§ 208.21 Admission of the asylee's spouse and children.

(a) Eligibility. In accordance with section 208(b)(3) of the Act, a spouse, as defined in section 101(a)(35) of the Act, or child, as defined in section 101(b)(1) of the Act, may be granted asylum if accompanying, or following to join, the principal alien who was granted asylum, unless it is determined that the spouse or child is ineligible for asylum under section 208(b)(2)(A)(i), (ii), (iii), (iv) or (v) of the Act for applications filed on or after April 1, 1997, or under § 208.13(c)(2)(i)(A), (C), (D), (E), or (F) for applications filed before April 1, 1997.

(b) Relationship. The relationship of spouse and child as defined in sections 101(a)(35) and 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the asylee proves that the asylee is the parent of a child who was born after asylum was granted, but who was in utero on the date of the asylum grant, the child shall be eligible to accompany or follow-to-join the principal asylee. The child's mother, if not the principal asylee, shall not be eligible to accompany or follow-to-join the principal asylee unless the child's mother was the principal asylee's spouse on the date the principal asylee was granted asylum.

(c) Spouse or child in the United States. When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee’s benefit request, the asylee may request accompanying or following-to-join benefits for his or her spouse or child, by filing for each qualifying family member a Request for Refugee/Asylee Relative, with supporting evidence, and in accordance with the form instructions, regardless of the status of that spouse.
or child in the United States. A separate Request for Refugee/Asylee Relative must be filed by the asylee for each qualifying family member within two years of the date in which he or she was granted asylum status, unless it is determined by USCIS that this period should be extended for humanitarian reasons. Upon approval of the Request for Refugee/Asylee Relative, USCIS will notify the asylee of such approval. Employment will be authorized incident to status. To demonstrate employment authorization, USCIS will issue a document reflecting the derivative's current status as an asylee, or the derivative may apply, under 8 CFR 274a.12(a), for employment authorization. The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) Spouse or child outside the United States. When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his or her spouse or child(ren) by filing a separate Request for Refugee/Asylee Relative for each qualifying family member in accordance with the form instructions. A separate Request for Refugee/Asylee Relative for each qualifying family member must be filed within two years of the date in which the asylee was granted asylum, unless USCIS determines that the filing period should be extended for humanitarian reasons. When the Request for Refugee/Asylee Relative is approved, USCIS will notify the asylee of such approval. USCIS also will send the approved request to the Department of State for transmission to the U.S. Embassy or Consulate having jurisdiction over the area in which the asylee’s spouse or child is located. The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal’s status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(e) Denial. If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act, a written notice stating the basis for denial shall be forwarded to the principal alien. No appeal shall lie from this decision.

(f) Burden of proof. To establish the claimed relationship of spouse or child as defined in sections 101(a)(35) and 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in §204.2 (a)(1)(i)(B), (a)(1)(iii)(C), (a)(2), (d)(2), and (d)(5) of this chapter. The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

(g) Duration. The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal’s status is revoked.

§ 208.22 Effect on exclusion, deportation, and removal proceedings.

An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to §208.24. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation, or deferral of removal, may not be deported or removed to the country to which his or her deportation or removal is ordered withheld or deferred unless the withholding order is terminated pursuant