

WIDOW BENEFITS - INA SECTION 204(I)

On October 28, 2010, Congress enacted new laws intended to provide additional immigration benefits to certain survivors of persons who were actual, or potential, petitioners or intended beneficiaries of certain kinds of immigrant visas.

Basic information about these new benefits can be found at the U.S. Department of Homeland Security website:

<http://www.dhs.gov/files/programs/cisomb-telecon-survivor-benefits-ina204i.shtm#0>

These provisions are fairly technical, and may well require the assistance of an immigration lawyer. However, a very general summary of the provisions follows:

The availability of this added relief is triggered by the death of a “qualifying person.” That deceased person may have been:

- The petitioner in a family-based immigrant visa petition,
- The principal beneficiary in a family-based visa petition,
- The principal beneficiary in an employment-based visa petition case
- The petitioner in a refugee/asylee relative petition,
- The principal alien admitted as a T or U non immigrant; or
- The principal asylee, who was granted asylum,

The primary person seeking to benefit from the new law must:

Have “resided” in the United States when the qualifying relative died and; (“resident” does not necessarily mean physically present in the U.S. at the time, foreign trip, etc.), and

Continue to “reside” in the United States on the date of the decision on the pending petition or application; and be at least one of the following:

The beneficiary of a pending or approved immediate relative visa petition

The beneficiary of a pending or approved family-based visa petition, including both the principal beneficiary and any derivative beneficiaries;

Any derivative beneficiary of a pending or approved employment-based visa petition; (Spouse, child etc.)

The beneficiary of a pending or approved Form I-730, Refugee/Asylee Relative Petition;

An alien admitted as a derivative “T” or “U” non immigrant; or

A derivative asylee under section 208(b)(3) of the Act.

Use of these new provisions can be made where a visa application had been filed by the “qualifying person” before his or her death, or by the filing a new application by the primary beneficiary, if filed within 2 years of the “qualifying person’s” death.

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