

MEMORANDUM

TO: All Deputy Chief Immigration Judges
All Assistant Chief Immigration Judges
All Immigration Judges
All Court Administrators
All Judicial Law Clerks
All Court Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum No. 97-7: Procedures For Identifying Potential Battered Spouse/Battered Child Cases

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I. Introduction

Section 384(a)(2) of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) amended the Immigration and Nationality Act by imposing a prohibition on the disclosure of information relating to cases involving battered spouses or battered children. Under this section, Department of Justice employees who willfully use or disclose information without authorization on these cases to anyone (other than a sworn officer or employee of the Department of Justice for legitimate Department purposes) may be subject to appropriate disciplinary action and subject to a civil money penalty up to \$5,000. *See* Attachment A. Furthermore, the regulations created an additional restriction on these types of cases by limiting public access to any hearing or information in the Record of Proceedings (ROP). 8 C.F.R. § 3.27(c). This OPPM is designed to prevent violations of both the statutory provision and the regulations by establishing procedures for identifying and processing these types of cases.

II. Identification of Potential Battered Spouse/Battered Child Cases

The key to preventing disclosure of these types of cases is to ensure that all cases involving battered spouses and/or battered children are clearly identified as soon as possible and are subjected to heightened care by the Court. Several steps have already been taken in the ANSIR system to alert EOIR personnel that the Record of Proceedings (ROP) may be subject to disclosure limitations. *See* § II (C), *infra*. Furthermore, all Court Administrators have been provided with warning stamps for use by the Court staff to identify these cases. *See* sample at Attachment B. In addition, a special case identifier code for battered spouses and/or children has been created in the ANSIR system. The Court Administrator is responsible for making sure that all Court staff is aware of the existence of these stamps and has access to them. Moreover, the Court Administrator must verify that all Court staff is apprised of possible disclosure limitations and conduct a short training program within two weeks of the receipt of this OPPM for the staff on the procedures outlined below regarding the use of these stamps and the special treatment given to these cases.

A. Prior to the Hearing

If, at any time prior to the hearing, the Judge, the Court Administrator or Court staff becomes aware that a case involves a battered spouse and/or a battered child, the ROP must be immediately retrieved and stamped at least twice with the warning stamp on the front of the ROP cover. In those cases which have more than one ROP, each ROP must also be stamped twice. When the Court Administrator or Court staff is unclear as to whether a case involves a battered spouse and/or battered child, the Court Administrator or staff member must immediately bring the case to the assigned Judge's attention and have the Judge make the determination. Once the case has been stamped, the court clerk must then go into the ANSIR system and input the battered spouse/battered child code. *See also* § II.C, *infra*. As an additional precaution, the court clerk should insert the following phrase in the remarks section:

Warning: Do not disclose the contents of this file.
Please see your Court Administrator.

The hearings must remain closed unless waived by the party. Note, however, that there is no waiver in the case of a battered child. For further discussion on this, please *see* § III, *infra*.

B. During the Hearing

There may be circumstances where it will not be apparent until the actual hearing that the case involves a battered spouse and/or battered child. In all cases involving a battered

spouse and/or battered child, the Judge must immediately close the hearing and clear the courtroom of the public. The Judge must inform the parties on the record why the hearing has been closed and that the hearing will remain closed unless the alien (other than a child) or his or her representative waives a closed hearing. A waiver given on the record must be noted on the Judge's worksheet. In the absence of such a notation, the hearing shall be presumed to be closed to the public. In addition, the Judge must ensure that the ROP is properly stamped and that the court clerk enters the battered spouse and/or battered child code into the ANSIR system. This procedure must be followed, regardless if it is in a master calendar or individual calendar hearing. In cases involving a battered child, the hearing must remain closed. No waiver is permitted.

C. ANSIR System

The ANSIR system has already been modified to accommodate battered spouse and/or battered child cases. This new identifier code has been added to the Aother applications@edit table. The new identifier code will trigger a warning to appear on the ANSIR screen notifying that the case is subject to the disclosure limitations. Furthermore, this feature will also activate the EOIR 1-800 hotline phone number to suspend the release of any data and direct the caller to please contact the Court as public access to the file may be restricted. These precautions, coupled with the language placed in the remarks section (*see* § I(A), *supra*), should suffice to adequately flag these cases to all ANSIR users and thus minimize any disclosure violations.

III. Public Access to Information

In order to comply with 8 C.F.R. § 3.27(c), the Court staff must be instructed not to answer any questions received over the phone or at the Court reception window on any battered spouse and/or battered child cases. Instead, all questions should be referred directly to the Court Administrator.

The Court Administrator will be responsible for reviewing the file and assuring that any information disclosed has been either waived by the party (under 8 C.F.R. 3.27(c)) or is only given to one of the statutorily permissible parties—a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau or Agency purposes (*see* § 384(a)(2) of IIRIRA). If, for some reason, the Court Administrator cannot determine if disclosure has been waived or an individual is a statutorily permissible party, he or she should contact his or her ACIJ. If, for some reason, the Court Administrator is not available (e.g., vacation, conference), then the Court Administrator will designate and train a member of his or her staff to answer questions on battered spouse and/or battered children cases. If a statutorily permissible party requests information from or requests to review an ROP in which public access is restricted, the Court Administrator must request that individual to send the request by facsimile on the agency letterhead and state the purpose for the request.

IV. Conclusion

The Office of the Chief Immigration Judge is committed to maintaining the privacy of battered spouses and children under both the statute and the regulations as well as ensure that our Court staff does not violate the disclosure statute. This OPPM is designed to protect both the parties and the Court. Strict adherence to these procedures should prevent any violations. If, however, you have any doubts or questions regarding the release of information, please contact your Assistant Chief Immigration Judge immediately prior to releasing any information relating to a battered spouse or child.

Michael J. Creppy
Chief Immigration Judge