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Practice Advisory: USCIS's New Refugee-Asylee Informal Marriage Guidance

June 3, 2022

Summary

On February 14, 2022, USCIS issued new guidance on recognizing informal marriages of refugees and asylees.¹ Under the new guidance, USCIS will recognize an informal marriage when a refugee or asylee could not lawfully marry due to their flight from persecution and circumstances beyond their control or because of restrictive laws or practices in their country of origin or country of first asylum. USCIS's guidance only applies in adjudications of refugee applications (I-590's), asylum applications (I-589's), and refugee/asylee family reunification petitions (I-730's). In this practice advisory, we explain the new guidance and how legal practitioners can assist impacted refugee and asylee families.

USCIS's New Guidance Restores and Expands a Longstanding Exception for Refugees Who Cannot Lawfully Marry

In U.S. immigration law, USCIS usually only recognizes a marriage when it meets the legal requirements for a marriage in the country where it occurred (the "place-of-celebration rule"). However, until 2018 USCIS applied an exception for refugees who were not able to lawfully marry because of discriminatory host country restrictions.² In 2018, USCIS removed this long-standing exception for refugee applicants (I-590 applicants), and in 2019, USCIS similarly removed the exception for refugee and asylee follow-to-join beneficiaries (I-730 refugee beneficiaries).³ These Trump-era policy changes made it more difficult or impossible for refugees who could not legally marry to be resettled with or reunify with their spouse.

¹ Memorandum from Ted H. Kim, Acting Associate Director, Refugee, Asylum, and International Operations (RAIO), USCIS, to All RAIO Employees (February 14, 2022) (re: Revised Guidance on Informal ("Camp") Marriages, https://www.uscis.gov/sites/default/files/document/memos/Revised_Guidance_on%20Informal_%28_Camp_%29_Marriages.pdf), hereinafter "2022 Informal Marriage Guidance."

² See 2022 Informal Marriage Guidance, footnote 6 (explaining the Legacy INS Refugee Program's exception, 2006 RAIO formalization of the exception, and 2015 guidance on informal or "camp" marriages).

³ *Id.* See Memorandum from Joanna Ruppel, Chief, Refugee Affairs Division (RAD), USCIS, to All RAD and International Operations (IO) Staff (May 3, 2018), available from IRAP's legal practitioner materials website, <https://6v7wzcbmd65.typeform.com/to/IDoh5oVz?typeform-source=www.google.com#hidden1=xxxxx>, hereinafter "2018 Refugee Application Informal Marriage Guidance." Although the 2019 guidance applying to I-730's does not appear to be publicly available, RAD updated its guidance in the form of a "Response to Query" after the release of the I-730 guidance. See Policy Branch, Refugee Affairs Division, Response to Query, (February 14, 2019) (re: Guidance for the treatment of refugee cases that include an RE-2 derivative spouse), available at https://immpolicytracking.org/media/documents/2019.02.14_Guidance_for_the_treatment_of_refugee_cases_that_include_an_RE-2_de_zOyTFld.pdf (hereinafter "USCIS Rescinded RTQ on Informal Marriage").



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USCIS's 2022 guidance rescinds the restrictive 2018 and 2019 guidance and provides for a new, more expansive exception for refugee and asylee marriages. USCIS can recognize refugee marriages that are not legally recognized in the place of celebration *either* 1) "as a result of their flight from persecution and circumstances beyond their control" or 2) "due to restrictive laws or practices in their country of origin or country of first asylum."⁴ As examples of circumstances beyond a couple's control, USCIS highlights "an inability to access host country institutions due to refugee policies or conditions, discriminatory government policies or practices, or other consequences of the flight from persecution."⁵ In order to be recognized under the guidance, spouses must show "indicia of a marriage" such as "the color of a marriage ceremony, cohabitation over a period of time, holding themselves out to be spouses over a period of time and children born to the union."⁶ For legal practitioners who are documenting a marriage in any immigration context, there are a number of helpful resources that suggest best practices and tips for categories of evidence and relevant case law, including guides from CLINIC,⁷ ILRC,⁸ AILA,⁹ and IRAP.¹⁰

USCIS will only apply the new informal marriage guidance in certain adjudications. The guidance applies to adjudications of refugee applications (I-590's), asylum applications (I-589's), and refugee/asylee family reunification petitions (I-730's).¹¹ Notably, the guidance does not apply to family-based I-130 immigration petitions.¹² The guidance should apply to Department of State (DOS) consular officers who process "Visa 92" (asylee follow-to-join) and "Visa 93" (refugee follow-to-join)

⁴ 2022 Informal Marriage Guidance, footnote 6. Although informal marriages are recognized, USCIS does not recognize an informal divorce of a legally valid marriage.

⁵ 2022 Informal Marriage Guidance, p. 4.

⁶ *Id.*

⁷ CLINIC, *Practice Advisory: Sham Marriages and Marriage Fraud: A Summary of Recent Case Law and Tips for Practitioners* (December 15, 2021), <https://cliniclegal.org/resources/family-based-immigration-law/spousal-petitions/practice-advisory-sham-marriages-and>.

⁸ Em Puhl, ILRC, *Family-Based Petitions for LGBTQ Couples: Considerations When Documenting a Bona Fide Marriage* (January 2020), https://www.ilrc.org/sites/default/files/resources/bona_fide_marriage_lgbtq_couples_final.pdf.

⁹ AILA, *Practice Pointer, Defining and Defending Bona Fide Marriages* (2021), available at <https://ailalink.aila.org> (membership service).

¹⁰ IRAP, *Practice Guide: Overview of Marriage for Immigration Purposes* (2022), available at IRAP's Legal Practitioner Materials Website, <https://6v7wzcbmd65.typeform.com/to/IDoh5oVz?typeform-source=www.google.com#hidden1=xxxx>.

¹¹ 2022 Informal Marriage Guidance, p. 3.

¹² The guidance also does not technically apply in Priority 3 (P-3) Family Reunification access to USRAP, but in the P-3 context a similar standard already exists. See Department of Homeland Security, Department of State, Department of Health and Human Services, Report to Congress on Proposed Refugee Admissions for Fiscal Year 2022, (September 20, 2021), <https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2022/> ("The United States will allow a qualifying individual to file for P-3 access for a partner of any gender if the filer can provide evidence of a relationship with the partner for at least one year overseas prior to the submission of the AOR and considers that person to be his/her spouse or life partner, and that the relationship is ongoing, together with evidence that legal marriage could not be obtained due to social and/or legal prohibitions.").

cases because DOS consular officers “effectively act as agents” of USCIS service centers for I-730 processing and are not responsible for final adjudication.¹³ Additionally, USCIS will accept a request for review (RFR) or motion to reconsider cases denied until the Trump-era guidance.¹⁴

Does the New Informal Marriage Guidance Help My Client? - Key Questions

- 1) Is my client in a marriage or partnership that is not legally recognized in the place of celebration?
- 2) Was my client unable to obtain a legal marriage because of their flight from persecution and circumstances beyond their control, or because of restrictive laws or practices in their country of origin or country of first asylum?
- 3) Can my client show evidence of a marriage or partnership, such as a marriage ceremony, cohabitation, or children together?
- 4) Is my client filing an I-589, I-590, or I-730, or did my client have an I-590 or I-730 denied based on Trump-era informal marriage policies?

If the answer is yes to all four questions, then the new informal marriage guidance may allow USCIS to recognize your client’s marriage.

Assisting Families Whose Cases were Denied or Impacted By Trump-Era Guidance

This section provides information for legal practitioners whose clients have already had applications denied or delayed by Trump-era guidance. This could include refugee or asylee I-730 petitioners or refugee (I-590) applicants.

¹³ USCIS, I-730 Travel Eligibility Standard Operating Procedure, p. 9, (March 2016) *available at* IRAP’s Legal Practitioner Materials Website, <https://6v7wzcbmd65.typeform.com/to/IDoh5oVz?typeform-source=www.google.com#hidden1=xxxxx>. Therefore, the 2022 USCIS guidance should supersede the Foreign Affairs Manual content reflecting the rescinded guidance. See Foreign Affairs Manual, 9 FAM 203.6, <https://fam.state.gov/FAM/09FAM/09FAM020306.html>.

¹⁴ USCIS Website, How to Request Reconsideration for Informal or Camp Marriages, <https://www.uscis.gov/humanitarian/refugees-and-asylum/how-to-request-reconsideration-for-informal-or-camp-marriages> Last Reviewed/Updated: 02/14/2022 (hereinafter “USCIS Informal Marriage RFR Webpage”). Because “RAIO’s previous guidance in 2018 and 2019 did not apply to Form I-589 applications” there is no re-opening of I-589s. *Id.*



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Refugees or Asylees Who Received I-730 Petition Denials Based on 2019 Guidance

Under the new guidance, refugee petitioners who received I-730 denials between Feb. 14, 2019, and Feb. 14, 2022, “solely on the basis that evidence of an informal marriage was insufficient to establish a qualifying relationship” can request reopening and reconsideration of their I-730 petition.¹⁵ USCIS requires an I-290B, Form I-290B, Notice of Appeal or Motion, to request reopening/reconsideration; this form has a \$675 fee, although fee waivers are possible.¹⁶ USCIS’s website states that the form may be filed outside of the 30-day filing window given the policy change. We recommend requesting reconsideration based on the policy change and requesting reopening based on evidence showing the existence of the marriage. Include a legal argument explaining why USCIS should recognize the marriage under the standard in the new guidance. For more information on Motions to Reopen / Reconsider for I-730s, see CLINIC’s I-730 Refugee/Asylee Family Reunification Practice Manual.¹⁷

Refugee Applicants Who Received Refugee Application (I-590) Denials Based on 2018 Guidance

USCIS states that refugee applicants who received denials between Jan. 29, 2018, and Feb. 14, 2022 “solely on the basis that evidence of an informal marriage was insufficient to establish a qualifying relationship” can file a Request for Review (RFR) of their refugee application.¹⁸ Denied refugee applicants would have received a “Notice of Ineligibility for Resettlement” and IRAP expects that the stated denial basis would have been category 1, “Special Humanitarian Concern.”¹⁹ In these situations, USCIS is allowing applicants to file a new RFR with USCIS after the usual 90-day RFR filing timeline and even if a previous RFR was already submitted.²⁰ USCIS provides information about RFRs in English on its website,²¹ and IRAP’s legal information website includes a guide for applicants in

¹⁵ USCIS Informal Marriage RFR Webpage. We are not aware of any USCIS guidance or information about whether refugees or asylees in an informal marriage who did not file an I-730 due to Trump-era policies may benefit from an extension of the 2-year filing deadline for I-730 petitions. It seems possible that the change in law could be considered a reasonable basis to request a humanitarian extension, so if the informal marriage guidance otherwise applies, legal practitioners should consider a new I-730 petition. For more information on the I-730 process and exceptions to the 2-year filing deadline, see CLINIC’s *I-730 Refugee/Asylee Family Reunification Practice Manual* (Oct. 29, 2019), <https://cliniclegal.org/resources/asylum-and-refugee-law/i-730-refugeeasylee-family-reunification-practice-manual>.

¹⁶ *Id.*

¹⁷ CLINIC, *I-730 Refugee/Asylee Family Reunification Practice Manual* (Oct. 29, 2019), <https://cliniclegal.org/resources/asylum-and-refugee-law/i-730-refugeeasylee-family-reunification-practice-manual>.

¹⁸ USCIS Informal Marriage RFR Webpage.

¹⁹ For a sample Notice of Ineligibility, see USCIS, Notice of Ineligibility for Resettlement, *available at* IRAP’s Legal Practitioner Materials Website, <https://6v7wzcbmd65.typeform.com/to/IDoh5oVz?typeform-source=www.google.com#hidden1=xxxx>.

²⁰ USCIS Informal Marriage RFR Webpage.

²¹ USCIS, Request for Review Tip Sheet, last reviewed/updated 08/04/2021, <https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees/request-for-review-tip-sheet>



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several languages on how to prepare and file an RFR.²² In general, RFR's are written submissions to USCIS explaining an error in a refugee adjudication or presenting new evidence; there is no filing fee, and the location for filing is listed on USCIS's website and varies depending on where the refugee adjudication occurred. We recommend requesting review based on the policy change and based on evidence showing the existence of the marriage. Include a legal argument explaining why USCIS should recognize the marriage under the standard in the new guidance.

Refugee (I-590) Applicants Impacted in Other Ways by the Rescinded 2018 Guidance

In addition to direct denials, USCIS likely delayed or negatively impacted many other refugee cases under the Trump-era policies, and the new guidance should allow some of these cases to move forward.

1. Cases USCIS Placed on Hold Due to a Request for Marriage Documentation

Under the rescinded guidance, if USCIS 1) decided not to recognize an informal marriage and 2) determined that a refugee is "reasonably able to obtain marriage documentation," then USCIS would have placed the case on hold.²³ Under the new guidance, USCIS may be able to recognize the marriage. Legal practitioners and advocates should contact the Resettlement Support Center (RSC) processing the refugee case to request review. IRAP's legal information website lists [contact information for all RSCs here](#).²⁴ Include any evidence of an informal marriage and a legal argument explaining why USCIS should recognize the marriage under the standard in the new guidance.

2. Cases that USCIS Split Due to Rescinded Marriage Guidance but did Not Deny

Under the Trump-era guidance, USCIS may have "split" the case of a refugee couple into two separate, independent refugee applications. This means that instead of having one principal refugee applicant and one derivative applicant under a single RSC case number, USCIS split the case so that each spouse is a principal refugee applicant in their own case.²⁵ Under the rescinded 2018 guidance, USCIS split cases when it 1) did not recognize a couple's marriage and 2) believed that the couple would not be able to obtain marriage documentation so there was no reason to put the case on

²² IRAP, *What can I do if my USRAP application was denied?*, last updated December 2021, <https://support.iraplegalinfo.org/hc/en-us/articles/360056581512-What-can-I-do-if-my-USRAP-application-was-denied->.

²³ USCIS Rescinded RTQ on Informal Marriage at 10-13.

²⁴ IRAP, *How can I check the status of my U.S. refugee application?*, last updated June 2021.

²⁵ If a legal practitioner is assisting an informally married refugee couple and is not certain if they have independent or "split" cases with USCIS, then the practitioner should confirm with the RSC if the spouses have different RSC case numbers (the format is XX-##### or XX-#####).



hold. Splitting cases can create extensive delays because the spouse with a newly created case must obtain independent access to USRAP.²⁶

Under the new informal marriage guidance, USCIS may reunify the cases and allow the couple to proceed more quickly with a single case with one original principal applicant. If you have clients whose cases were split due to the rescinded guidance, depending on the current status you may want to email the RSC to request that the couple be allowed to proceed together in one case based on the new guidance. Include any new evidence to show the existence of the marriage and a legal argument explaining that the marriage should be recognized under the current standard.

3. Cases that USCIS Split Due to 2018 Marriage Guidance and Denied on Certain Grounds

If a couple's case was "split" under the Trump-era guidance and USCIS denied only one of the cases, then the new guidance may help the couple. If a case was denied on category 1, "Special Humanitarian Concern," then the applicant can file an RFR as we explain in the section above, "*Refugee Applicants Who Received Refugee Application (I-590) Denials Based on 2018 Guidance.*" However, if USCIS denied one of the cases on a different basis—for example, failure to establish a "Refugee Claim" (category 2), "Firm Resettlement" (category 4), "Credibility" related to their qualifications to access USRAP, refugee claim, or firm resettlement (category 6), or a "discretionary" basis (category 7)—then the new informal marriage guidance may still provide relief.²⁷ While USCIS has not explicitly said it would allow new RFRs for these cases, USCIS should reconsider denied applicants *as derivatives* on their spouse's refugee applications. The denial bases listed above should not affect derivative eligibility because derivatives do not need to prove a refugee claim and are not subject to the firm resettlement bar or an exercise of discretion. Therefore, a legal practitioner assisting an informally married spouse whose case was split under Trump-era guidance and denied on any basis listed above should contact the RSC and request that the applicant be reconsidered as a *derivative* under the new guidance. Include any new evidence to show the existence of the marriage and a legal argument explaining that the marriage should be recognized under the current standard.

²⁶ *Id.* Depending on the basis for access, this could mean that UNHCR must make a lengthy assessment and resubmission or assessment for qualification on another basis. Further, even if access for the split case was confirmed, the spouse may be awaiting an independent refugee adjudication that would no longer be necessary under the new guidance because they could qualify as a derivative on their spouse's cases. Effectively, this could mean that refugee cases are indefinitely delayed but not formally denied due to the rescinded guidance.

²⁷ If a refugee spouse received a denial due to "Persecution of Others" (category 3), "Admissibility" (category 5), or "Credibility" related to those categories, then USCIS is unlikely to reconsider the spouse's case due to this guidance and re-consolidation unlikely to have a practical benefit as those the persecutor bar and admissibility requirements apply to derivative spouses.

Does the New Informal Marriage Guidance Help My Client? - A Hypothetical

Hypothetical: Khalil and Samah are from Iraq. Khalil is Christian and worked as an interpreter for the U.S. Army. Samah is Muslim and is a journalist. They met and fell in love, but were unable to marry in Iraq because of restrictions on interfaith marriage. Because Khalil faced threats from his work, they fled to Lebanon in 2014. Similar restrictions in the Lebanon meant that they could not marry, although they hid their interfaith relationship and lived together, considering themselves partnered. Khalil and Samah applied for the U.S. Refugee Admissions Program based on Khalil's work in 2016, and they were initially processed together, but in 2019 Khalil was told that his case would be approved but Samah would not be considered his spouse or be able to travel with him. Samah was given a denial notice with the first check-box, "Special Humanitarian Concern" selected as the reason for her denial. Khalil and Samah decided Khalil would travel to the U.S. and try to bring her. He traveled in 2020 and filed an I-730 petition for Samah. USCIS denied the petition on the grounds that they were not lawfully married. Khalil requests help reuniting with Samah.

Analysis:

- 1) *Is my client in a marriage or partnership that is not legally recognized in the place of celebration?* **Yes. Khalil and Samah have lived together in a partnership since 2014 but they are not lawfully married in Iraq or Lebanon.**
- 2) *Was my client unable to obtain a legally marriage because of their flight from persecution and circumstances beyond their control, or because of restrictive laws or practices in their country of origin or country of first asylum?* **Yes. Country conditions research confirms that restrictive laws in Lebanon and Iraq prohibited them from legally marrying.**
- 3) *Can my client show evidence of a marriage or partnership, such as a marriage ceremony, cohabitation, or children together?* **Yes. They have cohabited since 2014. An attorney would work with the clients to identify evidence including documents like leases, correspondence, or affidavits/declarations.**
- 4) *Is my client filing an I-589, I-590, or I-730, or did my client have an I-590 or I-730 denied based on Trump-era informal marriage policies?* **Yes. Samah's refugee application (I-590) and Khalil's I-730 were denied under Trump-era guidance.**

Based on the analysis, the informal marriage guidance could help Khalil and Samah reunite in the U.S.

A legal practitioner could help Samah file a Request for Review (RFR) of her refugee application (I-590) denial based on the new informal marriage guidance. The legal practitioner may also assist with a motion to reconsider Khalil's I-730 based on the new informal marriage guidance, potentially applying for a fee waiver if Khalil qualifies. The submissions should include evidence of the marriage or partnership. Both could be reconsidered under this new guidance. Samah may qualify for multiple pathways (I-590 derivative, I-730 beneficiary, P-3 access), and it may be helpful to initially pursue all of them because it is not clear which USCIS would reopen or process more quickly.