assessment whether the presumption ultimately applies in an individual's specific case.[17]

**Practice Tip: Juvenile Delinquency Adjudications.** While juvenile dispositions are not generally convictions for immigration purposes, for the KFT PIP process USCIS will consider juvenile adjudications as resulting in a presumption of ineligibility. Practitioners should carefully screen for juvenile delinquency adjudications and submit mitigating evidence to rebut the presumption of ineligibility. As mentioned below with regards to factors USCIS will consider when determining whether an applicant has successfully rebutted the presumption of ineligibility relating to a potentially disqualifying criminal conviction or juvenile adjudication, the applicant's age at the time of the offense is relevant.

For those criminal issues that are not automatically disqualifying but rather raise a rebuttable presumption of ineligibility, USCIS will weigh the seriousness of the criminal conviction or juvenile adjudication against mitigating factors, such as:[18]

- How long ago the conviction or other offense occurred;
- Applicant's age at time of offense;
- Sentence or penalty imposed;
- Evidence of subsequent rehabilitation;
- Nature of the conviction, including whether non-violent;
- Other criminal history, if any;
- Existence of mental or physical condition that may have contributed to the criminal conduct;
- Applicant's particular vulnerability, including any physical or mental condition requiring treatment or care in the United States;
- Applicant's status as a victim or witness;
- U.S. military service, by applicant or their USC spouse;
- If applicant is primary caregiver for USC child or elderly parent or in-law, or otherwise is a caregiver for an individual with disabilities, including USC in-laws or siblings;
- Evidence of applicant's good character through property, business, or community ties;
- How long applicant has been living in the United States;
- Impact on family, including USC or LPR relatives, if applicant is not granted KFT PIP;

[16] *Id.*
[17] *See* USCIS, "Frequently Asked Questions About Keeping Families Together," https://www.uscis.gov/keepingfamiliestogether/faq ("Q. Are dismissed, expunged, vacated, pardoned, deferred, annulled, invalidated, withheld, or sealed convictions subject to the presumption of ineligibility? A. Yes . . .").
[18] 89 Fed. Reg. at 67476.

- Other factors.

### F. Merits Favorable Exercise of Discretion – Applies to Both

Many immigration applications involve some element of discretion, including adjustment of status. Most of the time, an applicant does not need to provide a lot of documentation or explanation for why they warrant a favorable exercise of discretion, unless they need to counterbalance serious negative factors.

Both spouses and stepchildren of USCs applying for KFT PIP are subject to this requirement. Something unique about this application, however, is that to apply for KFT PIP the applicant must fill out a box on the application itself where they address why they deserve a favorable exercise of discretion and meet the general parole standard, warranting a grant of parole based on significant public benefit or urgent humanitarian reasons, in 750-2000 characters. Some may choose to include a longer written attachment, at the end of the online application where an applicant may upload "other" documentation, if they feel they need more space to address this prompt. No matter what, however, a minimum 750-character statement is still required in the space provided on the application itself.

## III. Application Process

### A. Applying for Keeping Families Together Parole in Place

The application for KFT PIP is Form I-131F, a new form that is only available for online filing. Unlike other forms that have a PDF version as well, conditional logic is built into the form so what questions an applicant sees depends on how they answer earlier questions. For instance, depending on whether they are applying as a spouse or a stepchild, different questions will flow as the applicant starts filling out the form online. See **Appendix A**, below, for online filing tips for Form I-131F and supporting documentation.

**Practice Tip:** Since no PDF version of the form is available with all the fields that must be filled out, practitioners may want to have clients use pages 5-13 of the I-131F Filing Guide as a draft version of the form.[19]

The filing fee is $580; no fee waiver is available. Each applicant needs their own application. No applications may be filed concurrently, including Form I-765 Application for Employment Authorization. Only once an applicant for KFT PIP is approved can they apply for work permission by filing an I-765 application.

No notices will be sent by mail; all notices are electronic through the applicant's myUSCIS account, which must be closely monitored. Notices should also arrive through the practitioner's myUSCIS account if a G-28 is submitted at time of filing. Applicants must print out their

[19] 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.

biometrics appointment notice and take it with them to the Application Support Center to complete their biometrics.

Adjudication should not involve an interview, although USCIS reserves the right to conduct one (this is unlikely).

## B. Stage of the Case

### 1. Whether the Applicant Has Already Filed a Family Petition and/or Already Started Consular Processing

**No need to have already filed an I-130.** An applicant for KFT PIP does not have to have already filed an I-130 family petition, even though in order to qualify for KFT PIP they must have a relationship with a USC that would support a family petition.

**Ok to apply for KFT PIP even if applicant has already filed an I-601A or otherwise begun consular processing.** Additionally, an applicant may apply for KFT PIP even if they have already started consular processing, including filing or even having been approved for an I-601A provisional unlawful presence waiver. Presumably, someone in this situation who chooses to apply for parole through this process plans to switch from consular processing to adjustment of status, since upon being granted parole they will be able to meet the threshold adjustment of status requirement that they were previously lacking (having been inspected and admitted or paroled). The I-131F asks for an I-601A receipt notice, if any, and USCIS has stated that they may prioritize KFT PIP applications for those who have previously filed I-601As.[20] During the one week of implementation that we saw before the administrative stay, many of the cases that were approved were those where the applicant had also filed an I-601A in part, perhaps, because USCIS was able to reuse previously collected biometrics from the I-601A filing.

**Practice Tip: INA 203(g) Termination Warning for Those with Pending or Approved Visa Petitions Who Switch from Consular Processing to Adjustment Upon Being Granted KFT PIP.** If an individual switches from consular processing, where their case is with Department of State (DOS), to adjustment of status with USCIS, they must be aware that they remain vulnerable to INA § 203(g) termination of their visa petition. They do not, however, need to file an I-824, which is only used to transfer approved petitions in the other direction, *from* USCIS *to* DOS. Under 203(g), however, DOS will initiate visa registration termination proceedings if an applicant whose case is with DOS does not take action or otherwise contact DOS within one year of visa availability. If the applicant does not timely respond, the approved I-130 visa petition will be canceled and destroyed. Since spouses and stepchildren of USCs are immediate relatives, visas are always immediately available, meaning this clock starts ticking immediately. Individuals unaware of this requirement have appeared at their adjustment interview only to learn that their underlying petition has been terminated and they must start all over and refile the I-130, and sometimes the adjustment application as well. Fortunately, this requirement of yearly contact with DOS is relatively easy to satisfy. DOS has said that the following actions satisfy this requirement:

[20] 89 Fed. Reg. at 67473.

- Paying a fee with DOS, which is tracked in the Consular Electronic Application Center (CEAC) for electronic cases;
- Submitting a document which can be tracked in CEAC for electronic cases;
- Using the Ask NVC Public Inquiry Form; and
- Logging into the CEAC account.

The applicant should print out a copy of any activity on CEAC or submission to the NVC Public Inquiry Form, to keep proof that they have contacted DOS within one year to avoid termination.

## 2. Applicants in Removal Proceedings or Who Have Prior Orders

**Currently in proceedings.** Applicants may apply for KFT PIP with USCIS if currently in removal proceedings,[21] unless they were placed in proceedings because they were an enforcement priority according to the current enforcement priorities.[22] Someone who was ordered removed but has filed an appeal that is still pending with the Board of Immigration Appeals or a circuit court of appeals is still considered to be in proceedings, since the order is not yet final. In terms of risk assessment when deciding whether to apply, those who are currently in proceedings may have the least to lose if they apply for KFT PIP, even given all the uncertainty around this process with litigation and the upcoming presidential election, since the government is fully aware of their presence in the United States and they are already actively defending themselves against deportation. Further, this process could serve as a basis for seeking prosecutorial discretion for those currently in proceedings.

**Final order.** By contrast, someone who has a final removal order may be ineligible to apply, depending on if the order has been executed yet. If the order has been *executed*, meaning the person was deported or left voluntarily after being ordered removed, then they cannot apply for KFT PIP[23] (and further, are at risk of reinstatement if ICE learns that they are back in the United States after having been ordered removed). This includes expedited removal orders, which are executed immediately. If instead someone has an *unexecuted* final order, they may apply for KFT PIP but must overcome a rebuttable presumption of ineligibility.[24]

USCIS has said they will consider the following factors in evaluating whether the presumption should apply to someone with an unexecuted final order:[25]

- Lack of proper notice;
- Applicant's age at time they were ordered removed;
- Ineffective assistance of counsel or if the applicant was a victim of provider fraud;
- Physical or mental condition requiring care or treatment during proceedings;
- Other extenuating factors, including:
    - Language barriers leading to inability to understand proceedings;
    - Applicant's status as a victim of domestic violence;

[21] 89 Fed. Reg. at 67472.
[22] *See* ICE, *Guidelines for the Enforcement of Civil Immigration Law*, (Sept. 30, 2021), https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf.
[23] 89 Fed. Reg. at 67471.
[24] 89 Fed. Reg. at 67471-72.
[25] *Id.*

- Other extenuating personal factors, e.g. lack of housing that would have impacted the individual's ability to appear.

**Practice Tip: Motions to Reopen After KFT PIP Grant.** Individuals with a final, unexecuted order who intend to adjust after being granted KFT PIP must first seek reopening of their removal proceedings. They can then either pursue adjustment of status in immigration court or seek termination so that they may adjust with USCIS.

### 3. Special Circumstances: Prospective Applicants Who Also Have DACA

Individuals with Deferred Action for Childhood Arrivals (DACA) must think carefully about whether applying for KFT PIP makes sense for them as part of a longer-term immigration strategy. If an individual is granted KFT PIP, USCIS will deny any DACA renewal application adjudicated while the person is within the parole period.[26] Thus, applying for KFT PIP may jeopardize a DACA recipient's ability to continue to have DACA, which would be especially problematic if they were not eligible to adjust, since they would be trading the ability to renew deferred action and employment authorization every two years as long as DACA continues in existence for a one-time, three-year parole grant with corresponding employment authorization (which they can apply for only after being approved for KFT PIP), somewhat of a legal dead end. Even those who believe they are eligible to adjust, however, risk having their adjustment denied and losing DACA in the interim.

At the same time, DACA recipients are already eligible to seek a form of parole: advance parole. Upon traveling abroad and returning on advance parole, DACA recipients who previously entered without inspection would essentially have the same thing—a parole entry—that the KFT PIP process gets them. Advance parole is generally an easier application process since it does not require ten years of physical presence documents and is currently viable, unlike KFT PIP which is presently stayed. However, if a DACA holder does not have an employment, education, or humanitarian basis for seeking DACA advance parole then KFT PIP may be preferable. Still, any DACA holder considering applying for KFT PIP should consider whether they are ultimately eligible to adjust and are relatively confident that their adjustment will be approved.

## C. Adjudication

USCIS will adjudicate KFT PIP applications on a case-by-case basis as an individualized assessment. USCIS will weigh positive and negative discretionary factors to determine whether to grant KFT PIP based on significant public benefit or urgent humanitarian reasons.

In its "unfettered discretion," USCIS may issue a request for additional evidence, notice of intent to deny, or deny outright.[27]

[26] USCIS, "Frequently Asked Questions About Keeping Families Together," https://www.uscis.gov/keepingfamiliestogether/faq.
[27] 89 Fed. Reg. at 67465.

## D. Decision

### 1. Approval

Individuals who are granted KFT PIP will be issued an I-94 as proof they have been paroled. They do not accrue unlawful presence while within the parole period. As soon as they are granted parole, they may apply for employment authorization under the category (c)(11) by submitting an I-765 application. See practice tip below, however, about individuals who may want to seek employment authorization under a different category, if eligible.

Most significantly, those who are otherwise eligible to adjust may apply for adjustment as soon as they are granted KFT PIP. If they have not yet filed an I-130, they can file the I-130 family petition along with the I-485 adjustment application as a "one step" adjustment of status. If they have already filed the I-130, however, they do not need to wait for the I-130 to be approved in order to file the I-485; this is still considered a concurrent filing.[28]

**Practice Tip: Applying for an EAD Under (c)(11) Versus (c)(9).** Although individuals may apply for a (c)(11) employment authorization document (EAD) as soon as they are granted KFT PIP, if they intend to apply for adjustment soon thereafter they may want to wait and apply for an EAD under the category (c)(9) based on having a pending adjustment, because (c)(9) EADs last longer and are cheaper—(c)(9) EADs last for five years rather than just three years with a (c)(11) EAD and (c)(9) EADs are half price since they are associated with an adjustment of status filing.[29]

**Discretionary revocation.** USCIS may revoke KFT PIP approval in its discretion at any time,[30] such as if the grantee subsequently gets a criminal conviction or if USCIS learns of some sort of misrepresentation or concealment in the KFT PIP application.

**Automatic termination.** KFT parole is automatically terminated if the grantee travels abroad without advance travel permission (KFT PIP does *not* include travel permission) or is issued a Notice to Appear (NTA).[31] The NTA will serve as written notice of parole termination.[32]

### 2. Denial

If the KFT PIP application is denied there is no appeal, but applicants may reapply. In general, denial of KFT PIP will not result in referral to removal proceedings unless the applicant is also an enforcement priority under the Mayorkas memo.[33] Of course, all of this could change under a new presidential administration, a risk applicants take if they apply now, without knowing if their application will be adjudicated before the next president takes office.

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[28] *See* USCIS, "Concurrent Filing of Form I-485," https://www.uscis.gov/green-card/green-card-processes-and-procedures/concurrent-filing-of-form-i-485.
[29] *See* USCIS, G-1055, Fee Schedule, https://www.uscis.gov/g-1055.
[30] 89 Fed. Reg. at 67462.
[31] USCIS, "Frequently Asked Questions About Keeping Families Together," https://www.uscis.gov/keepingfamiliestogether/faq.
[32] *Id.*
[33] *See* USCIS, "Frequently Asked Questions About Keeping Families Together," https://www.uscis.gov/keepingfamiliestogether/faq.

## IV. Deciding Whether to Apply: Weighing the Risks and Benefits

Following the Biden administration's announcement of this new process in June 2024, full details were not released until the Federal Register notice came out on August 19, 2024,[34] the same day that USCIS began accepting applications. Then, after just one week of implementation—during which time some cases were approved—a federal district court judge in Texas issued an administrative stay that at time of writing (September 24, 2024) continues in effect indefinitely.[35] For the latest updates on the litigation and USCIS processing of applications, go to www.ilrc.me/pip. Under the stay in effect at time of writing, USCIS may continue to accept and review applications, including issuing biometrics notices and collecting biometrics, but may not issue any approvals.

Individuals who choose to apply while the stay is in effect risk losing the filing fee without knowing when, if ever, their applications will be adjudicated. Additionally, we are in the midst of a presidential election and depending on the outcome, those with pending applications must face the uncertainty of a new administration's immigration policies. A Democratic administration would likely continue the process, if permitted, but this depends on the litigation. A Republican administration, on the other hand, could end the process entirely and refuse to defend the process in court.

Given this backdrop of currently pending litigation and the looming presidential election, prospective applicants must weigh the risks and benefits based on their individual circumstances. For help with this risk assessment, see related ILRC resource, "Documenting Eligibility and Risk Assessment for Parole in Place for Spouses of U.S. Citizens."[36]

[34] 89 Fed. Reg. 67459. The notice was formally published in the Federal Register on August 20, 2024.
[35] *See Texas, et al. v. DHS, et al.* (No. 6:24-cv-306) (E.D. Tex.). Certain related issues from this case are currently before the Fifth Circuit Court of Appeals, including denial of a motion to intervene by CHIRLA and directly impacted individuals.
[36] https://www.ilrc.org/resources/documenting-eligibility-and-risk-assessment-parole-place-spouses-us-citizens.

## Appendix A. Online Filing Tips for Form I-131F and Supporting Documentation

Given that this is the first online-only immigration application, below are some practice tips related to online filing for Form I-131F.

### Creating myUSCIS accounts

- Legal representatives must create a USCIS account if they do not already have one and add the KFT applicant as a client in order to link the applicant's filing to the legal representative's account.
- Applicants must also create their own USCIS accounts if they do not already have one. If they have previously submitted an application to USCIS and received a USCIS account number, they may use that number in creating their account, if desired. The email address previously submitted to USCIS must then be the same email address used for the KFT parole application filing.
- When a practitioner completes the I-131F online, myUSCIS will recognize the applicant's account via the applicant's email that the practitioner enters on the form. However, at an earlier point on the form where the applicant's USCIS account number is requested, if the applicant hasn't previously received and used a USCIS account number or has forgotten their number, the answer to that question is "I don't know what my number is." The creation of a new account will not itself provide evidence of the account number. For those locked out of their USCIS account, a new email and creation of a new account is a possible solution.

### Uploading supporting documents

- Uploaded documents cannot exceed 12MB. Note if there is color on a page, that will add significantly to the data usage thus black and white document uploads are advisable.
- For the question related to criminal arrests and convictions, the applicant may upload both conviction disposition documents and a written explanation (for explanation, select "explanation" from the dropdown menu for document type).
- Multiple uploads of documents in each evidence section are allowed.
- Any Word document must be converted to PDF, JPG, JPEG, TIF, or TIFF before uploading.
- A document will be rejected for uploading that has a *file name* that includes commas, apostrophes, or other unaccepted characters (the error message will say "only English characters" although what it really means is no unaccepted special characters). Watch out for keyboards that might be set for another language and automatically putting in tildes or other special characters that may not be permitted. Letters, numbers, spaces, periods, hyphens, underscores, and parentheses are accepted characters, but best practice is just to use letters to avoid any issues related to special characters.
- Both a preparer form and an interpreter form are required if either is used by the applicant. These forms should be prepared in advance, downloaded, signed, scanned, and uploaded to the practitioner's device for ready uploading to the I-131F form when prompted.

**Application review prior to electronic submission**

- Once the application is completely filled out, it may be reviewed online or a draft version may be downloaded and printed, although not all the documents that have been uploaded will be visible in the draft.
- Practitioners do not upload a G-28 for this application, but rather must complete the form online as part of the KFT application. For practitioners with prior online accounts, autofill may be chosen and most (but not all) of the online G-28 will be filled out automatically. The G-28 can then be reviewed, printed, downloaded, and saved and/or submitted.
- Once a draft is complete, the practitioner will receive a passcode (a mix of numbers and letters) to share with the applicant.
- The applicant then logs into their USCIS account and chooses “enter representative passcode” under “My Account” dropdown menu to enter the passcode. A common mistake is entering the letter “O” instead of the number zero (“0”) and vice versa. In addition, the dashes within the code should not be entered manually; copying and pasting the entire code works best to avoid any entry errors.
- The applicant then must proceed to review the G-28 and check one of three boxes (similar to the signature page of the paper G-28) to indicate the location where the I-94 is to be sent upon approval of KFT parole. Most practitioners prefer the third box, resulting in the I-94 being sent directly to the applicant. The applicant then accepts and signs the online G-28 with their full name exactly as stated in their application and submits the G-28.
- The applicant will next see the I-131F form to review. They can only “accept” or “decline”; the legal representative must ultimately pay the filing fee and submit the form once the applicant accepts everything. If the applicant wants to change anything in the form, they must “decline” and that will send the form back to the practitioner to modify.
- Once the applicant officially accepts all the forms, the practitioner must go online to their own account, where the applicant’s entry should no longer say “pending signature” but rather “action,” which then allows payment of the filing fee by bank account or credit card and submission of the finalized forms. Once paid, both the applicant’s and practitioner’s accounts will indicate the I-131F has been successfully submitted.

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**About the Immigrant Legal Resource Center**

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