

U.S. DEPARTMENT OF HOMELAND SECURITY  
U.S. CITIZENSHIP AND IMMIGRATION SERVICES  
VERMONT SERVICE CENTER  
75 LOWER WELDEN STREET  
ST. ALBANS, VT 05479

XXX, xxx	)	Receipt No. EAC-
	)	Case No. PTP-
	)	
Beneficiary / Applicant	)	Priority Date: [date]
	)	
	)	

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**MOTION TO REINSTATE I-130 PETITION**

Through undersigned Counsel, the above-referenced beneficiary, Mr. X, respectfully requests that the U.S. Citizenship and Immigration Services (USCIS) reinstate the I-130 petition filed by his now-deceased mother, Ms. Y. Ms. Y filed the I-130 petition on behalf of her above-referenced child on [date]. The Vermont Service Center approved the I-130 petition on [date]. Ms. Y was still living at that time. She died on [date], thus causing automatic revocation of the I-130 petition.

In the present motion, Beneficiary moves, pursuant to 8 CFR § 205.1(a)(3)(i)(C), to reinstate the I-130 petition filed by his mother, because revocation would be inappropriate due to the humanitarian factors in this case.

Moreover, Beneficiary includes a substitute Form I-864 Affidavit of Support with this motion, as permitted under the Family Sponsor Immigration Act of 2002, Pub. L. No. 107-150, 116 Stat. 74 (March 13, 2002). The substitute sponsor, Mr. Z, is the biological brother of the beneficiary. Please see attached proof of this relationship.

## ARGUMENT

### **1. REVOCATION OF THE PRESENT I-130 PETITION WOULD BE INAPPROPRIATE DUE TO COMPELLING HUMANITARIAN FACTORS IN THIS CASE**

Automatic revocation of an approved I-130 family-based immigration petition will generally be instituted upon the death of the petitioner. *See* 8 CFR § 205.1(a). However, 8 CFR § 205.1(a)(3)(i)(C) provides an exception to the automatic revocation rule. This section provides the USCIS with the authority to reinstate any family-based I-130 petition that has already been approved, where revocation would be “inappropriate” based on humanitarian factors. *See* 8 CFR § 205.1(a)(3)(i)(C); *Sanchez-Trujillo v. INS*, 620 F.Supp. 1361 (W.D.N.C. 1985); *Pierno v. INS*, 397 F.2d 949, 950 (2d Cir. 1968). In the present case, the I-130 petition was approved, Petitioner died after the petition was approved but before Beneficiary was eligible to immigrate, and humanitarian factors exist that would make revocation inappropriate.

Immigration law and regulations do not provide guidance as to what specific humanitarian factors would satisfy the test of “appropriateness” proposed by the regulations. Traditionally, however, the USCIS weighs the following factors in cases concerning humanitarian need: (1) hardship to U.S. citizens or lawful permanent residents; (2) disruption of an established family unit; (3) lengthy residence in the U.S.; (4) strong family ties in the U.S.; (5) conditions in the home country; (6) health/medical conditions; (7) undue delay in processing the petition and visa; and (8) lengthy wait for beneficiaries in preference categories. *See* 9 *Foreign Affairs Manual* 42.42 PN 2 (“*Recommending Reinstatement of Petition*”). The factors listed at numbers 1, 4, 5, and 8 exist in the present case.

The original sponsor in this case was Beneficiary’s mother, Ms. Y, a lawful permanent resident of the United States. Ms. Y filed the I-130 petition in [date]. The Immigration and Naturalization Service (INS) promptly approved the I-130 petition. However, Beneficiary was not eligible to apply for an immigrant visa until his priority date became current. Ms. Y died almost seven (7) years later, on [date]. Just two months before her death, Ms. Y sent a letter to the INS requesting an update. The INS responded on [date]. Beneficiary was still waiting for an immigrant visa to become available at the time of his mother’s death.

The U.S. citizens and permanent residents affected by this case are the siblings, in-laws, nieces and nephews of the Beneficiary. Particularly, the Beneficiary’s U.S. citizen siblings experience hardship in the form of emotional trauma based on their continued worrying about the safety and welfare of their brother in Haiti, due to present security conditions in Haiti, detailed herein. Moreover, the Beneficiary’s U.S. citizen siblings continue to financially support the Beneficiary and his family in Haiti, which places a significant burden on his family in the United States.

Hardship to his U.S. citizen family members would diminish if Beneficiary were allowed to immigrate to the United States. First, his U.S. citizen family members would no longer have to worry about his vulnerable situation in Haiti, since he would be safe and secure in the United States. In addition, since Beneficiary is a young, healthy individual with a strong work ethic, he would be able to work in the U.S. in order to support his own family members who remain in Haiti – instead of relying solely on money sent from the United States, which he has done since he was forced to close his business for safety reasons.

Finally, both U.S. citizen siblings of Beneficiary own homes in Maryland, and these homes already have empty bedrooms waiting to be filled by Beneficiary. *See Declarations of Mr. X and Mr. A, Tabs F-1 and F-2.* Thus, Beneficiary would not place any unnecessary financial or logistical strain on his U.S. families. To the contrary, he would release the financial burden his U.S. families now shoulders in having to support him and his family completely.

More importantly, Beneficiary's presence in the U.S. would reduce the emotional weight his U.S. family members now bear. Since President Aristide's resignation and departure from Haiti in February 2004, conditions in Haiti have continued to deteriorate. "In April [2004], the U.N. Security Council authorized 6,700 troops and 1, 622 civilian police for the U.N. Stabilization Mission in Haiti (MINUSTAH)." *See attached 2004 U.S. Department of State Country Report on Human Rights Practices in Haiti.* The streets remain unsafe. "In the streets, there are areas to discard refuse. You will see dead people in the piles of trash. You can see pigs eating the dead people as you pass by in your car. You would never walk by, only drive, and you see. You see so many bad things." *See Declaration of Ms. A.*

On May 26, 2005, the U.S. Department of State issued a travel warning:

"Due to the volatile security situation, the Department has ordered the departure of non-emergency personnel and all family members of U.S. Embassy personnel... Visitors and residents must remain vigilant due to the absence of an effective police force in much of Haiti... and the possibility of random violent crime, including kidnapping, carjacking, and assault... The UN stabilization force (MINUSTAH) is fully deployed and is assisting the government of Haiti in providing security." *See Tab F-7.* This travel warning remains current.

In fact, though Beneficiary owns his own home in Port-au-Prince, he and his family now find themselves homeless due to the presence of UN stabilization forces in their neighborhood. The UN forces unlawfully cast Beneficiary and his family to the streets when they decided to occupy Beneficiary's family home, a large, 4-story building with a clear view of the neighborhood. Note that you may personally contact Captain Tuterson to verify this information. Captain Tuterson is the leader of the Brazilian UN forces occupying Beneficiary's home at street address, in Port-au-Prince. His phone number in Haiti is 510-2834. *See Declaration of Mr. X.*

Finally, we call your attention to the letters submitted by the beneficiary himself. His letter is heartfelt and desperate. He admits: "My situation is extremely painful. I'm the father of three children and I can't take care of them. The economical and political status of the country make my situation worst. Sincerely I have to let you know: If I'm still alive, I own it to the moral and financial support of my two brothers..." See *Letter from Mr. B.*

**2. BENEFICIARY/APPLICANT SATISFIES THE AFFIDAVIT OF SUPPORT REQUIREMENT THROUGH THE ENCLOSED FORMS I-864 AND I-864A SUBMITTED BY SUBSTITUTE SPONSORS, HIS BROTHER AND SISTER-IN-LAW; AS ALLOWED UNDER THE FAMILY SPONSOR IMMIGRATION ACT OF 2002**

Congress now permits intending immigrants, in I-130 reinstatement cases, to submit a substitute affidavit of support from certain qualifying relatives, in order to satisfy the requirements of INA §213A(f). See the *Family Sponsor Immigration Act of 2002, Pub. L. 107-150, 116 Stat. 74 (March 13, 2002)* (hereinafter *Public Law 107-150*). The list of qualifying family members who can act as a substitute sponsor includes: spouse, parent, mother-in-law, father-in-law, sibling, child (at least 18 years old), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, grandchild or legal guardian. Beneficiary includes a substitute Form I-864 Affidavit of Support issued by his sibling, Mr. X, and a Form I-864A issued by his sister-in-law, who is the wife and household member of Mr. X.

The substitute sponsors are both over the age of 18 and domiciled in the United States. Mr. X is a U.S. citizen. His wife is a lawful permanent resident of the United States. Together, they demonstrate that they meet and exceed the minimum income requirement for their household size. Documents supporting their affidavit of support include: federal tax returns and W-2 Forms from 2004, 2003, and 2002; letters of current employment; recent pay stubs; copy of Sponsor's naturalization certificate; copy of the permanent resident card of his wife/household member; and birth certificates of Beneficiary and Sponsor to prove that they share the same parents and thereby establish a qualifying family relationship.

In addition, we call attention to the fact that Beneficiary's U.S. citizen siblings already provide full financial support to Beneficiary and his families in Haiti and have additional room in his home in the U.S. to accommodate Beneficiary.

**3. DENYING THIS MOTION WOULD CONTRADICT THE LEGISLATIVE INTENT OF CONGRESS IN ENACTING PUBLIC LAW 107-150: TO ENCOURAGE AND FACILITATE FAMILY REUNIFICATION**

In evaluating this motion, we respectfully request you to consider that the legislative intent behind Public Law 107-150 is family reunification. A legacy INS Memorandum on Public Law 107-150, dated June 15, 2002, instructs that a major factor to consider is

whether "failure to reinstate would lead to a harsh result contrary to the goal of family reunification." *INS Memorandum for Regional Directors, from Johnny N. Williams, Executive Associate Commissioner-Office of Field Operations re Policy Change-Public Law 107-150, June 15, 2002.*

In support of Public Law 107-150, Congressman Issa declared: "This bill will keep families together and help avoid the possibility of having two tragedies stemming from one unfortunate event." See [www.issa.house.gov/newsroom\\_press\\_detail.asp?serial=26](http://www.issa.house.gov/newsroom_press_detail.asp?serial=26). Likewise, Congresswoman Jackson-Lee testified: "I believe that this is a legislative initiative that is extremely important because it speaks to the cornerstone of immigration policy in this Nation, and that is family reunification. In spite of all the tragedies that we have faced in the last year and reminding ourselves of the tragedy of September 11, I believe this Nation should never stray away from the honest need to reunite families who legally want to access the opportunities of citizenship in this country." *Congressional Record: February 26, 2002 (House) [Page H527-H529] From the Congressional Record Online via GPO Access [wais.access.gpo.gov] [DOCID:cr26fe02-90]*. Finally, in testimony on February 27, 2002, Congressman Smith stated: "Let's correct this unfair technicality in our immigration law to help keep the American Dream a reality for those who lose their sponsors. The hope of freedom should not die because of the untimely death of a sponsor." See *Congressional Record: February 27, 2002 (Extensions), at Page E219, From the Congressional Record Online via GPO Access [wais.access.gpo.gov] [DOCID:cr27fe02-27]*.

### CONCLUSION

Beneficiary – beset by the tragic loss of his beloved mother, on top of his increasingly desperate situation in Haiti – seeks to fulfill his mother's dying wish of reuniting the family in the United States. Through the under-signed counsel, he formally requests the U.S. Citizenship and Immigration Services to reinstate the I-130 petition filed for him by his mother, Ms. X. He demonstrates that he has a substitute sponsor to meet the requirements of INA §213A. Moreover, he demonstrates that revocation of his I-130 petition would be inappropriate due to the humanitarian factors in his case.

For the reasons set forth above – and in the interests of justice, fairness, and family reunification – we respectfully request you to approve this motion and to reinstate the I-130 petition.

Thank you for your thoughtful consideration of this matter. Please do not hesitate to contact me if you have any questions or require additional information.

Respectfully submitted this \_\_\_ day of August, 2005, by:

## EXHIBITS

- A. Form G-28 Notice of Appearance as Attorney
- B. Proof of approved I-130 petition
  - 1. Form I-797 Approval Notice
  - 2. Letter from Petitioner to the Vermont Service Center on [date], and INS's response on [date]
  - 3. Letter from the NVC indicating that the I-130 Petition was returned to the USCIS on or before [date]
- C. Death certificate of Petitioner, Ms. Y, with English translation
- D. Substitute I-864 Affidavit of Support by the Beneficiary's brother
  - 1. 2004, 2003, and 2002 tax returns and W-2 Forms
  - 2. Letter from employer and recent pay stubs, as proof of current employment
  - 3. Naturalization certificate of substitute sponsor
- E. Proof of qualifying relationship between Beneficiary and substitute sponsor
  - 1. Birth certificate of substitute sponsor, with translation into English
  - 2. Birth certificate of Beneficiary, with translation into English
- F. Evidence of humanitarian factors that make revocation of Beneficiary's I-130 petition inappropriate
  - 1. Declaration of Substitute Sponsor, detailing the Humanitarian Factors in his Brother's Case
  - 2. Letter from Beneficiary's Brother, a U.S. Citizen who lives with his Family in Silver Spring, Maryland, and a copy of his Naturalization Certificate
  - 3. Evidence of Financial Support sent by Mr. Z to his Siblings, the Beneficiary in this Case, in Haiti
  - 4. Letters from Beneficiary, requesting Reinstatement of his I-130 Petition for Humanitarian Reasons
  - 5. Declaration and U.S. Naturalization Certificate of Ms. A, a Friend of the X Family who recently traveled to Haiti on a Church Mission and visited with Beneficiary
  - 6. Letters from Beneficiary's cousins, both U.S. Citizens
  - 7. 2004 U.S. Department of State (DOS) Country Report on Human Rights Practices in Haiti, DOS Travel Warning issued May 26, 2005, and news articles describing the current security crisis in Haiti