Policy Branch
Refugee Affairs Division
Refugee, Asylum and International Operations
U.S. Citizenship and Immigration Services

RESPONSE TO QUERY

Date: **February 14, 2019**[1]

Subject: Guidance for the treatment of refugee cases that include an RE-2 derivative spouse

I. QUERY

How should an officer address the validity of a marriage between a principal refugee applicant and his or her accompanying RE-2 spouse? What must be done when an applicant does not establish that the marriage to the accompanying RE-2 spouse is legally valid in the place where it was performed?

II. RESPONSE

This updated procedural guidance supersedes the "Guidance on Informal Marriages" issued by the United States Citizenship and Immigration Services (USCIS), Refugee Affairs Division (RAD), in the form of a Response to Query (RTQ) dated January 29, 2018,[2] as well as the "Guidance for the treatment of refugee cases that include an RE-2 derivative spouse" issued by RAD in the form of a RTQ dated May 2, 2018.

This guidance reconfirms that a marriage must be valid under the law of the jurisdiction where it was celebrated in order to be recognized for immigration purposes. *See Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). This updated procedural guidance **applies to all Form I-590, Registration for Classification as Refugee (I-590s) applications that include an accompanying derivative spouse (RE-2) that have not received a final approval stamp by January 29, 2018, including any interviews, reinterviews, Requests for Review, Form I-602 waivers, or hold lifts conducted by either RAD or International Operations Division (IO).**

[1] OCC/RALD cleared response May 2, 2018, and cleared updated version on February 14, 2019.
[2] The January 29, 2018 guidance superseded the "Camp Marriage" guidance issued by USCIS/RAD in the form of a RTQ dated May 28, 2015. The 2015 guidance had provided that refugee applicants who entered into an informal or unregistered marriage in their host country, and were unable to perfect the marriage, could be recognized as having a valid marriage for immigration purposes where the refugee was unable to access host country institutions due to host country policies or conditions, or because of discriminatory governmental policies or practices in either the host country or the country of flight. The "Camp Marriage" guidance also recognized informal "Camp Divorce" of a "Camp Marriage." On January 24, 2018, the "Camp Marriage" guidance was withdrawn, and informal marriages and divorces may no longer be considered valid for immigration purposes.

This procedural guidance **does not apply to:**

- cases in which a principal applicant is unmarried;
- cases in which a principal applicant is or may be married but is *not* including his or her spouse as an accompanying RE-2; and
- Priority 3 (P-3) cases reviewed by the Refugee Access Verification Unit (RAVU) and granted access based on a spousal relationship between a qualifying family member in the United States and the principal refugee applicant.[3]

For Form I-730, Refugee Relative Petitions for following-to-join spouses, the marriage must be recognized as valid under the law of the jurisdiction where it was celebrated. For specific procedural guidance on I-730 adjudications refer to the I-730 Adjudications SOP.[4]

To comply with this guidance, officers must consider the evidentiary requirements described in Section III, and follow the procedural steps described in Section IV. In addition, the RAD Policy Branch has developed a draft, quick reference guide (QRG) regarding country-specific marriage requirements. The QRG is available in the RAD Training Library: Country-Specific Marriage Requirements (QRG). Officers may consult the country-specific research contained in the QRG to assist in determining whether a marriage conducted in certain countries is recognized as legal in the place of celebration.

III. EVIDENTIARY REQUIREMENTS FOR A VALID MARRIAGE

Under statute, a spouse who is admissible to the United States and not subject to the persecutor bar is entitled to derivative refugee status if accompanying the principal refugee applicant. *See* INA § 207(c)(2); 8 CFR § 207.7(a). The term "marriage" is not specifically defined in the INA; however, the meaning of "marriage" can be inferred from INA § 101(a)(35), which defines the term "spouse."[5] The underlying principle in determining the validity of a marriage is that the law of the place of marriage celebration controls.[6] If the marriage was properly and legally performed in the place of celebration and

[3] For specific guidance on Affidavits of Relationship (AOR) and P-3 Access refer to specific P-3 guidance and related PRM program announcements. However, note that this guidance *does* apply to the validity of the marriage between a principal applicant (RE-1) and RE-2 accompanying spouse on any P-3 case.

[4] Although the May 2, 2018 RTQ procedural guidance was originally intended to guide Form I-590 refugee adjudications and not Form I-730 refugee/asylee relative adjudications, on February 14, 2019, IO issued a Memo titled *Form I-730 Informal Marriage Guidance* that directed all IO staff to apply the guidance contained in this RTQ to Form I-730 petitions, including for asylee following-to-join cases. *See* IO Chief, Ron Rosenberg, Memorandum, *Form I-730 Informal Marriage Guidance*, dated February 14, 2019.

[5] "The term[s] 'spouse,' 'wife,' or 'husband' do not include a spouse, wife or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated." INA § 101(a)(35): A proxy marriage may be recognized as valid as of the date of the proxy ceremony if it was subsequently consummated. Proxy marriages consummated prior to the proxy ceremony cannot serve as a basis for a valid marriage for immigration purposes. Like all marriages, a marriage in which one or both parties is a minor must be valid under the law of the jurisdiction in which it was celebrated. *See also* 9 FAM 102.8-1(A).

[6] *See Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981); s*ee also* 9 FAM 102.8-1(B).

legally recognized, then the marriage is deemed to be valid for immigration purposes.[7] Any prior marriage, of either party, must be legally terminated *before the later marriage*.[8]

For refugee applications that include accompanying RE-2 spouses, the burden of proof is on the applicant to establish *by a preponderance of the evidence* that the spouse is an "eligible spouse." *See* 8 C.F.R. §207.7(e) (emphasis added). Evidence to establish the claimed relationship for a spouse *as set forth in 8 CFR part 204 must* be submitted with the request for *accompanying* benefits; *where possible* this will consist of the documents specified in 8 C.F.R. §§ 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5). *See* 8 C.F.R. §207.7 (e) (emphasis added). Accordingly, *where possible*, an applicant will submit a "certificate of marriage issued by civil authorities," and if previously married, "proof of the legal termination of all previous marriages."[9] *See* 8 CFR § 204.2(a)(2). However, if this preferred evidence is not available, a claimed relationship to a spouse may be established through other evidence as set forth in 8 CFR part 204, which includes any secondary evidence. *See* 8 C.F.R. §207.7 (e). "The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service." *See* 8 CFR § 204.1(f)(1). This secondary evidence could include **testimonial evidence** (if credible), **documentary evidence** (if genuine), and **country of origin information** (if reputable and corroborated). *See* 8 C.F.R. §204; 8 C.F.R. §207.7 (e) (listing evidence available to establish a relationship).

An applicant's testimony may be sufficient to sustain his or her burden of proof *without corroboration* if it "is credible, is persuasive, and refers to specific facts sufficient to demonstrate" that the applicant is eligible for the benefit; however, if the adjudicator determines that additional corroborating evidence is needed, the adjudicator should request the evidence and the applicant must either provide the evidence or provide a reasonable explanation as to why he or she cannot. INA §§ 208(b)(1)(B)(ii); 240(c)(4)(B). An applicant's testimony, even if credible, may not be sufficient to sustain the applicant's burden of proof if the officer determines that additional evidence is necessary.

In most cases, evidence of marriage will be a civilly registered marriage certificate in the country where the marriage occurred. Marriage certificates issued by religious organizations, churches, or temples *are generally not sufficient* in most cases unless supported by foreign law that establishes they are legally recognized in the country where the marriage occurred. Officers will learn more about country-specific requirements for a legal marriage, what types of documents should be expected from each population and the circumstances in which it is reasonable to request corroborating evidence in Pre-Departure Briefings prior to each refugee circuit ride; these materials will be made available on the ECN. In addition, the Department of State reciprocity and civil documents table lists evidence of marriage available by country.

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[7] However, marriages contrary to public policy, such as polygamous marriages, are not recognized for immigration purposes. *See Matter of H-*, 9 I&N Dec. 640 (BIA 1962). *See also* 9 FAM 102.8-1(B).
[8] *See* 9 FAM 102.8-1(B).
[9] Of the three preferred parts of section 204 that relate to evidence of a spousal relationship, the first two refer to evidence that the marriage is bona fide, not that it is legally valid. 8 CFR § 204.2(a)(1)(i)(B), (a)(1)(iii)(B).

Most refugee applicants will have some identity documents issued by the government of either the applicant's home country or the host country or by UNHCR, which can be used to corroborate family relationships. *The officer must request and verify the original versions of these documents at the beginning of the interview*. If presented, the officer shall inspect the document for authenticity, *ensure a copy is included in the record, and annotate on the copy or include in the interview notes that the original document was seen and returned*. If only copies are presented at interview, the officer will record that in the notes and ask the applicant why the original is not available and record the reason in the notes as well.

Applicants from certain refugee populations routinely have documents or are able to obtain additional corroborating evidence from their home countries. When interviewing such groups, it may be reasonable for the officer to request such documents from the applicant. If the applicant is unable to provide reasonably available corroboration or to explain why he or she is unable to do so, the applicant may fail to meet his or her burden to establish a claimed relationship to a spouse. However, some refugee applicants are interviewed in situations where corroborating evidence is not reasonably available to them. Applicants who live in refugee camps or in relatively precarious urban refugee situations will sometimes have limited documentation and, due to communication barriers, lack of resources, and legal restrictions, may have much greater difficulty accessing documents from their home country than applicants from other populations or asylum applicants living in the United States. In such cases, it would not be appropriate for the officer to require corroboration that is not reasonably available. Instead, other evidence may be relied upon to establish the validity of a marriage.

Accordingly, if an officer determines that civil documents are not reasonably available, credible oral testimony and secondary documentary evidence may be sufficient to establish a valid marriage under the law of the place of celebration. In general, if a marriage occurred in the country of nationality from which the applicant has either fled or fears persecution, it is unreasonable to expect a refugee to return to that country of nationality to obtain documentation. However, if a marriage occurred in the country of asylum, and evidence indicates that refugees are reasonably able to obtain documentation to corroborate this marriage, such documentation may be requested (or an explanation of why it cannot be provided). Alternatively, if common law marriage is recognized in the place of celebration, formal registration may not be necessary to establish a recognized marriage (e.g. Tanzania recognizes common law marriage).

IV. PROCEDURAL GUIDANCE

Pre-DHS Interview (Instructions for RSCs)

A. RSCs must evaluate cases that include a derivative RE-2 spouse prior to DHS interview:

Resettlement Support Centers (RSCs) are advised to evaluate all cases that include a derivative RE-2 spouse to make an initial determination as to whether the marriage is legally recognized, or requires a change in case composition based on this updated guidance. RAD Regional Operations and RAD Policy

will provide RSCs with basic COI-based guidance to inform this review, and suggested questions to ask applicants to determine whether a marriage is valid.

Prior to DHS circuit ride, RSCs will instruct applicants to obtain and present any marriage documentation that is reasonably available at their DHS interview. If applicants are able to perfect their marriage in the host country and obtain documentary evidence of a valid marriage, they should do so prior to DHS interview. RSCs will notify RAD Regional Operations of any ambiguous cases prior to scheduling for DHS interview, so that research can be conducted and instructions provided to adjudicating officers. RSCs should identify cases in which the would-be split-off RE-2 spouse may not have access or an independent refugee claim, and notify RAD Regional Operations and RAD Policy, copying the relevant PRM Program Officer. RAD will consult with the USCIS Office of Chief Counsel (OCC) regarding these cases before scheduling for DHS interview.

If RSCs determine a marriage to an RE-2 derivative spouse is not legally valid, the RE-2 "spouse" will no longer be a derivative and must be split off onto his or her own case and cross-referenced to the other "spouse" as a "union with female/male" prior to USCIS interview. Alternatively, if the claimed "spouses" had lived together in the country of nationality, and the "add-on" criteria are met, the RE-2 could be included on the case as an "add-on" RE-1.[10]

Importantly, if RSCs split a case based on this updated marriage guidance, these cases must remain linked in WRAPS for purposes of security vetting and interview.

B. <u>If a marriage to a derivative spouse is clearly valid – RSCs will present the case to USCIS:</u>

Cases that include a legally valid marriage to a derivative RE-2 spouse are not affected by this updated guidance and *should continue to be presented to USCIS for interview, and processed under normal procedures.* In general, if there is any marriage documentation in the file, RSCs may presume the marriage is valid unless there is specific evidence in the file to the contrary. If there is no documentation of marriage in the file, but the marriage occurred in the country of nationality, the RSCs may presume the marriage is valid (not explicitly affected by rescission of camp marriage guidance) unless there is specific evidence to the contrary. If the marriage occurred in the country of asylum, RSCs will request marriage documentation from the applicant to establish a valid marriage, or instruct applicants to perfect their marriage and provide documentary evidence.

[10] Add-ons are individuals who do not qualify to be derivatives (spouse or child) and do not independently have access to the USRAP, but instead are included on a case for humanitarian reasons.[10] *It is important not to confuse the concept of an "add-on" (i.e. a non-derivative case member included for humanitarian reasons) with the concept of adding an actual derivative to a case (i.e. "add-on baby" or "add-on spouse").* These are two separate and distinct types of case members with different criteria and procedural requirements. To qualify as an add-on, the individual must: a) have lived in the same household in the country of nationality prior to flight; b) have been part of the same economic unit as PA in the country of nationality prior to flight; and c) have exceptional and compelling circumstances warranting inclusion. If granted, the add-on receives an RE-1 code of admission.

C. If a marriage to a derivative spouse is clearly invalid – RSCs will split and cross-reference the cases before the cases are presented to USCIS:

After initial review, if RSCs determine a marriage to an RE-2 spouse is clearly not legally valid in the country of celebration, RSCs should instruct the applicants to perfect their marriage by getting re-married in the host country, and present documentary evidence of a valid marriage. Once RSCs confirm a valid marriage was obtained, the applicants may be presented as a married couple under normal procedure.

Alternatively, if legal perfection of the marriage is not possible due to host country policies or procedures, the RE-2 "spouse" would no longer be a derivative and must be split off onto his or her own case and cross-referenced to the other "spouse" as a "union with female/male" prior to USCIS interview. For P-1 cases, if the split-off partner is not listed in the Resettlement Registration Form (RRF), or if mentioned, does not contain a sufficiently detailed claim, RSCs should return the case to the referring authority for an updated RRF. For P-2 cases, RSCs should ensure the split-off partner independently meets the P-2 criteria for access. If the split-off partner does not meet the P-2 criteria, the split-off partner would need to obtain a separate P-1 referral to gain access. Alternatively, if the "Add-on" criteria are satisfied, the "spouse" could be included as an Add-on RE-1.

RSCs should not present these split cases to USCIS for interview until the RSCs ensure each member of the union has independent access to the U.S. Refugee Admissions Program (USRAP), RSC prescreening is complete, and forms are updated to reflect the union. Once the cases are presented to USCIS for interview, they will be processed as separate cross-referenced cases under normal procedures.

D. If a marriage is unclear – RSCs will present the case to USCIS to make the final determination:

After initial review, and consultation with RAD HQ, if RSCs are unable to determine whether a refugee marriage is legally valid or invalid, the case will be presented to USCIS for interview as a married couple and the officer will make the final determination. The USCIS officer will process the case according to this updated guidance and – depending on the results – process the case as a married couple; recommend that the case be split, cross-referenced, and re-presented; place the case on hold for perfection of the marriage; or notify RAD HQ the case requires review and consultation with OCC.

Addressing marriage validity during the interview (USCIS Guidance)

Although cases presented to the USRAP for processing will be screened and set-up for USCIS processing in a manner consistent with the case composition rules, there may be instances in which a claimed marriage to a derivative RE-2 spouse is determined not to be valid for immigration purposes. **It is always the USCIS officer's responsibility to determine whether the principal applicant's marriage to an RE-2 spouse is valid for immigration purposes – i.e., legally recognized in the place of celebration**. When a refugee case presented for interview includes an RE-2 spouse, the officer should take the following steps:

- Confirm that the spouse is included on the case and will accompany the PA to the United States as a derivative RE-2 spouse.
- Request reasonably available documentation to establish the validity of the marriage. Any new documentation presented must be copied and included in the file.
- If an applicant is unable to produce documentation:
    - the officer must provide the applicant with an opportunity to explain why it cannot be reasonably provided (e.g. it was left in the country of nationality, or lost during flight). This testimony must be included in the assessment notes. The officer must consider the testimony in determining whether documentary evidence of the marriage is reasonably available.
    - If documentation is not reasonably available, officers must elicit testimony from the applicant to determine if the marriage satisfies the legal requirements in the place of celebration. This testimony must be included in the assessment notes. For testimony alone to establish a valid marriage, it must be credible.
- Clearly annotate on the RE-1 and RE-2 applicants' Form I-590, whether the marriage is valid or invalid for immigration purposes.

Each of these steps is discussed in greater detail below.

Requesting documentary evidence

At the start of interview, officers should request any reasonably available documentary evidence that may establish a valid marriage, consistent with relevant law in the country where the marriage was celebrated. The officer should request primary evidence first. If presented, this evidence will establish a valid marriage, unless there are sound and cogent reasons for discrediting it or other reasons for giving it reduced evidentiary weight. If primary evidence is not reasonably available, a claimed relationship to a spouse may be established through other evidence as set forth in 8 CFR Part 204. *See* 8 C.F.R. § 207.7(e). Accordingly, where primary evidence is not available, the officer should examine any secondary evidence available in conjunction with the applicant's testimony. Officers are expected to evaluate credibility and weigh evidence to determine whether the applicant met his or her burden. 8 C.F.R. § 204.1(f)(1).

- **Primary Evidence:**
    - Marriage certificate. 8 CFR § 204.2(a)(2). In most cases, evidence of marriage will be a civil marriage certificate issued by a government entity in the country where the marriage occurred. Marriage certificates issued by religious organizations, churches, or temples *are generally not sufficient* in most cases unless supported by foreign law that establishes they are legally recognized in the country where the marriage occurred.
    - Proof of divorce, annulment, or death of prior spouse, if either spouse had a prior marriage. *See* 8 CFR § 204.2(a)(2).

- **Secondary Evidence:**
    - Any other credible evidence. 8 CFR § 204.1(f)(1).

- Refugee registration document, indicating applicant and spouse are married.
- UNHCR RRF, indicating applicant and spouse are married.
- RSC Case History, indicating applicant and spouse are married.
- Other government issued marriage documentation

o Birth certificate(s) of child(ren) born to the applicant and spouse. 8 CFR §204.2(a)(1)(i)(B)

- **Credible testimony.** INA §§ 208(b)(1)(B)(ii); 240(c)(4)(B); 8 CFR § 204.1(f)(1).

Establishing a valid marriage through testimony

If marriage documentation is not reasonably available, applicants may establish a valid marriage through credible testimony. *See* INA §§ 208(b)(1)(B)(ii); 240(c)(4)(B); 8 CFR § 204.1(f)(1). The officer must first elicit testimony to establish whether and why documentary evidence is not reasonably available. Then, the officer must elicit testimony to determine whether a marriage was legally perfected under the marriage laws of the place of celebration. The following is a suggested list of non-exhaustive questions to assist in making a determination on the legal validity of a refugee marriage; the officer should ask appropriate follow up questions as necessary:

- [redacted]

If common law marriage is recognized as legal in the place of celebration (e.g. in Tanzania), consider the following questions:

- [redacted]

Annotating Form I-590

Officers must confirm whether a marriage to a derivative RE-2 spouse is valid or invalid for immigration purposes directly on Form I-590 for both the RE-1 and RE-2. This administrative annotation will be considered evidence of a determination by the adjudicating officer that the marriage is legally valid in the place of celebration, or alternatively, a determination that a marriage is not valid for immigration purposes. This annotation is not considered a numbered correction that requires the applicant to acknowledge and sign. The annotations required differ for each version of the I-590 as follows:

2012 I-590

In the spouse section, items 7-10, the officer must include one of the following annotations:

- For a Valid marriage: **"Confirmed by [X document]" [initial & date]** or **"Confirmed through credible testimony" [initial & date]**
- For an Invalid marriage: **"Marriage not legally valid" [initial & date].** The response to the check box for item 10 must also be changed to indicate that the spouse will not be accompanying the applicant to the United States.

2014 I-590

In Part 6, "Information About Your Marital Status," the officer must include one of the following annotations:

- For a Valid marriage: **"Confirmed by [X document]" [initial & date]** or **"Confirmed through credible testimony" [initial & date]**
- For an Invalid marriage: **"Marriage not legally valid" [initial & date].** The response to the check box at the beginning of the marriage section must be changed to show that the applicant is not currently married. The response to the check box under #1 must be changed to indicate that the spouse will not be accompanying the applicant to the United States.

2018 I-590[11]

In Part 6, "Information About Your Marital Status," the officer must include one of the following annotations:

- For a Valid marriage: **No annotation is required, instead red tick marks are sufficient**. If a case is adjudicated on the 2018 I-590, the case would have been adjudicated under the current marriage guidance. As a result, the spouse's continued presence on the case as an RE-2 will indicate that the adjudicator found the marriage to be legally valid and the RE-2 remained on the case. No additional annotation is required, instead red confirmation tick marks in Part 6 on both the RE-1 and RE-2's forms confirm that they are currently in a valid marriage.
- For an Invalid marriage: **"Marriage not legally valid" [initial].** The response to the check box at the beginning of the marriage section must be changed to show that the applicant is not currently married. The response to the check box under #1 must be changed to indicate that the spouse will not be accompanying the applicant to the United States.

[11] For additional procedural guidance on the 2018 I-590 refer to the 2018 I-590 SOP.

Remember: If the PA claims to have a current legally valid marriage, but the spouse is not included on the case as an accompanying derivative RE-2 spouse, the officer is not required to confirm the validity of the marriage on the I-590. Instead, the officer should simply confirm the accuracy of the information in Part 6 of the I-590 (or #s 7-10 and G-325C for the 2012 I-590), and ensure the "will not accompany" box is marked. If the applicant later filed a Form I-730 petition for the spouse, or other immigration benefit, the applicant would have the burden to establish the validity of the marriage at that time.

Next steps for cases with valid marriages:
If the officer determines that the marriage to an RE-2 derivative spouse is valid for immigration purposes, the officer should continue to process the case as normal; no additional holds are required.

However, if marriage documentation is missing, the explanation of why it cannot be provided is insufficient, and the officer determines that such marriage documentation is reasonably available *in the country of asylum*, the officer may place the case on hold for "**Other: 'Marriage Documentation Requested'**" in order for the applicant to obtain this documentation. The officer should refer to country specific information to determine whether this request is reasonable.

Next steps for cases with invalid marriages:
In general, RSCs should not present a case for USCIS interview that includes an RE-2 derivative spouse if the marriage to the spouse is not valid under the law of the jurisdiction where it was celebrated. However, if such a case is incorrectly presented, officers should follow these procedures:

If the applicants are able to remarry/perfect the marriage in the host country:
If the officer determines that the marriage to an RE-2 derivative spouse is *not* valid under the law of the jurisdiction where it was celebrated, *however, the applicants indicate they are able to remarry or perfect the marriage in the host country*, the officer will continue to interview the case, but place the case on hold for the applicants to remarry/perfect the marriage. The officer will instruct the applicants to remarry/perfect the marriage and submit the original marriage documentation to the RSC. The officer will complete the I-590s, interview, and assessment. The officer will place the case on hold for "**Other: 'Marriage Documentation Requested'**".

If the marriage is subsequently perfected and documentation submitted, a DHS officer will review the documentation to confirm the validity of the marriage. If the marriage is confirmed valid, the officer will annotate the I-590s according to the annotation guidance above, lift the hold for "Other: Marriage Documentation Requested" and continue to process the case accordingly.

If the applicants are NOT able to remarry/perfect the marriage in the host country:
If the officer determines the marriage to an RE-2 derivative spouse is *not* recognized as valid under the law of the jurisdiction where it was celebrated, *and the applicants indicate they are not able to remarry or perfect the marriage in the host country*, the officer should not continue to interview the case. Instead, the officer should inform his or her Team Leader (TL) of the invalid marriage determination,

return the case to the RSC, instruct the RSC to split the RE-2 from the case, and counsel the applicants regarding the implications of this determination. No holds are required.

The RE-2 "spouse" would no longer be a derivative on the case and must be split off onto his or her own case and cross-referenced to the other "spouse" as a "union with female/male" prior to USCIS interview; or included as an "Add-on" RE-1 if the criteria are met. **RSCs should not re-present these split-off cases to USCIS for interview until the RSCs ensure that each member of the union has obtained independent access to the USRAP, RSC prescreening is complete, and forms are updated to reflect the union.** In general, cross-referenced cases shall be presented to the interviewing officer together. However, the TL may use his or her discretion to coordinate with the RSC to reschedule each of these cases for interview, and request from RAD Regional Operations a 30-day waiver for prescreening, if necessary. Once the cases are re-presented to USCIS for interview, they will be processed as separate cross-referenced cases.

Note: After a case is split off by the RSC and presented to USCIS, if an officer confirms that a marriage is invalid, but the *split-off partner does not have independent access to USRAP*, this case should not be presented for interview. Officers should not interview either case. Instead, raise this issue with the TL, who will notify the appropriate RAD regional desk officer and RAD Policy. RAD HQ will consult with OCC regarding the circumstances of the case.

Post-DHS Interview Hold Lifting (USCIS Guidance)

If an interviewed case that is pending final approval stamp includes an RE-2 derivative spouse, the hold-lifting officer must review the record to confirm the validity of the claimed marriage before stamping the case approved. An interviewed case that is pending *denial* is not subject to this requirement. If the officer confirms that the marriage is valid for immigration purposes based on the procedures below, the officer may stamp the case finally approved. However, officers should not stamp a case finally approved if an RE-2 derivative spouse is included on a case but the marriage is not valid under the law of the jurisdiction where it was celebrated, ***regardless of when the case was initially interviewed or whether it is a reinterview (for any reason)***.

Hold-lifting officers should assess the validity of the marriage by taking as many of the following steps as necessary to reach a determination:

1) **Examine Part 6 ("Information About Your Marital Status") of Form I-590 (or spouse information for 2012 I-590s)** for both the RE-1 and RE-2. For **2012 I-590s** and **2014 I-590s**, if the appropriate section has been annotated already by an adjudicating officer after January 29, 2018, indicating "confirmed by [X document]" or "confirmed through credible testimony", this is sufficient evidence that the marriage has already been confirmed valid for immigration purposes.

   For **2018 I-590s**, the RE-2s continued presence on the case, and red confirmation tick marks in Part 6, would confirm the Officer's determination that the marriage was valid. No additional annotation

is required to confirm the validity of the marriage.

For cases interviewed prior to the change in marriage guidance on January 29, 2018, or missing the required annotation, continue with the following steps.

2) **Look for documentation of the marriage in the case file.** For all cases, if there is a marriage certificate[12] in the file, the marriage is presumed valid for immigration purposes, regardless of the place of celebration. Other government-issued documentation may also establish the validity of a marriage, depending on the country of celebration.[13] No additional annotations on the I-590s are required.

3) **If there is no documentation of the marriage in the case file, look to Part 6 of Form I-590 (or G-325C for old I-590s) to determine where the marriage occurred.**

If the marriage occurred *in the country of nationality*, the marriage is presumed valid unless there is specific evidence to the contrary in the file. Information contained in Form I-590 is considered testimonial evidence from the applicant that is confirmed by the officer with red tick marks. The officer should review the interview notes in the assessment to confirm there is no evidence to the contrary – e.g. testimony indicating that the marriage was polygamous or not legally perfected. If no contradictory testimony is found, a marriage occurring in the country of nationality, confirmed in Part 6 of Form I-590 (or G-325C), is considered valid for immigration purposes. No additional annotations on the I-590s are required.

If the marriage occurred in the *country of asylum*, the officer should examine country-specific information provided by RAD Regional Operations and RAD Policy to determine whether a valid marriage is established in the record. Accordingly:

If specific COI indicates that refugees in that particular country are reasonably able to obtain marriage documentation, and documentation is missing, the officer should place a physical case file on "Other" hold, and annotate "marriage documentation requested," and return it to the RSC so the applicant can provide relevant documentation.

For similar cases in the digital stamp queue, the officer should instead mark the case "unable to stamp" and include this administrative note: "Applicant must provide marriage documentation. Once received by RSC, please scan document into WRAPS and return the case to the digital stamp queue." Importantly, before making this determination, officers should first review the testimony to determine whether the applicant has already addressed the validity of the marriage, including

[12] This document is often listed in WRAPS scanned documents with the code "MC."
[13] For example, for marriages celebrated in Uganda, the "Refugee Family Attestation" issued by the Ugandan Office of the Prime Minister will include both spouses, if the spouses have been legally married in Uganda. A Refugee Family Attestation that includes both the RE-1 and RE-2 identified as spouses would serve as sufficient evidence to establish the validity of their marriage for immigration purposes.

the reasonably availability of documentation. Typically the case should be placed on hold as described, unless the applicant has sufficiently addressed both issues through testimony, in which case the marriage may be considered valid for immigration purposes.

If specific COI indicates that refugees are not able to obtain a valid marriage in that country of asylum (ex. Malaysia or Thailand), and documentation is missing, the marriage is presumed not valid for immigration purposes. Nevertheless, the officer should still review the interview notes in the assessment to confirm whether specific testimony otherwise establishes the validity of the marriage in its place of celebration, and whether it was established that documentation is not reasonably available. However, if no testimony or other evidence in the file is available to otherwise establish the validity of the marriage, then the case should not be finalized.

When addressing a physical case file, the officer should write in Section VIII (Post-Interview Notes): "Marriage is not valid for immigration purposes. RE-2 must be split from the case, cross-referenced as a 'union with [male/female],' and re-presented for interview as an RE-1. [name of officer, title, date]." If the physical file is present, the officer should write in part 6 of the I-590s for each partner: "Marriage not legally perfected [initial & date]." Return the case to the RSC and explain the circumstances. Once the RE-2 is split off from the case, and cross-referenced, the original case will continue to be processed under existing procedures.

To address such cases in the digital stamp queue, the officer should mark the case as "unable to stamp," then include an administrative note stating: "Marriage is not valid for immigration purposes. RE-2 must be split from the case, cross-referenced as a 'union with [male/female],' and re-presented for interview as an RE-1." No additional annotations on the I-590s are required. Once the RE-2 is split off from the case, and cross-referenced, the original case will continue to be processed under existing procedures.

Note: **RSCs should not re-present the split-off "spouse" (member of the union/partner) to USCIS for interview until the RSC ensures this applicant has obtained independent access to the USRAP, RSC prescreening is complete, and forms are updated to reflect the union.** RSCs will notify RAD Regional Operations of any ambiguous cases prior to scheduling for USCIS interview, so that research can be conducted and instructions provided to adjudicating officers. RSCs should identify cases in which the would-be split-off RE-2 spouse may not have access or an independent refugee claim, and notify RAD Regional Operations and RAD Policy. RAD will consult with OCC regarding these cases before scheduling for USCIS interview.

Any questions about the guidance contained in this Response to Query should be directed to the RAD Policy Branch at Refugeeaffairs-PAS@uscis.dhs.gov.

Quick Reference Guide – Determination of a Valid or Invalid Marriage During I-590 Interview

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<th>Primary Evidence of valid marriage</th>
<th>Secondary Evidence of valid marriage (if primary evidence is not reasonably available)</th>
<th>I-590 Annotations to confirm a valid/invalid marriage</th>
<th>Other Information:</th>
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<td>Marriage certificate. 8 CFR § 204.2(a)(2)
○ In most cases, evidence of marriage will be a civilly registered marriage certificate in the country where the marriage occurred.
○ Marriage certificates issued by religious organizations, churches, or temples are generally not sufficient in most cases unless supported by foreign law that establishes they are legally recognized in the country where the marriage occurred.

If either spouse had a prior marriage, proof of divorce, annulment, or death of prior spouse. See 8 CFR § 204.2(a)(2)</td>
<td>Any other credible evidence. 8 CFR § 204.1(f)(1).
○ Refugee registration document, indicating applicant and spouse are married.
○ UNHCR RRF, indicating applicant and spouse are married.
○ RSC Case History, indicating applicant and spouse are married.
○ Other government issued marriage documentation

Birth certificate(s) of child(ren) born to the applicant and spouse. 8 CFR §204.2(a)(1)(i)(B)

Testimonial Evidence of valid marriage
Credible testimony. INA §§ 208(b)(1)(B)(ii); 240(c)(4)(B); 8 CFR § 204.1(f)(1).
○ Must establish a legally valid marriage under the laws of the jurisdiction in which it was entered (informed by COI, as presented at PDB or on the ECN).</td>
<td>Confirmation of a valid/invalid marriage: Officers must confirm whether a marriage to a derivative RE-2 spouse is valid or invalid directly on the I-590s for both the RE-1 and RE-2. The annotations required differ for each version of the I-590 as follows:

2012 I-590 & 2014 I-590:
In the spouse section (2012 I-590) or Part 6 (2014 I-590), the officer must indicate either:
• For a Valid marriage: “Confirmed by [X document] [initial & date]”; or “Confirmed through credible testimony” [initial & date]

• For an Invalid marriage: “Marriage not legally valid” [initial & date]

2018 I-590:
In Part 6 of the I-590, the officer must indicate either:
• For a Valid marriage: No annotation required, instead red tick marks are sufficient

• For an Invalid marriage: “Marriage not legally valid” [initial]</td>
<td>Hold for documentation that is reasonably available: If marriage documentation is missing, the explanation of why it cannot be provided is insufficient, and the officer determines that such marriage documentation is reasonably available in the country of asylum, the officer may place the case on hold for “Other: ‘Marriage Documentation Requested’” in order for the applicant to obtain this documentation. However, the officer should refer to country specific information to determine whether this request is reasonable.

Hold to remarry/perfect the marriage:
If RSCs incorrectly present a case with an invalid marriage to an RE-2, however, the applicants are able to remarry/perfect the marriage in the host country, the officer will continue to interview the case, but place the case on hold for the applicants to remarry/perfect the marriage. The officer will instruct the applicants to remarry/perfect the marriage and submit the original marriage documentation to the RSC. The officer will complete the I-590s, interview, and assessment. The officer will place the case on hold for “Other: ‘Marriage Documentation Requested’”.

Invalid marriage (perfection not available):
If RSCs incorrectly present a case with an invalid marriage to an RE-2, and the applicants are not able to remarry or perfect the marriage in the host country, the officer should not continue to interview the case. Instead, officers should inform their TL of the invalid marriage, return the case to the RSC, instruct the RSC to split the RE-2 from the case, and counsel the applicants regarding the implications of this determination. No holds are required.</td>
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