- If the I-130 was filed concurrently with the beneficiary's adjustment application, require the petitioner to bring the missing documentation to the interview.

(2) Adjudication Issues .

In addition to the more general adjudication issues discussed in subchapter 21.2, pay particular attention to these concerns pertaining specifically to spousal visa petitions:

(A) Proxy Marriages .

Section 101(a)(35) of the Act provides that the term "spouse", "wife", or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present together at the ceremony, unless the marriage has been consummated afterwards. (Note: Consummation of a marriage can only occur after the ceremony, there is no such thing as "pre-consummation" of a marriage.)

(B) Validity of a Marriage Celebrated in a Foreign Country .

One may normally presume the validity of a marriage upon presentation of a marriage certificate, duly certified by the custodian of the official record. As a general rule, the validity of a marriage is judged by the law of the place of celebration. If the marriage is voidable but no court action to void the marriage has taken place, it will be considered valid for immigration purposes. However, if a marriage is valid in the country where celebrated but considered offensive to public policy of the United States, it will not be recognized as valid for immigration purposes. Plural marriages fall within this category.

(C) Marriage Between Close Relatives .

In some foreign countries, and some states in the United States, marriages between close relatives (e.g., cousins) are permitted under certain circumstances. In cases where such marriages do not offend the laws of the state where the parties reside, the marriage will be recognized for immigration purposes.

(D) Marriage Involving Minor(s).

There are no statutory minimum age requirements for the petitioner or beneficiary of a Form I-130 spousal petition. In some U.S. states and in some foreign countries, marriage involving a minor is generally not allowed but may be permitted under certain circumstances, including where there is parental consent, a judicial order, emancipation of the minor, pregnancy of the minor, etc. (Note: Although the INA definition of "child" includes being under 21 years of age, in family law, a "minor" in a marriage context is generally defined as an individual under 18 years of age.)

However, a marriage involving a minor warrants special attention. Officers should evaluate all marriages involving a minor for evidence that: 1) the marriage was lawful in the place it was celebrated and on the date it was celebrated, 2) if the couple resides outside the place of celebration, the marriage is recognized as valid in the U.S. state where the couple currently resides or will presumably reside and does not violate the state of residence's public policy, and 3) the marriage is bona fide, and the minor(s) provided full, free, and informed consent to enter into the marriage.

Note: U.S. state laws vary in setting minimum age requirements to marry and exceptions that may permit minors to marry. Some U.S. states do not have an age floor below which a minor cannot marry if an exception applies. However, there may still be public policy considerations that would result in the domicile refusing to confer reciprocity to an out of state marriage involving a minor.

Note: The officer can generally rely upon a marriage certificate, court decree or parental consent as probative evidence of the minor's consent. However, if the case presents forced marriage issues, please consult with headquarters and/or your regional office through your normal supervisory chain.

(i) Legality of Marriage in the Place of Celebration.

Where the record does not establish the legality of the marriage, officers should issue an RFE for evidence that the marriage was lawful in the place where it was celebrated and on the date it was celebrated. The petitioner bears the burden of proof [See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)] and must provide evidence that the minor(s) met the legal minimum age requirements in the place of celebration or that the minor(s) qualified for an exception to the general age requirements. If you have questions about the legality of a marriage involving a minor, please contact local USCIS counsel.

Note: Officers retain discretion to deny a petition without first issuing an RFE or NOID when required initial evidence was not submitted or the evidence of record fails to establish eligibility. See AFM 10.5(a) and AFM 10.5(b).

Note: Regardless of the age of the petitioner and beneficiary at the time the I-130 petition is adjudicated, officers should ensure that any marriage that involved a minor was valid at the time it was entered into. Matter of P, 4 I&N Dec. 610 (Decided by the AG March 18, 1952).

(ii) Validity of the Marriage in Petitioner and Beneficiary's State of Residence or Presumed State of Residence and State Public Policy Considerations.

If the marriage involving a minor was lawfully entered into in the place where it was celebrated, whether domestically or overseas, but the couple now lives in or can be expected to live in a different place at the time of adjudication, officers should determine whether the marriage is or will be recognized as valid in the petitioner's current or presumed state of residence. (Note: A marriage complying with all the

requirements of the state of celebration might nevertheless be deemed invalid if it is invalid under the laws of a state where one of the parties is domiciled at the time of the marriage and where both parties intend to make their home afterward, or if it violates a strong public policy of the state of domicile. See *Matter of Zappia*, 12 I. & N. Dec. 439 (BIA 1967); Matter of Da Silva, 15 I. & N. Dec. 778, 779 (BIA 1976).)

Where the beneficiary resides abroad, unless otherwise indicated or known to the officer, officers should presume that the couple will reside in the petitioner's state of residence [See *Matter of Manjoukis*, 13 I&N Dec. 705 (BIA 1971)]. The officer should consult with local USCIS counsel for assistance in determining the validity of the marriage or considering whether to issue an RFE for the petitioner to establish whether the marriage is or will be recognized as valid in the petitioner's current or presumed state of residence. For example, the petitioner may provide evidence that the state Attorney General's Office recognizes the marriage involving a minor, which was celebrated out of state. [Note: Officers retain discretion to deny the petition without first issuing an RFE or NOID when required initial evidence was not submitted or the evidence of record fails to establish eligibility. See AFM 10.5(a) and AFM 10.5(b).]

Where it is unclear whether the marriage is or will be recognized as valid outside the place of celebration, officers should also determine whether the marriage violates the public policy of the new place of residence. A state's public policy is often reflected in specific criminal statutes that penalize undesirable or offensive conduct. Officers should look at the state's criminal statutes or consult with local counsel to determine whether the marriage is contrary to the state's public policy. A marriage involving a minor may be legal in the place of celebration but void under the state law of the minor's residence as contrary to state public policy. Conversely, state law may prohibit the marriage of a person under age 16, but may recognize as valid an out of state marriage of a resident under age 16 [See *Matter of Da Silva*, 15 I&N Dec. 778 (BIA 1976)]. The assessment as to whether a marriage violates state public policy is a case-by-case determination and involves the facts surrounding the parties, the marriage, and U.S. state law. Officers should contact local counsel if it appears that the petitioner has not met his or her burden of establishing that the marriage would not violate the public policy of the state of residence despite being legal in the place of celebration. (Note: Some states will not recognize a marriage as valid if celebrated outside the state because the parties intended to evade the marriage restrictions in that state. These are generally referred to as 'evasion laws'.)

(iii) Bona Fides of the Marriage, Including Forced Marriage Considerations.

Officers must also consider the bona fides of the marriage and all other eligibility requirements as they evaluate a marriage involving a minor. A marriage cannot be considered bona fide if it was entered into for the sole purpose of evading U.S. immigration law. See *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983).

A marriage that was entered into without the consent of one or both parties is not considered bona fide for immigration purposes. Generally, an officer may rely upon a marriage certificate, court decree, or parental consent as probative evidence of the minor's consent unless the case involves forced marriage indicators, such as an affidavit from the victim or a communication from Department of State (Note: Instances of forced marriage are almost always self-identified). Forced marriage is a marriage entered into without the full, free, and informed consent of one or both parties to the marriage, regardless of age. (Note: For additional information, please see the USCIS Forced Marriage webpage, at https://www.uscis.gov/humanitarian/forced-marriage.) Forced marriage should not be confused with the cultural practice of arranged marriage, where families may be involved in selecting a partner. USCIS will consider any evidence that a forced marriage exists in its determination of whether the marriage is bona fide. If you have reason to believe that the marriage underlying an I-130 spousal petition may have been forced, please consult with headquarters and/or your regional office through your normal supervisory chain.

If the marriage involving a minor: (1) was legal in the place of celebration; (2) is recognized as valid in the couple's current or presumed state of residence and there are no state public policy concerns; (3) is bona fide and there are no indications of a forced marriage; and all other eligibility requirements have been met, then officers must approve a Form I-130 spousal petition involving the lawful marriage of a minor.

Note: While there is no minimum age associated with being party to a Form I-130 spousal petition, any sponsor executing Form I-864 (including the Form I-130 petitioner, any joint sponsor, and/or a substitute sponsor) must be at least 18 years of age at the time the Form I-864 is executed. The Form I-864 must generally be submitted with the beneficiary's Form I-485. For more information about Affidavit of Support Considerations, AFM Chapter 20.5; AFM Chapter 21.3(a)(1)(A); and Policy Manual Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section D, Determine Admissibility, Subsection 2, Affidavit of Support Under Section 213A of the Act (Form I-864) [7 USCIS-PM A.6(D)(2)].

(E) Fraudulent Marriage Prohibition .

Section 204(c) of the Act provides that:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws[,] or (2) the Attorney General has determined that the ali en has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

If there is evidence that the beneficiary has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws, the petition must be denied. However, the evidence of the attempt or conspiracy must be contained in the alien's file. (See also **8 CFR 204.2(a)(1)(ii)** .)

Note
Section 204(c) prohibits the approval of any petition, not just an I-130 petition. Accordingly, if an alien has attempted of conspired to enter into a fraudulent marriage, USCIS would also be barred from approving an I-140 petition filed in his or her behalf.

(F) Freedom to Marry .