U.S. Department of Homeland Security
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010

U.S. Citizenship and Immigration Services

August 25, 2017

COW2016000918

Leslye E. Orloff
Adjunct Professor and Director
National Immigrant Women's Advocacy Project
4300 Nebraska Ave, NW C100
Washington, DC 20016

Dear Leslye E. Orloff:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office September 15, 2016 for the following information:

1. Number of BSW applications filed
2. Number of requests for further evidence (RFEs) issued
3. Number of BSW applications approved
    a. Of the total number of cases approved, the number of cases approved without requiring an interview
    b. Of the total number of cases approved, those in which approval followed a district office interview
4. Number of BSW applications denied
    a. Of the total number of cases denied, the number of cases that were denied without requiring an interview
    b. Of the total number of cases denied, those in which the denial followed a district office interview
5. Number of BSW cases entered into the USCIS Central Index System that are labeled/coded "384'
6. Provide data for cases in which BSW cases were not coded as "384" in the Central Index System
7. The shortest length of time between:
    a. Receipt of BSW applications and the BSW case being entered into the Central Index System
    b. Receipt of the BSW application and adjudication of the BSW application by the Regional Service Center for cases that are adjudicated without requiring an interview by the district office
    c. Receipt of the BSW application and adjudication of the BSW application when the BSW case is sent to the District Office for an interview
    d. Receipt of the BSW application and approval of the BSW application for cases that are approved after interview
8. The longest length of time between:
    a. Receipt of BSW applications and the BSW case being entered into the Central Index System
    b. Receipt of the BSW application and adjudication of the BSW application by the Regional Service Center for cases that are adjudicated without requiring an interview by the district office

c. Receipt of the BSW application and adjudication of the BSW application when the BSW case is sent to the District Office for an interview
d. Receipt of the BSW application and approval of the BSW application for cases that are approved after interview

9. The average length of time between:
a. Receipt of BSW applications and the BSW case being entered into the Central Index System
b. Receipt of the BSW application and adjudication of the BSW application by the Regional Service Center for cases that are adjudicated without requiring an interview by the district office
c. Receipt of the BSW application and adjudication of the BSW application when the BSW case is sent to the District Office for an interview
d. Receipt of the BSW application and approval of the BSW application for cases that are approved after interview

10. Please provide copies of policies, field manuals, and other directions provided by USCIS to the following:
a. Service center staff responsible for battered spouse waiver adjudication of BSW cases
b. District office staff involved in BSW case interviews and/or adjudications

11. The dates of all trainings staff responsible for BSW adjudications/interviews received on each of the following topics for (1) each Regional Service center and, (2) each district office involved in BSW adjudications and interviews, including:
a. Dynamics of domestic violence (battering or extreme cruelty) against adult victims
b. Dynamics of domestic violence (battering or extreme cruelty) against child victims
c. VAWA and BSW legislative history and purpose
d. VAWA confidentiality
e. For each training, please also list the format in which the training was delivered (e.g., In-person training, webinar, on-line course, etc.)

12. A description of the procedures used in the mailroom for each Regional Service Center to screen for BSW cases, to separate them from other cases received, and to clearly label the cases as VAWA confidentiality protected

13. A description of the procedures used at each regional service center and each District Office for providing separate and secure confidential storage, filing and handling of BSW cases.

We have completed the review of all documents and have determined that USCIS did not create nor does it have custody and control over records that may be responsive to items 2, 5, 6, 7a, 7b, 7d, 8a, 8b, 8d, 9a, 9b, 9d, 12 and 13. For the remaining items, USCIS identified 92 pages that are responsive to your request. Enclosed are 72 pages and 2 spreadsheets released in their entirety and 15 pages released in part. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(5) and (b)(6) of the FOIA.

During our review, USCIS located 5 pages of potentially responsive documents that may have originated from U.S. Immigration and Customs Enforcement (ICE). USCIS has sent the document(s) and a copy of your FOIA request to the ICE FOIA Office for consideration and direct response to you. Should you wish to contact ICE concerning the status of the processing of the document(s), please contact the ICE FOIA Office via phone at (866) 633-1182 or via e-mail at ICE-FOIA@dhs.gov. The ICE FOIA Office mailing address is 500 12th Street, S.W., MS 5009, Washington, D.C. 20536-5009.

Exemption (b)(5) provides protection for inter-agency or intra-agency memoranda or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

As a result of discussion between agency personnel and a member of our staff, as a matter of administrative discretion, we are releasing computer codes found on system screen prints previously withheld under exemption b(2). There may be additional documents that contain discretionary releases of exempt information. We will identify discretionary releases within the record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

The enclosed record consists of the best reproducible copies available. Certain pages may contain marks that appear to be blacked-out information. Such black marks would have been present prior to our receipt of the file and are not information we have withheld under the provisions of the FOIA or PA.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. You may file an administrative FOIA appeal to USCIS at: USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison, Jill Eggleston, for assistance at:

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO 64064-8010

Telephone: 1-800-375-5283
E-Mail: USCIS.FOIA@USCIS.DHS.GOV

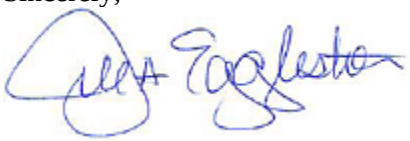
If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal Agencies. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Telephone: 202-741-5770
877-684-6448
Email: OGIS@NARA.GOV
Website: OGIS.ARCHIVES.GOV

The National Records Center does not process petitions, applications or any other type of benefit under the Immigration and Nationality Act. If you have questions or wish to submit documentation relating to a matter pending with the bureau, you must address these issues with your nearest District Office.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the control number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, or sent by fax to 816-350-5785. You may also submit FOIA/PA related requests to our e-mail address at uscis.foia@uscis.dhs.gov.

Sincerely,



Jill A. Eggleston
Director, FOIA Operations

Enclosure(s)

From: Newman, Edward A
Sent: Tuesday, November 23, 2010 4:54 PM
To: Ratcliff, Paulette C; Perillo, Susan M; /o=IRMMAIL/ou=MBX Servers - BUF/cn=Recipients/cn=SWKrasse; Belling, Jeffrey L; Bessette, Richard W; Croxie, Sonia M; Delmonte, Aaron J; Desmone, Mark A; Flanagan, Joan M; Gallagher, Adam J; Kefi, Hichem; Kozlowski, Nicole M; Morris, Michele D; Owen, Janice M; Tracy, Carolyn E; Vaccarelli, Christopher J; Wegrzyn, Caitlin L; Wilson, Gwendolyn E
Subject: FW: New classification in CIS
Something we need to be aware of and discreet about (see below)....

From: Renaud, Tracy L
Sent: Tuesday, November 23, 2010 3:26 PM
To: #NER-DD-FOD-COS; Selby, Cara M "Carrie"; Weeber, Karen E; Haag, Andrew P; Lawliss, Jeffrey R
Subject: New classification in CIS

All-

We were informed on a teleconference this afternoon that effective December 1, 2010 there will be a new classification in CIS. The new classification is "384" and will be used for individuals who have a VAWA, T or U case pending. This "384" designation is intended to send a signal to employees that they need to be contentious of the confidentiality requirements that accompany these victim cases. As it was explained to us, the intended use is that the Service Center will update CIS with the "384" designation when the victim application is filed. If the case is approved the proper adjustment code will be reflected in CIS. HQ is providing some sort of training materials but those materials will not be available when the new code is put in place so I wanted to get this information out to you now. Please make sure your staff is aware of the new classification and the responsibility that comes with it of protecting the applicant's information. If you have any questions please let me know.

Tracy L. Renaud
Regional Director, Northeast Region
US Citizenship & Immigration Services
Department of Homeland Security
[redacted] (b)(6)

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Section 384 Overview AND District Returns on VAWA-based filings

Sara Richard (ISO 3) and Karen Lemnah (SISO)
Vermont Service Center

U.S. Citizenship and Immigration Services

Topics to be covered

- I-360 General Information
- Section 384 Protections and Prohibitions
- Revocation Process
- Revocation reasons

U.S. Citizenship and Immigration Services

General VAWA Information



U.S. Citizenship and Immigration Services

Fraud Detection at VSC

- Close partnership between VAWA team and VSC Fraud Detection Unit
- Patterns that are identified are reported to the Fraud Unit
- VAWA unit applauded in 2007 VSC FDNS report for identifying, tracking, and deterrence of fraud

U.S. Citizenship and Immigration Services

Section 384

Special Protections and Prohibitions



U.S. Citizenship and Immigration Services

Prohibitions and Protections

- Section 384 of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) of 1996. (See 8 USC 1367)
  - Provides prohibitions for making adverse determinations based on information from certain sources
  - Prohibits disclosure of information



U.S. Citizenship and Immigration Services

Protections and Prohibitions

- Relates to any alien who is the beneficiary of an application for relief under:
  - INA 204(a)(1)(A)—Battered spouse or battered child of a USC
  - INA 204(a)(1)(B)—Battered spouse or battered child of an LPR
  - INA 216(c)(4)(C)—CPR seeking removal of conditions based on a waiver for hardship or battered/extreme cruelty



U.S. Citizenship and Immigration Services

Protections and Prohibitions

- Relates to any alien who is the beneficiary of an application for relief under:
  - INA 101(a)(15)(U)—U nonimmigrant
  - INA 101(a)(15)(T)—T nonimmigrant

U.S. Citizenship and Immigration Services

Protections and Prohibitions

- No official or employee of the Secretary of Homeland Security may make an adverse determination of admissibility or deportability using information furnished solely by:
  - Spouse/parent who battered or subjected the alien to extreme cruelty
  - Member of batterer's family/household
  - Spouse/parent who battered the alien's child or subjected the child to extreme cruelty
  - Member of family/household of the individual who battered the alien's child or subjected the child to extreme cruelty



U.S. Citizenship and Immigration Services

Protections and Prohibitions

- What does it mean?
  - Cannot use squeal letters from the abuser, the abuser's family or the abuser's household members
  - Cannot use statements made by the abuser to USIS (ex. Stokes interview)
- What can you use?
  - Information from an independent, 3rd party source
  - Information from the self-petitioner (new and historical)

U.S. Citizenship and Immigration Services

Protections and Prohibition

Disclosure Prohibition:

No official or employee of the Secretary of Homeland Security may permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureaus, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the INA....



U.S. Citizenship and Immigration Services

Protections and Prohibitions

- What does this mean?
  - Cannot disclose any information about the following forms:
    - I-360 battered spouse/ battered child
    - I-918, U-visa petitions
    - I-914, T-visa petitions
    - I-751, battered spouse/child waivers
  - Disclosure prohibition includes information as basic as the fact that there is a filing



U.S. Citizenship and Immigration Services

Exceptions for Disclosure

- Census information
- Legitimate law enforcement purpose
- Judicial review
- Applicant waives the confidentiality
- Public benefits
- Congressional oversight authority



U.S. Citizenship and Immigration Services

General Information

- VAWA officers receive intensive training in the following areas:
  - Domestic violence (types, recognition and evidence)
  - Requirements for immigrant relationships
  - Classification eligibility requirements
  - Confidentiality issues
  - Evidence restrictions



U.S. Citizenship and Immigration Services

General Information

- Regulations are not up to date
  - Sweeping changes to the law occurred in 2000
  - Additional changes in 2006
- VSC denial rate averages over 30 percent
- VSC averages 100 district returns per year
  - Majority are for issues that are permitted in the INA but not reflected in regulation



U.S. Citizenship and Immigration Services

Penalties

Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the INA shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation.

U.S. Citizenship and Immigration Services

INA 239(e)

Includes restrictions on immigration enforcement actions at specified locations (e.g. shelters, victim services, courthouses) and required that there must be a certification that IIRIRA § 384 was not violated when such actions are taken.

U.S. Citizenship and Immigration Services

I-485 interview with underlying I-360

- Tips:
  - Do not re-adjudicate the I-360
  - Questions asked at time of adjustment interview should pertain to information related to the I-485
  - Evidence provided by abuser cannot be used
    - If information can be independently corroborated, it can be used
  - Do not ask about the abuse



U.S. Citizenship and Immigration Services

I-485 interview with underlying I-360

- Tips:
  - Ensure use of safe address for correspondence
    - If application filed initially with VSC, refer to safe address worksheet
  - Verify source of information
  - Confirm information with publicly available information sources
  - No contact with abuser

U.S. Citizenship and Immigration Services

District Return Process

U.S. Citizenship and Immigration Services

District Return Process

- Only VSC has jurisdiction to revoke an I-360 based on VAWA
- Process governed by August 5, 2002 memo:
  - District officer details reasons for revocation request in a memo
  - Supervisor must concur and sign memo
  - File returned to VSC
  - VSC reviews request. Re-affirmations require VSC supervisory concurrence.



U.S. Citizenship and Immigration Services

District Return Process

- Only *new* information previously unavailable to the VSC at time of adjudication warrants review by VSC of an approved I-360
- Must have "good and sufficient cause"—not just disagree with the decision

U.S. Citizenship and Immigration Services

Common Reasons for District Returns

U.S. Citizenship and Immigration Services

Reasons for District Returns

- Self-petitioner remarried *prior* to the I-360 approval
  - Remarriage allowed after I-360 approval
- Inadmissibility issues related to criminality revealed by fingerprint results
  - Self-petitioners have an ongoing good moral character requirement through the time of adjustment

U.S. Citizenship and Immigration Services

Reasons for District Returns

- Abusive marriage terminated more than 2 years at the time I-360 filed
  - Termination of the abusive marriage allowed if termination occurred within 2 years of the I-360's filing date
  - Termination allowed after filing of I-360
- INA 204(c) or 204(g) not addressed
  - Remarks block should indicate "204(c) resolved" or "204(g) resolved"

U.S. Citizenship and Immigration Services

Reasons for District Returns

- Step-relationship created after child's 18th birthday (self-petitioning children only)
- Fraud/misrepresentation associated with the I-485
  - Fraud/misrepresentation may reflect on discretionary issues
  - Need evidence not prohibited from use by section 384

U.S. Citizenship and Immigration Services

Common Return Errors

U.S. Citizenship and Immigration Services

Angelidis, Theodora P

From: Zaragoza, Conrad J
Sent: Friday, May 16, 2014 11:45 AM
To: Sorges Collins, Rima L; Watson, Natalie R; Lombardo, Rosio
Cc: Angelidis, Theodora P; Bailey Boutte, Maria D
Subject: VAWA - Self-Petitioner can Remarry following Approval of a VAWA I-360

Follow Up Flag: Follow up
Flag Status: Flagged

Chiefs-
Please ensure this e-mail is shared with our staff and is incorporated into our training. Roger nicely explains the issue below.

Best regards,

Conrad J. Zaragoza
Field Office Director
Baltimore-District 6
DHS/USCIS

From: Picker, Roger K
Sent: Friday, May 16, 2014 9:39 AM
To: Zaragoza, Conrad J
Cc: Clemsen, Kimberly A; Warnke, Derek J; Collett, Greg L (b)(5)
Subject: VAWA - Self-Petitioner can Remarry following Approval of a VAWA I-360

Conrad,

(b)(5)

[redacted]

Roger

Roger K. Picker
Associate Counsel
Office of Chief Counsel
DHS/USCIS/Baltimore Field Office

*** Warning *** Attorney/Client Privilege *** Attorney Work Product *** Deliberative Process
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Washington, DC 20529

U.S. Citizenship and Immigration Services

HQDOMO 70/23.1
AFM Update AD08-16

Memorandum

TO: Field Leadership

FROM: Michael L. Aytes /s/ *Donald Neufeld*
Associate Director, Domestic Operations

DATE: April 11, 2008

SUBJECT: Adjustment of status for VAWA self-petitioner who is present without inspection

Revision of *Adjudicator's Field Manual* (*AFM*) Chapter 23.5
(*AFM* Update AD 08-16)

1. Purpose

This memorandum provides guidance to USCIS adjudicators for adjudicating adjustment of status applications filed by VAWA self-petitioners who are present in the United States without having been inspected and admitted or paroled.

2. Background

As a general rule, an alien seeking adjustment of status under section 245(a) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255(a), must have been inspected at a port-of-entry and either admitted or paroled into the United States. Under section 245(a)(2) of the Act, the adjustment applicant must also be admissible as an immigrant. Section 212(a)(6)(A) of the Act renders inadmissible an alien who is present in the United States without inspection. Section 212(a)(6)(A)(ii) of the Act, in turn, provides for a waiver of inadmissibility for a VAWA self-petitioner who can show a "substantial connection" between the VAWA self-petitioner's unlawful entry and the VAWA self-petitioner's having been subjected to battery or extreme cruelty. Thus, section 245(a) provides two separate bars to denying adjustment of status, in the case of an alien who is present without inspection.

In October 2000, section 1506(a) of Public Law 106-386 amended section 245(a) of the Act so that the "inspection and admission or parole" requirement does not apply to an alien who is seeking adjustment of status as a VAWA self-petitioner. Section 1506(a), therefore, eliminated at least one bar to granting adjustment of status to a VAWA self-petitioner. Public Law 106-386 did not, however, specify what effect, if any, the amendment to the introductory text in section 245(a) should have on the second bar to granting adjustment of status. In particular, section 106-386 amended neither section 245(a)(2) of the Act, which requires an adjustment applicant to be admissible, nor the inadmissibility ground in section 212(a)(6)(A)(i) of the Act.

Effective immediately, USCIS interprets the introductory text in section 245(a) of the Act as effectively waiving inadmissibility under section 212(a)(6)(A)(i) of the Act for any alien who is the beneficiary of an approved VAWA self-petition. All USCIS adjudicators will follow this interpretation in adjudicating a VAWA self-petitioner's adjustment of status application.

USCIS adjudicators will also deem this changed interpretation to be a sufficient basis to accept and approve, without filing fee, a motion to reconsider or reopen a VAWA self-petitioner's adjustment application the VAWA self-petitioner filed the application on or after January 14, 1998, and USCIS denied the application solely because the VAWA self-petitioner was inadmissible under section 212(a)(6)(A) of the Act.

3. Field Guidance and Adjudicator's Field Manual (AFM) Update

The adjudicator is directed to comply with the following guidance.

1. Chapter 23.5 of the AFM entitled, "Adjustment of Status to Lawful Permanent Residence," is amended by adding a new section (k), "VAWA-based Adjustment of Status Applications."

23.5 Adjustment of Status under Section 245 of the INA

* * * * *

(k) VAWA-based Adjustment of Status Applications. Under section 245(a) of the Act, the alien beneficiary of a VAWA self-petition may apply for adjustment of status even if the alien is present without inspection and admission or parole. USCIS has determined that this special provision in section 245(a) of the Act, in effect, waives the VAWA self-petitioner's inadmissibility under section 212(a)(6)(A)(i) for purposes of adjustment eligibility. Thus, a USCIS adjudicator will not find, based solely on the VAWA self-petitioner's inadmissibility under section 212(a)(6)(A)(i), that the VAWA self-petitioner cannot satisfy the admissibility requirement in section 245(a)(2) of the Act. The VAWA self-petitioner is *not* required to show a "substantial connection" between the qualifying battery or extreme cruelty and the VAWA self-petitioner's unlawful entry.

As with adjustment applicants under section 245(i) of the Act, this interpretation applies only to inadmissibility under section 212(a)(6)(A) of the Act. *Cf. Matter of Briones*, 24 I&N Dec. 355 (BIA 2007). A VAWA self-petitioner who, by repeated violations of the Act, has made himself or herself inadmissible under section 212(a)(9) of the Act may obtain adjustment of status only if the VAWA self-petitioner applies for, and obtains, the related form of relief from inadmissibility. *Cf.* section 212(a)(9)(A)(iii), (B)(III)(iv), (9)(C)(iii) of the Act.

2. Current section 23.5(k), "Precedent Decisions Pertaining to Adjustment of Status," is re-designated as section 23.5(l).

4. Contact Information

Questions regarding this memorandum may be directed to Amanda Atkinson, Office of Policy and Strategy, or David Tu, Service Center Operations. Inquiries should be vetted through appropriate supervisory channels.

Distribution List: Regional Directors
District Directors
Field Office Directors
Service Center Directors
National Benefits Center Director

Common Return Errors

- No memo
  - Without a memo, VSC does not know the reason the file returned
  - Will be shipped back without any detailed review or action
- No sign off from supervisor
  - Supervisory concurrence for revocation request is required
- No usable adverse information provided



U.S. Citizenship and Immigration Services

Common Return Errors

- Abuser lost status after I-360 filing
  - LPR abuser may also have lost status within 2 years preceding I-360 filing
  - USC abuser may relinquish citizenship within 2 years preceding I-360 filing
- Marriage termination after I-360 filed
  - Marriage may also be terminated within 2 years preceding I-360 filing

U.S. Citizenship and Immigration Services

Common Return Errors

- Marriage not legal due to bigamy
  - INA allows for bigamy on the part of the abuser
- Self-petitioning child over 21 at time of approval
  - Self-petitioning children do not age out if they met the age requirements at the time of filing
- Self-petitioning child over 21 at time of filing
  - Law change in 2006 allows for certain self-petitioning children to be over 21 but under 25 at the time of filing



U.S. Citizenship and Immigration Services

QUESTIONS?

U.S. Citizenship and Immigration Services

From: Bazylak, Mary
Sent: Tuesday, October 30, 2007 7:54 AM
To: Ellis, Kenneth W; Fiorita, Michael M; Mayer, Donald F; Rinehart, Brett R; Angelidis, Theodora P; Perry, Len; Peterson, Jonathan W
Subject: FW: Automatic Revocation of I-360 Upon Re-marriage of Self- Petitioner
Just a reminder....

From: Bazylak, Mary
Sent: Tuesday, June 12, 2007 7:10 AM
To: Ellis, Kenneth W; Fiorita, Michael M; Garrett, Henry J; Mayer, Donald F; Rinehart, Brett R; Angelidis, Theodora P; Perry, Len; Peterson, Jonathan W; Reynoso, Rosmary D
Cc: Almeida, Yolanda R; Bazylak, Mary
Subject: FW: Automatic Revocation of I-360 Upon Re-marriage of Self- Petitioner

VAWA info below. Thanks Don. M.

From: Mayer, Donald F
Sent: Tuesday, June 12, 2007 6:32 AM
To: Bazylak, Mary
Subject: FW: Automatic Revocation of I-360 Upon Re-marriage of Self- Petitioner

FYI.

Don M.

From: Murphy, George H
Sent: Monday, June 11, 2007 5:29 PM
To: Mayer, Donald F
Subject: FW: Automatic Revocation of I-360 Upon Re-marriage of Self- Petitioner

Hi, Mr. Mayer ~ both the form instructions and the regs are very much out of date; there are no regs yet covering the VAWA 2000 law, let alone the 2005 law or the supplemental August 06 bits. I added below this response a relating message from earlier this year. ~ George

Please note the following clip from INA 204(h):

INA: ACT 204 - PROCEDURE FOR GRANTING IMMIGRANT VISAS
Sec. 204. [8 U.S.C. 1154]

(h) The legal termination of a marriage may not be the sole basis for revocation under section 205 of a petition filed under subsection (a)(1)(B)(ii) pursuant to conditions described in subsection (a)(1)(A)(iii)(I). 11/ Remarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of section 204(a)(1)(A) or in section 204(a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 205.

INA: ACT 204 FN 11
FN 11 Language inserted at the end by section 1507(b) of Public Law 106-386, dated October 28, 2000.

From: Mayer, Donald F
Sent: Monday, June 11, 2007 2:47 PM
To: Murphy, George H
Subject: Automatic Revocation of approved I-360

Mr. Murphy:

Good afternoon. If you could provide me with some information, I'd appreciate it. I've been told that, contrary to the instructions accompanying the I-360, re-marriage no longer automatically revokes an approved I-360. I reviewed the VAWA of 2005, but did not see any reference to that issue.
Can you confirm this? Can you tell me what legislation or field memo to reference?
Thank you for your assistance.

Donald Mayer, DAO
Tampa District

From: Murphy, George H
Sent: Friday, January 12, 2007 9:02 AM
To: Mayer, Donald F
Subject: RE: Automatic Revocation of I-360 Upon Re-marriage of Self- Petitioner

Good morning, Mr. Mayer ~ there's a key matter of timing here, one that makes the remarriage a fatal issue or a non-issue (no middle ground) based on law changes that took effect on October 28, 2000 (and for which regulations have not yet been updated). As a result of the lack of updated regs, we work based on the ACT.

The main idea is that with this law change remarriage after approval of the I-360 is not an issue; whereas, marriage to someone other than the alleged abuser prior to approval of a VAWA self-petition effectively nullifies the qualifying relationship. In the INA, please note Section 204(h) Survival of Rights to Petition: The big string of subparagraphs are the references to VAWA, and the second sentence is the one saying that after approval of the VAWA 360 a subsequent marriage will not be the basis for a revocation.

In short, depending on when the other marriage occurred in relation to the approval of the I-360 will swing you definitively in one direction of the other. As far as effecting the revocation, there's a memo outlining the procedure (link is below); the brief version is that field officers are called to write a memo, have supervision sign off on it, then forward the file to VSC for consideration.

~ George

Revocation memo link:
http://vsc.cis.dhs.gov/ADJ_Memos/VAWA/Revocation%20of%20VAWA%20self%20petitions%2080502.pdf

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From: Mayer, Donald F
Sent: Friday, January 12, 2007 7:45 AM
To: Murphy, George H
Subject: Automatic Revocation of I-360 Upon Re-marriage of Self- Petitioner

Good morning, Mr. Murphy. I have a pending I-485 for a woman and her two children who have an approved I-360. The mother has re-married; therefore the I-360 is automatically revoked per the 360 instructions. I have two questions: Should the case be returned to your office, or do I tell her via denial letter that the petition is revoked, and the 485 as well?
If I inform her of the revocation, could you tell me the section of law that pertains to this?

Thank you very much for your assistance.

Don Mayer, DAO
Tampa Sub-Office

From: Bazylak, Mary
Sent: Wednesday, September 12, 2007 12:50 PM
To: Ellis, Kenneth W; Fiorita, Michael M; Garrett, Henry J; Mayer, Donald F; Rinehart, Brett R; Angelidis, Theodora P; Hearn, Annette; Perry, Len; Peterson, Jonathan W
Subject: FW: I-360 Self-Petitions

Attachments: 384.JPG; 8 USC 1367 as amended (2).rtf; SAC FOD memo signed.pdf

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From: Shavers, Timothy
Sent: Wednesday, September 05, 2007 5:12 PM
To: Redman, Kathy A; Almeida, Yolanda R; Bazylak, Mary; Kennedy-Lindstrom, Julie A; Smith, Kristen J; Hicks, Scott J
Subject: FW: I-360 Self-Petitions

Staff,

Please disseminate among your units.

Thanks,
Timothy Shavers
Tampa FDNS
813-637-3081

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From: Haag, Andrew P
Sent: Thursday, August 30, 2007 8:27 AM
To: Anozie, Mary-Margaret A; Ayze, Thomas M; Beiger, Paul; Bittner, Adrian; Bonano, Miguel A; Cassidy, Francis T; Castro, Anouchka; Christopher, Ross J; Clarke, Arthur F; Collins, John W; Condon, Deborah J; Costa, Emily Rose; DeBuys, Rosanna A; Ellis, Mildred D; Ferguson, Michelle; Ferro-Hanley, Ana; Fineaso, Samson P; Fiorilli, Joanne M ; Fonda, Christopher; Francis, Troy A; Gilbert, Joseph J; Gray, Tamika S; Hernandez, Pablo H; Hersee, Mark; Higgins, Stephen W; Kaiser, Long D; Kennedy, Robert V; Knipper, Joseph; Krinsky, David; Kuhn, Thomas P; Lorenc, James; McCotter, Robert; McCoy, Tina; Muttuswamy, Sivaloganathan L; Ninan, Simon; Palermo, Raymond J; Parkinson, Valentine; Pastuszek-Horn, Michale; Perez, Amada J; Pittman, Michael R; Plourde, Toby R; Rozij, Roman; Sassone, Joann P; Shatzkamer, Mel; Shavers, Timothy; Shaw, Terry; Skinner, Stanley N; Spaulding, David; Vanslette, Heather P; Yacenda, Joseph; Zellen, Lorie
Subject: FW: I-360 Self-Petitions

This e-mail and the attached documents should serve as a refresher to those of you that had the VAWA training last year and as guidance for any of you who missed the training. This area can be a tricky one, with many restrictions. Please read through the material closely and if you have any questions please feel free to reach out to the FDNS POC on VAWA I-360 cases Tracey Parsons (802- 527-4781) with any questions.

Andy

Andrew P. Haag
Regional Immigration Officer
DHS/USCIS
Fraud Detection & National Security
Eastern Regional Office
(802) 660-1136 Office
[redacted] Cell (b)(6)

From: Dean, Kimberly D
Sent: Wednesday, August 29, 2007 1:22 PM
To: Haag, Andrew P
Cc: Parsons, Tracey E
Subject: FW: I-360 Self-Petitions

Hi Andy-

It's been awhile since the formal FDNS VAWA training took place and now would probably be as good a time as any to send this reminder out. We have lots of new FDNS employees and the VAWA phone calls seem to be increasing.

Tracey Parsons continues to be the FDNS POC of all VAWA related matters. Tracey would encourage anyone with questions relating to the I-360 VAWA cases to call her directly.

Please see her message below and disseminate as you deem appropriate.

Thanks!

-Kim

Kimberly D Dean | DHS| USCIS | FDNS| Supv Intelligence Research Specialist | FDU - Vermont |(802.527.4786 | 7: 802.527.4837 | *: Kimberly.Dean@dhs.gov

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From: Parsons, Tracey E
Sent: Wednesday, August 29, 2007 1:12 PM
To: Dean, Kimberly D
Cc: Mickey, Jennifer L
Subject: I-360 Self-Petitions

Kim,

As we discussed in our Unit meeting today, our Unit and the FDNS IO'S appear to be encountering more fraud leads as it pertains to I-360 Self-Petitioning Spouse of an Abusive USC or LAPR (VAWA) applications. This month alone, at least four individuals within our Unit were contacted regarding existing I-360 Self-Petitions. I'm also aware of at least three instances within a recent one month time frame in which FDNS was contacted at a HQ or District level regarding possible fraudulent I-360 Self-Petitions. The noted increase in I-360 Self-Petition fraud leads is to be expected. The I-360 Self-Petition is still a relatively new application type, with filings submitted to USCIS through the VSC increasing by hundreds and thousands one Fiscal Year (FY) to the next, probably as the result of more and more people within the immigrant community becoming aware of its existence. The fact that there is no longer a fee associated with the I-360 Self-Petition will also likely contribute to an increase in filings. For the most part, I've noted that when FDNS is contacted in regards to a suspect I-360 Self-Petition, it is usually though another DHS entity, such as ICE. However, occassionally, the lead is received from the alleged abuser. For example, in at least two separate instances within the last two weeks, it was the alleged abuser who reached out to FDNS to report fraud on the part of the Self-Petitioning spouse. In one instance, the alleged abuser faxed information that was forwarded to an FDNS IO, who then actually contacted the alleged abuser telephonically to discuss the alleged marriage and VAWA fraud. The IO in this particular instance cannot be faulted. The IO is a relatively new FDNS employee with no experience regarding victim based filings with USCIS, and has not had proper training as it pertains to the I-360 Self-Petition.

Due to the continued increase in the number of I-360 Self-Petitions being filed, the apparent increase in the number of VAWA related fraud referrals, the continued hiring of many new FDNS employees, and the apparent lack of formal training as it pertains to developing VAWA related fraud leads and investigations, it might be worth reminding FDNS employees that Section 384 applies to all VAWA related filings. As you know, Section 384 attempts to protect the victim by prohibiting the disclosure of information and prohibiting the use of information as obtained solely from specific sources (such as the alleged abuser) to make an adverse determination. In general, no one should disclose information regarding an I-360 Self-Petition or its existence to a non-DHS entity, particularly an alleged abuser. Not only can this disclosure be in violation of Section 384, but it may put the Self-Petitioner, who may be a true victim of domestic violence, at risk. This doesn't mean that an FDNS employee cannot receive information and evidence as provided by an alleged abuser and use it to assist in the development of a case for fraud. It is also worth noting that information that is considered sufficient for the denial or revocation of an I-130 spousal petition is not necessarily sufficient for the denial or revocation of an I-360 Self-Petition. I have had more than one IO express to me his or her disappointment and frustration after learning that the alleged abuser's written statements regarding the validity of the marriage could not be used by the VSC VAWA Unit to deny or revoke an I-360 Self-Petition because it was not supported by third party evidence from an unbiased source. While I believe an argument could be made that the use of this type of information is not prohibited for an adjudicative decision, this is how Section 384 is interpreted at this time by the VSC VAWA Unit. I have attached the Section 384 Warning that is contained in all I-360 Self-Petitions as a reference and for guidance. I should note at this time that Section 384 does not apply in instances where the I-360 Self-Petition has been denied and in which the time frame to file an appeal has expired without an appeal being filed. Denied I-360 Self-Petitions in which an appeal has been filed and is pending is subject to Section 384. I've also attached the possible penalties for disclosure as provided to me by former FDNS Counsel and an ICE memorandum that provides Special Agents with interim guidance as it pertains to VAWA related investigations as provided to me by an FDNS IO who has successfully worked within the constraints put forth in Section 384 (may prove to be useful for field IO'S in particular). This information and additional VAWA related information can be obtained from the FDNS website through Domestic Information Resources located under the Resources tab found on the left side of the FDNS home page. In addition, as the FDNS VAWA POC, I would certainly assist any of my colleagues in the field who approached me with questions or were in need of additional information. I don't believe any of us should be compromised while conducting our duties in good faith as a result of unavailable training or lack of working knowledge. I also wouldn't want a Self-Petitioner who is found to truly be a victim of domestic violence to be placed at additional risk as a result of our actions. By reminding everyone of Section 384, perhaps potential negative experiences can be avoided.

Thank you for your consideration in this matter.

Tracey

Tracey E. Parsons, Sr. Intelligence Research Specialist
USCIS/Fraud Detection & National Security
Fraud Detection Unit- Vermont
Ph: 802-527-4781

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

December 15, 2010 **PM-602-0022**

Policy Memorandum

SUBJECT: Revocation of VAWA-Based Self-Petitions (Forms I-360); *AFM* Update AD10-49

Purpose
This Policy Memorandum (PM) restates the Violence Against Women Act (VAWA) revocation policy.

Scope
Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

Authority
8 CFR 205.2; 62 FR 16607.

Background
A memorandum addressing the revocation of VAWA-based self-petitions was originally issued August 5, 2002. At that time, certain district offices were issuing notices of intent to revoke Form I-360, Petitions for Amerasian, Widow(er), or Special Immigrant, that were approved at the Vermont Service Center (VSC) pursuant to the self-petitioning provisions contained in VAWA. The 2002 memorandum was intended to ensure consistency in the adjudication of VAWA self-petitions, including consistency in revocations of VAWA self-petitions. Accordingly, the VSC was designated as the USCIS office with the sole authority to revoke an approved VAWA self-petition. However, district offices have not been following the 2002 memorandum instructions.

Policy
In 1997, to ensure appropriate and expeditious handling of all self-petitions filed by battered spouses and children, the former Immigration and Naturalization Service implemented a centralized filing procedure by which all VAWA self-petitions are adjudicated at the VSC. The VSC adjudications officers assigned to the VAWA unit have received specialized domestic violence training and have developed expertise in adjudicating these petitions, including expertise in identifying fraudulent filings. Therefore, in order to ensure consistency in the adjudication of VAWA cases, self-petitions that field offices believe should be reviewed for possible revocation are to be returned to the VSC for review.

This PM therefore reiterates the policy in order to remind officers that a request for review must be based on new evidence not available at the time the Form I-360 was approved by the VSC.

All requests must be accompanied by a memorandum explaining the new evidence and its impact on the adjudication of the self-petition, and the memorandum must be signed by a supervisor. As of the date of this PM, the VSC will not accept any requests for review that do not follow the instructions outlined below.

Implementation
Accordingly, the *AFM* is revised as follows:

1. Add new paragraph (z) to *AFM* Chapter 21.14 to read:

Chapter 21: Family-based Petitions and Applications

* * *

21.14 Self-petitions by Abused Spouses and Children

* * *

(z) Revocation of VAWA-based Forms I-360.

(1) Field Request for Review of an Approved VAWA-based Form I-360. If an officer in the field receives new information that was not available to the VSC at the time of the approval of a VAWA self-petition, and that new information leads the officer to reasonably believe that a VAWA self-petition should be revoked, the officer must write a memorandum to his or her Supervisory Immigration Service Officer (SISO) explaining why the VAWA self-petition should be reviewed for possible revocation. The memorandum must state what the new information is and how USCIS obtained it.

(2) Supervisory Review and Return to VSC. If, upon review of an officer's memorandum of explanation, the SISO concurs in the officer's assessment, the SISO must sign the memorandum and forward it, with the file in question, to the VSC to the attention of the VAWA unit. A VSC VAWA unit supervisor will review the memorandum of explanation and the relating file and make a recommendation either to initiate revocation proceedings or to reaffirm the self-petition. If the VSC supervisor concurs with a recommendation to reaffirm the self-petition, he or she must write a memorandum explaining why the self-petition was not revoked. This memorandum will be returned to the field with the file. In all such situations, the VSC is expected to complete its review process on an expedited basis. Self-petitions being returned to the VSC from a field office, or from the VSC to a field office, must in all cases be accompanied by a memorandum signed by the appropriate supervisor.

(3) Reminder of Special Provisions Relating to VAWA Cases. Officers should keep in mind that section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (8 U.S.C. § 1367) prohibits DHS employees from making an adverse determination of admissibility or deportability of an alien using information provided solely by:

- A spouse or parent who has battered the alien or subjected the alien to extreme cruelty;

- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty;

- A spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty); or

- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty. (*See* IIRIRA § 384(a)(1). For limited exceptions to this prohibition, *see* IIRIRA § 384(b).)

Any adverse information received by USCIS from a self-petitioner's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, must be independently corroborated by an unrelated source before USCIS may take adverse action based on that information. (*See* Virtue, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384," (May 5, 1997).)

Section 384 of IIRIRA also prohibits DHS employees from permitting the use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information that relates to an alien who is the beneficiary of a VAWA-based self-petition. (*See* IIRIRA § 384(a)(2).) Anyone who willfully uses, publishes, or permits such information to be disclosed in violation of IIRIRA § 384 will face disciplinary action and be subject to a civil money penalty of up to $5,000 for each such violation. (*See* IIRIRA § 384(c).)

2. Add new paragraph (z) to *AFM* Chapter 21.15 to read:

21.15 Self-petitions by Abused Parents of U.S. Citizens

* * *

(z) Revocation of VAWA-based Forms I-360.

(1) Field Request for Review of an Approved VAWA-based Form I-360. If an officer in the field receives new information that was not available to the VSC at the time of the approval of a VAWA self-petition, and that new information leads the officer to reasonably believe that a VAWA self-petition should be revoked, the officer must write a memorandum to his or her Supervisory Immigration Service Officer (SISO) explaining why the VAWA self-petition should be reviewed for possible revocation. The memorandum must state what the new information is and how USCIS obtained it.

(2) Supervisory Review and Return to VSC. If, upon review of an officer's memorandum of explanation, the SISO concurs in the officer's assessment, the SISO must sign the memorandum and forward it, with the file in question, to the VSC to the attention of the VAWA unit. A VSC VAWA unit supervisor will review the memorandum of explanation and the relating file and make a recommendation either to initiate revocation proceedings or to reaffirm the self-petition. If the VSC supervisor concurs with a recommendation to reaffirm the self-petition, he or she must write a memorandum explaining why the self-petition was not revoked. This memorandum will be returned to the field with the file. In all such situations, the VSC is expected to complete its review process on an expedited basis. Self-petitions being returned to the VSC from a field office, or from the VSC to a field office, must in all cases be accompanied by a memorandum signed by the appropriate supervisor.

(3) Reminder of Special Provisions Relating to VAWA Cases. Officers should keep in mind that section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (8 U.S.C. § 1367) prohibits DHS employees from making an adverse determination of admissibility or deportability of an alien using information provided solely by:

- A spouse or parent who has battered the alien or subjected the alien to extreme cruelty;

- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty;

- A spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty); or

- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty. (*See* IIRIRA § 384(a)(1). For limited exceptions to this prohibition, *see* IIRIRA § 384(b).)

Any adverse information received by USCIS from a self-petitioner's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, must be independently corroborated by an unrelated source before USCIS may take adverse action based on that information. (*See* Virtue, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384," (May 5, 1997).)

Section 384 of IIRIRA also prohibits DHS employees from permitting the use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information that relates to an alien who is the beneficiary of a VAWA-based self-petition. (*See* IIRIRA § 384(a)(2).) Anyone who willfully uses, publishes, or permits such information to be disclosed in violation of IIRIRA § 384 will face disciplinary action and be subject to a civil money penalty of up to $5,000 for each such violation. (*See* IIRIRA § 384(c).)

☞ 3. The *AFM* **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

AD10-49 12/15/2010	**Chapter 21.14(z)** **Chapter 21.15(z)**	This memorandum provides guidance on revocations of VAWA-based I-360s.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy & Strategy or to the Service Center Operations Directorate.

Referred to Immigration and Customs Enforcement

Referred to Immigration and Customs Enforcement

Referred to Immigration and Customs Enforcement

Referred to Immigration and Customs Enforcement

Referred to Immigration and Customs Enforcement

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

September 12, 2013 **PM-602-0089**

Policy Memorandum

SUBJECT: Exception to the Two Year Custody and Two Year Residency Requirement for Abused Adopted Children

Purpose

This policy memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers in adjudicating Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, filed by a self-petitioning adopted child, when the adopted child has been battered or abused. This PM revises Chapter 21.14 of the Adjudicator's Field Manual (AFM); AFM Update AD13-15.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

Authority

Section 101(b)(1)(E) of the Immigration and Nationality Act (INA), as amended by section 805(d) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162 (2006)

Background

INA section 101(b)(1)(E) specifies the requirements that must be met in order for an adopted child (other than an orphan or Hague Convention adoption) to be considered, for immigration purposes, to be the child of his or her adoptive parents. Under INA section 101(b)(1)(E), the adoptive parent must have completed the adoption before the adopted child's 16th (or in some cases, 18th) birthday. The adoptive parent must also have had legal custody of the adopted child for at least two years, and must have resided with the adopted child for at least two years.

VAWA legislation permits certain abused adopted alien children of U.S. citizens or lawful permanent residents to self-petition for immigrant classification. Before the VAWA 2005 amendments, however, the custody and residence requirements under INA section 101(b)(1)(E) hindered the ability of an abused adopted child from seeking this protection. Adopted alien children were previously required to demonstrate that they completed two years of legal custody and two years of residence with the U.S. citizen or lawful permanent resident adoptive parent. There were no exceptions, even if that adoptive parent was abusive to the adopted child. These

requirements left alien children who were victims of domestic abuse ineligible for immigrant classification and ineligible to file a self-petition until they remained in the abusive household for at least two years. Others were ineligible because they were removed or fled from an abusive household before they had met the two year legal custody and two year residency requirements.

Section 805(d) of VAWA 2005 eliminated these two requirements in amending the definition of an adopted child under INA section 101(b)(1)(E)(i) for a child who has been battered or subjected to extreme cruelty by the adoptive parent or by household family members of the adoptive parent. The VAWA 2005 changes allow abused adopted children to leave an abusive household without adversely affecting their eligibility to file a VAWA self-petition.

Policy

The guidance herein is applicable to the self-petitioning child filing a VAWA-based Form I-360.

An abused adopted child submitting a petition for classification as a lawful permanent resident under INA section 204 must still show a valid adoption and that he or she shared a residence for some period of time with the abusive adoptive parent. However, the amendment to INA section 101(b)(1)(E) means that an adopted child who has been abused by the adoptive parent or household family member is no longer required to present evidence that he or she has been in the custody of, and resided with, the adoptive parent for at least two years.

Implementation

Accordingly, the AFM is revised as follows:

☞ 1. Add new paragraph (d) to AFM Chapter 21.14 entitled "Self-petitions by Abused Spouses and Children" to read:

Chapter 21.14: Self-petitions by Abused Spouses and Children

* * *

(d) Abused Adopted Child.

(1) Removal of 2-Year Legal Custody and 2-Year Residency Requirement. Generally, for an adoption to be the basis for granting immigration benefits, evidence of the following is needed to establish an adopted child's eligibility under INA sections 201(b)(2)(A)(i) or 203(a)(2)(A):

- A legal adoption took place:
  - Prior to the child reaching the age of 16; or
  - Prior to the child reaching the age of 18, if the child is the birth sibling of another child who was adopted by the same adoptive parent;
- The adoptive parent(s) had two years of legal custody of the child; and

- The adoptive parent(s) had two years of residence with the child.

However, section 805(d) of VAWA 2005 amended the definition of adopted child in INA section 101(b)(1)(E)(i). This change in the law removed the two year legal custody and the two year residency requirement for adopted children who were battered or subjected to extreme cruelty by their adoptive parent(s) or household family members.

(2) Applicability of 101(b)(1)(E)(i). The amendment to 101(b)(1)(E) is applicable to a child who is the beneficiary of a Form I-130, Petition for Alien Relative, and to the self-petitioning child filing a VAWA-based Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

A self-petitioning child, who is related to his or her abusive parent through adoption, will not need to establish the two year legal custody and two year residency requirements with the adoptive parent if the self-petitioning child can demonstrate that he or she was battered or subjected to extreme cruelty by the adoptive parent or a member of the adoptive parent's family residing in the same household.

(3) Eligibility Requirements.

(A) Self-Petitioning Child of Abusive USCs and LPRs (Generally). INA section 204 allows for alien children of abusive U.S. citizens and lawful permanent residents to self-petition for classification as lawful permanent residents. The child self-petitioner is required to provide evidence that he or she:

- Is the child of a U.S. citizen or lawful permanent resident;
- Is eligible to be classified under INA section 201(b)(2)(A)(i) or 203(a)(2)(A);
- Resides or has resided with the abusive U.S. citizen or abusive lawful permanent resident parent;
- Has been battered by or has been the subject of extreme cruelty perpetrated by the U.S. citizen or lawful permanent resident parent; and
- Is a person of good moral character.

(B) Self-Petitioning Adopted Child of Abusive USCs and LPRs. The VAWA 2005 amendments to the definition of an adopted child (i.e., the removal of the two year custody and two year residency requirements for abused adopted children) do not remove the need for adopted children to establish all other requirements for self-petitioning children under INA section 204. The self-petitioning adopted child is required to provide evidence demonstrating that he or she:

- Was legally adopted:
  - Before attaining age 16; or
  - Before attaining age 18 if the child is the birth sibling of another child who was adopted by the same adoptive parent;
- Was legally adopted by a U.S. citizen or lawful permanent resident, or that his or her adoptive parent is legally married to a U.S. citizen or lawful permanent resident;
- Resided for some period with the abusive U.S. citizen or abusive lawful permanent resident;
- Was battered by or subjected to extreme cruelty perpetrated by the U.S. citizen parent or lawful permanent resident parent or a member of the U.S. citizen's or lawful permanent resident's family residing in the same household; and
- Is a person of good moral character.

(4) Filing from Outside the United States. There is no statutory requirement that a self-petitioning adopted child be living in the United States at the time the self-petition is filed. The filing requirements found in INA sections 204(a)(1)(A)(v) and 204(a)(1)(B)(iv) relating to a self-petitioning spouse, intended spouse, or child living abroad of a U.S. citizen or lawful permanent resident shall be applicable to self-petitions filed by an abused adopted child.

(5) Late-filing After Age 21. The provisions of INA section 204(a)(1)(D)(v) which provide continued eligibility to file as a self-petitioning child after attaining age 21, if the abuse was one central reason for the delay in filing, shall be applicable to self-petitions filed by an abused adopted child. For guidance relating to the late-filing provisions, please see the September 6, 2011 memoranda entitled: *Continued Eligibility to File for Child VAWA Self-Petitions After Attaining Age 21; Revisions to Adjudicator's Field Manual (AFM) Chapter 21.14 (AFM Update AD07-02), PM-602-0048.*

(6) Evidence.

(A) Standard of Proof. The standard of proof applied in the adjudication of a self-petition filed by an abused adopted child is "preponderance of the evidence". This evidentiary standard is met if the self-petitioning child submits sufficient evidence to establish that the facts of the case are more likely true than not true.

(B) Evidentiary Requirements. A copy of the legal adoption decree, issued by the appropriate civil authority, or other relevant credible evidence of the self-petitioning child's legal relationship to the abuser should be submitted with the I-360. If a copy of the legal adoption is

unavailable, the self-petitioning adopted child should provide any other credible evidence to demonstrate that a legal adoption took place. Additionally, the self-petitioning adopted child must provide credible evidence demonstrating the following:

- Some period of shared residence with the abusive parent;
- The self-petitioning child's good moral character, if age 14 and over;
- The battery and/or extreme cruelty perpetrated by the U.S. citizen or lawful permanent resident parent or perpetrated by a member of that parent's family residing in the same household; and
- The abuser's U.S. citizenship or lawful permanent resident status.

Evidence of shared residence with the abusive parent may include, but is not limited to the following:

- Employment records, school records, hospital or medical records, rental records;
- Insurance policies; or
- Affidavits or any other type of relevant credible evidence of residency.

A good moral character determination will be made on a case-by-case basis, taking into account the provisions of INA section 101(f) and the general standards of the community. Evidence of good moral character may include, but is not limited to the following:

- The self-petitioner's affidavit of good moral character, accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the three year period immediately preceding the filing of the self-petition.
  - Self-petitioners who lived outside of the United States should submit similar clearances or background checks issued by the appropriate authority in the foreign country in which he or she resided for six or more months during the three year period immediately preceding the filing of the self-petition.
- If the types of clearances listed above are not available, the self-petitioner may include an explanation and submit any other credible and relevant evidence with his or her affidavit.

Evidence of battery or extreme cruelty may include, but is not limited to, the following:

- Reports and affidavits from: police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials;
- Evidence that the child was placed in a shelter for the abused or in foster care or state custody as a result of removal from a home due to abuse;
- Photographs of injuries accompanied by affidavits from witnesses, if possible;
- A statement from the child or other competent individual describing the battery or extreme cruelty in the child's relationship with the adoptive parent; or
- Similar evidence showing the abusive parent perpetrated such acts against another immediate family member in the household to which the child was a witness or was adversely impacted by the behavior.

(C) Consideration of Evidence. Officers will consider all relevant, credible evidence when making a determination regarding claims to all eligibility requirements. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS.

☞ 2. The AFM **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

AD13-15 9/12/2013	**Chapter 21.14(d)**	Provides guidance on the amended definition of adopted child for abused children as provided by VAWA 2005.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Family Immigration & Victim Protection Division, Office of Policy & Strategy.

Barnes, Maria I

From: Rachal, Terri L
Sent: Friday, October 11, 2013 8:33 AM
To: Marszalek, Richard J; Barnes, Maria I; Cherry, Kesha L; Wheeler, Marques K; Miller, Avakian Y; Maxwell, Reginald G; Lane, Telga F; Mansfield, Rayshonda T; Epps, Yvonne; Phillips, Aretha T
Subject: FW: Applicant's request for change of an I751 to e or f (battered spouse or child)

FYI

Terri

From: Charles, Sheryl F
Sent: Friday, October 11, 2013 8:04 AM
To: Abraham, Zenebe; Aerts, Kellee A; Baker, Angelita I; Baskerville, Julia A; Bell, Charles A; Bell, Theresa L; Bessard, Tracey; Calhoun-Flores, Linda M; Carpenter, Christopher D; Davis, Kennisha N; Epie-Alobwede, Ewang T; Exum, Robert E; Frasier, Mamie S; Gellineau, Andrea K; Gilmore, Moses; Grohmann, Ronald J; Hill, Mary L; Howard, Darren M; Jenkins, Vanessa G; Kearley, Neal B; Lawyer, Thomas J; Lum, Robert C; Marshall, Crystal N; McClain, Anita A; Nelson, Nathan A; Nguyen, Hong Q; Okwuosah, Juliette O; Perkins, Vanessa K; Power, Mentoria A; Roberts, Constance D; Roth, Emanuel J; Singleton, Ronald; Summers, Nadia S; Swift, Lloyd; Walker, April G; Wanjiru, Anji G; Wideman, Douglas L; Williams, Gloria J; Williams, Roger; Wilson, David R; Wynn, Ruby J; Bostick, Joyce; Brooks, Michael J; Burns, Nicholas P; Garcia, Yaviel E; Griffith, Alicia; Igbinoba, Solo O; Lee, Kalani K; Moses, Michele D; Reed, Gwendolyn F; Sachs, Neal; Short, Sheila M; Yearby, Denise N; Baker, Melessa A; Paredes, Marianna
Cc: Aerts, Kellee A; Coleman, Christal A; Head, Toni M; Hicks, James; Miller, Shineka C; Nnabue, Tony C; Pantos, Stephen J; Rachal, Terri L; Walker, April G; Whitehead, Esther A; Williams, Gloria J; Williams, Jaclyn M; Johnson, Cheryl L; DeBoe, Mayburn E
Subject: FW: Applicant's request for change of an I751 to e or f (battered spouse or child)

Good morning All,

Please see the below interim guidance.

Thank you,

S. Charles

From: Onyango, Paul O
Sent: Friday, October 11, 2013 7:48 AM
To: DeBoe, Mayburn E; Charles, Sheryl F; Johnson, Cheryl L
Subject: FW: Applicant's request for change of an I751 to e or f (battered spouse or child)

Good morning SMs – please disseminate...thank you!

Paul O. Onyango

Atlanta Field Office Director
Department of Homeland Security
USCIS, Atlanta Field Office, District 8

From: Yeager-Bowser, Keri K
Sent: Friday, October 11, 2013 7:46 AM

To: SERLEADERSHIP
Cc: Bace, Philip R; Parker, Vanessa
Subject: Applicant's request for change of an I751 to e or f (battered spouse or child)

Field Leadership—

Please see the below interim guidance from HQ reference the change from a jointly filed I-751 to an I-751 waiver for a battered spouse/child.

If the beneficiary or child of the beneficiary appear for an interview on a jointly filed I-751, claims abuse and requests a waiver under box e or f, the ISO will:

- Inform the beneficiary/child of beneficiary that they will need to withdraw the jointly filed I-751 and re-file a new I-751 under e or f waiver request (with fee);
- Request the beneficiary/child of beneficiary to provide a written statement (with signature) requesting the withdrawal;
- Place the withdrawal statement on top of the I-751;
- Annotate the I-751 in the Action Block "Withdrawal" initial and date;
- Issue the beneficiary/child of beneficiary a withdrawal acknowledgement letter;
- Place a copy of withdrawal acknowledgment letter on top of withdrawal statement;
- Update MFAS; and
- Route the file to the NRC.

Further guidance will be forthcoming, but in the interim please follow this guidance. Thank you.

Happy Friday!

Keri Yeager-Bowser
Regional Immigration Services Officer
Southeast Regional Office
390 N. Orange Avenue
Orlando, FL 32801
407-237-8821

From: Flores, Mary F
Sent: Thursday, October 10, 2013 5:56 PM
To: Goodwin, Shelley M; Gallagher, Kevin E; Bace, Philip R; Woo, Ellen Y
Cc: Benton, Shelia G
Subject: Applicant's request for change of an I751 to e or f (battered spouse or child)

Good Afternoon,

The AOS Branch is a part of a working group that is tasked with developing a process for I-751 cases that are filed jointly and subsequently the beneficiary requests a change on the I-751 to a Waiver Request filing under e or f (battered spouse or child). The Don Neufeld policy memo dated April 3, 2009, gives guidance to waiver requests by applicants that are divorced, but does not address a battered spouse/child.

The waiver request for an e or f is a bit more challenging because of the VAWA provisions and urgency to update the appropriate systems to reflect the identifier code of "384" for the safe address.

The CSC has agreed to process any case with a waiver request for change to e or f, however, this would not include cases that are already referred to the field. Therefore, Field offices should follow the instructions below, until further guidance.

If the beneficiary or child of the beneficiary appear for an interview on a jointly filed I-751, claims abuse and requests a waiver under e or f, ISO will:

- Inform the beneficiary/child of beneficiary that they will need to withdraw the jointly filed I-751 and re-file a new I-751 under e or f waiver request (with fee);
- Request the beneficiary/child of beneficiary to provide a written statement (with signature) requesting the withdrawal;
- Place the withdrawal statement on top the I-751;
- Annotate the I-751 in the Action Block "Withdrawal" initial and date;
- Issue the beneficiary/child of beneficiary a withdrawal acknowledgement letter;
- Place a copy of withdrawal acknowledgment letter on top of withdrawal statement;
- Update MFAS; and
- Route the file to the NRC.

If you have any questions please contact me.

Mary

Mary Flores | Adjudications Officer | Adjustment of Status | DHS-USCIS | Field Operations Directorate/202 272-8258 desk [redacted] (b)(6)

Barnes, Maria I

From: Rachal, Terri L
Sent: Thursday, October 16, 2014 10:07 AM
To: Barnes, Maria I; Maxwell, Reginald G
Subject: FW: I-751 - Battered and/or Abused Waiver

FYI

Terri

From: Johnson, Cheryl L
Sent: Thursday, October 16, 2014 7:17 AM
To: Aerts, Kellee A; Coleman, Christal A; Head, Toni M; Nnabue, Tony C; Pantos, Stephen J; Paredes, Marianna; Perkins, Vanessa K; Rachal, Terri L; Whitehead, Esther A
Cc: Williams, Jaclyn M; DeBoe, Mayburn E
Subject: FW: I-751 - Battered and/or Abused Waiver

Please share the below information with ISOs.

Thank you.

Cheryl Johnson
Branch Chief
USCIS Atlanta Field Office - District #8

"The achievements of an organization are the results of the combined effort of each individual."
-Vince Lombardi

From: Parker, Vanessa
Sent: Wednesday, October 15, 2014 4:58 PM
Subject: FW: I-751 - Battered and/or Abused Waiver

SER Leadership –

Below is the I-751 – Battered and/or Abused Waiver Interim Guidance and SME contact information provided by the VSC following the teleconference scheduled with the region on October 14, 2014.

Please distribute this information to the Immigration Services Officers in order to the assist the field in processing of I-751E and F Waiver filings when such cases are forwarded for interview.

The national work group is currently developing a I-751 Waiver training module and we will be reaching out to the field with the information when it is made available to the region.

If you need additional information, please email the VSC I-751 Waiver SMEs at Field, VSC or the VSC, Hotline Follow Up and copy Keri Yeager-Bowser or Vanessa Parker.

Thank you for your support of the SER!

Vanessa Parker
Immigration Services Officer
Southeast Region
390 N. Orange Avenue
Orlando, FL 32801
(407)237-8823

From: Lynch, Mary A
Sent: Wednesday, October 15, 2014 3:10 PM
Subject: RE: I-751 - Battered and/or Abused Waiver

Hi Keri,

Sorry that you missed the teleconference yesterday as it was certainly beneficial from the VSC perspective and hopefully for the District and field offices also. As agreed upon, we are sending along what will hopefully be some interim guidance for SER officers to assist them in processing of I-751 E and F abuse Waiver filings when they are relocated from the VSC for interview, and until such time as the national work group completes development of a broad based I-751 Waiver training module. As follows:

Two separate email addresses to obtain information from VSC I-751 Waiver SMEs:

- Field, VSC : this email address is used to contact VSC for a variety of issues to include I751s for which the filing basis is E of F (Waiver due to battery or extreme mental cruelty.
- VSC, Hotline Follow Up is used to contact the VSC VAWA unit for I-360 Filings, but can also be used secondarily for questions regarding I-751 E and F filings

Below are the call ups used by the VSC for requests for evidence. This should help to clarify for district officer the type of information VSC looks for when specifically adjudicating I751 s for which the filing basis (E or F- Waiver due to battery or extreme mental cruelty)

1. This is the most commonly used call up for extreme mental cruelty:

- *You must submit evidence to support your claim that your relationship included mental and/or emotional abuse. However, non-battering abuse must meet the standard of extreme cruelty. A finding of extreme cruelty involves the examination of the dynamics of the relationship, the victim's sense of well-being before the abuse, the specific acts during the period of abuse, and the victim's quality of life and ability to function after the abuse. Your own testimony should cover these factors.*

Extreme Cruelty

- *Further evidence or testimony is needed in order to promote a finding of extreme cruelty. Such testimony might involve an explanation of the type of abuse suffered and the after-effects of the abuse to include answers or descriptions of the following:*

- *Verbal: What were the words, names used? What tone of voice was used? How did the incident end? Who left the room or residence? Did things go back to "normal" or was there a need for apologies, appeasement or "walking on eggshells"?*

- *Social isolation: Were you socially isolated? If so, please explain the manner and duration of the isolation. What specific actions did your alleged abuser take? What did you do in response? How did you feel as a result of your alleged abuser's actions?*

- *Possessiveness: Was your alleged abuser possessive? If so, please explain the manner of the possessiveness. What did your alleged abuser do? What did you do in response? How did you feel as a result of your alleged abuser's actions?*

- *Quality of life: How did your life change? How were you affected by the abuse? What do you feel caused the changes? What did you do to deal with the abuse?*

- *It is important to understand the above factors in order to determine if the abuse qualifies as extreme cruelty. Any further explanations or descriptions you can provide or anything further you may wish to share would be of great assistance in making an informed determination.*

- *You may also submit the following which may be of assistance to USCIS in making an informed decision:*

  - *Police reports,*
  - *Psychological reports, or*
  - *Affidavits from third parties which corroborate your claim.*

- *Please note that affidavits must be written statements sworn to or affirmed by individuals, other than yourself, who were living at the time the events(s) occurred, and who have personal knowledge of the event you are trying to prove--for example, the incident of abuse.*

- *The affiants may be required to testify before a United States Citizenship and Immigration Services Officer.*

2. This is the call up used when requesting evidence of battery:

   Battery (Physical Abuse)

- *You may submit one or more of the following types of evidence to establish your eligibility for a waiver based on battery (physical abuse) perpetrated by your abuser:*

- *A statement in your own words describing the relationship with your abuser. Be as specific as possible.*

- *Complete reports and affidavits from police, judges, court officials, or school officials that include the signature of the individual who completed the report.*

- *Reports or findings from counselors, medical personnel, social workers, or other social service agency personnel who provided counseling for the abuse.*

- *Copies of doctor reports, hospital reports, or other medical treatment facilities that treated you for injuries sustained from the abuse. These reports may include, but are not limited to, diagnosis, treatment plans, etc.*

- *Evidence that you have sought refuge in a shelter for victims of domestic abuse.*

- *If photographs were taken of any visible physical injury, provide clear color photos.*

- *Any additional explanations, descriptions or documentation you wish to share that would assist USCIS in making an informed determination.*

Affidavits

- *Affidavits from third parties which corroborate your claims may be submitted in addition to any other documentation submitted.*
- *Affidavits are written statements sworn to or affirmed by individuals, **other than yourself**, who were living at the time the events(s) occurred, and who have personal knowledge of the event you are trying to prove--for example, the incident of abuse.*
- *The affiants may be required to testify before a U.S. Citizenship and Immigration Services Officer.*

3. This call up is a short list of evidence of a good faith marriage:

Please submit evidence to demonstrate you have resided with your abusive parent or step-parent. Satisfactory evidence may include, but is not limited to:

1. *Leases or rental agreements listing you as an occupant.*
2. *Photocopies of your parent's income tax filing listing you as a dependent.*
3. *Insurance policies, banking and other financial records.*
4. *School records listing your parent/guardian and address of record.*
5. *Medical records or a statement from your physician.*
6. *Affidavits of friends and family. Please submit evidence to demonstrate that you have resided with your abusive parent or step-parent. Satisfactory evidence may include, but is not limited to:*

4. This is the informational paragraph that describes that marital tensions are not necessarily abuse:

- *This immigration classification was created to provide a means of securing legal status for individuals who had been battered by or were the victims of extreme cruelty at the hands of citizen or lawful permanent resident spouses or parents. Extreme cruelty generally demonstrates an attempt by the perpetrator to control through psychological means that include emotional abuse, humiliation, degradation, and isolation. It may also include economic coercion or control. Acts of extreme cruelty demonstrate a pattern or intent on the part of the perpetrator directed at achieving compliance from or control over the victim.*

- *Marital tensions and incompatibilities such as apathy toward the relationship by one party, infidelity or substance abuse of a spouse, which place strains sometimes severe enough to result in a marriage's disintegration, do not by themselves, constitute extreme cruelty. The evidence provided in the present case does not suggest that the marital difficulties claimed by you were beyond those encountered in many marriages. Additional evidence to demonstrate your claims is needed.*

Also cited below are the three relocation memos that VSC uses when relocating a file to the field for interview, and the filing status is either
an E or F Waiver cases:

- *I751 RAB Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has not established that it was a "good faith marriage" and/or has not established their claim of Battery and/or Extreme Mental Cruelty.*
- *I751 RAE Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has already established that it was a "good faith marriage", but <u>has not established</u> their claim of Battery and/or Extreme Mental Cruelty.*
- *I751 RGF Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has already established the claim of Battery and/or Extreme Cruelty, but <u>has not established</u> their claim of a good faith marriage.*

For I-751 Waiver filings, it is critical to note that, "credible evidence" is the standard for both "good faith marriage" and the claim of Battery and/or Extreme Mental Cruelty. Chapter 25 of the Adjudicator's Field Manual states the following concerning the evidence and adjudication of a Battery and/or Extreme Cruelty Waiver:

(3) Battering or Extreme Cruelty.

The original IMFA (as enacted in 1986) did not contain a separate waiver provision for victims of battering or extreme cruelty. Although in most cases, such victims could easily qualify for either of the two waiver provisions, Congress found that there was a need to spell out that victims of such treatment are entitled to special consideration under the law. As a result, section 216 of the Act was amended by section 701 of the Immigration Act of 1990 to add this waiver. It is important that in adjudicating such waiver applications INS officers are aware of and in accord with the views of Congress in passing this legislation. Other issues to bear in mind when adjudicating a battering or extreme cruelty waiver include:

· Persons who have been subjected to such treatment may have difficulty in discussing their experiences. While it is almost always necessary to discuss the abusive events with the applicant, such discussions should be carried on in a professional manner which does not further abuse the applicant by forcing him or her to unnecessarily re-live abusive episodes.

· Police reports and hospital records can be key documents in establishing that battering or extreme cruelty existed, but not all cases of abuse contain these items. Officers must be prepared to accept and evaluate other, less traditional, forms of documentation. Conversely, in the worst marriage fraud cases it is not unheard of for evidence of abuse or battering to be fabricated (someone who is willing to commit marriage fraud would not be unwilling to file a false police report).

Thanks to all that participated in the call today. We hope that the information provided during the call and the information included in this email will help the field with the adjudication of these petitions.

The VSC I-751 Team: SC Mary A Lynch, SISO Gary Lefebvre, and ISOs Art Lambesis, Christina Martel, and Eric Oberg

- *Compliance with Section 384 confidentiality regulations*
- *Understanding the sensitive nature of E and F abuse issues, specifically related to safe address concerns and the correct application of the, "credible evidence" standard cited below:*

Standard of Proof

The standard of proof that an officer must apply is "any credible evidence". There is no specific primary or secondary evidentiary requirement and the CPR spouse or CPR child is not required to demonstrate the unavailability of secondary or primary evidence.

The "any credible evidence" standard is discussed in the memorandum from Paul W. Virtue, General Counsel, Office of the General Counsel, "Extreme Hardship" and Documentary Requirements Involving Battered Spouses and Children, (Subject file HQ 90/15-P & HQ 70/8-P)(October 16, 1998) available at website http://vsc.uscis.dhs.gov/ADJ Memos/751/waiver sop.pdf. The memo discusses the following:

- *The determination of what evidence is credible is one that must be made by the adjudicating officer on a case-by-case basis. Frequently, evidence that is credible in one setting will not be so in another.*
- *More weight will be given to primary evidence and evidence provided in court documents, medical reports, police reports, and other official documents.*
- *A CPR spouse or CPR child who submits affidavits are urged, but not required, to provide affidavits from more than one person.*
- *A CPR spouse or CPR child filing under an "e" or "f" waiver may not have access to the range of documents normally available for a variety of reasons, such as having been forced to flee from the abuse and not having access to critical documents, destruction of documents by the abuser to prevent a waiver filing or filing without the knowledge or consent of the abuser.*
- *Give the CPR spouse or CPR child ample opportunity to add to the evidence submitted in support of the petition if necessary.*
- *Determine each case based on the facts and circumstances of that case only, taking into account the limitations that pertain to a battered spouse or child.*

Also of note is that earlier this year the VSC was working with some POCs in the SER to provide remote training to be given by two of our VSC Waiver SME's in Orlando (back in April 2014), but that training was eventually cancelled by FOD in early May, based on a determination that such training should be provided by the ATC. Since that time a larger group has been teleconferencing on a weekly basis to develop an I-751 Waiver training package which I believe is intended to become a module for BASIC Academy training in the future. Our two VSC Waiver SME's have been full participants in that group and will be able to provide updated information on that effort when we teleconference with you later this week or next. Please advise as to a convenient time for us to speak with you and let us know who should receive a calendar invite. Thanks.

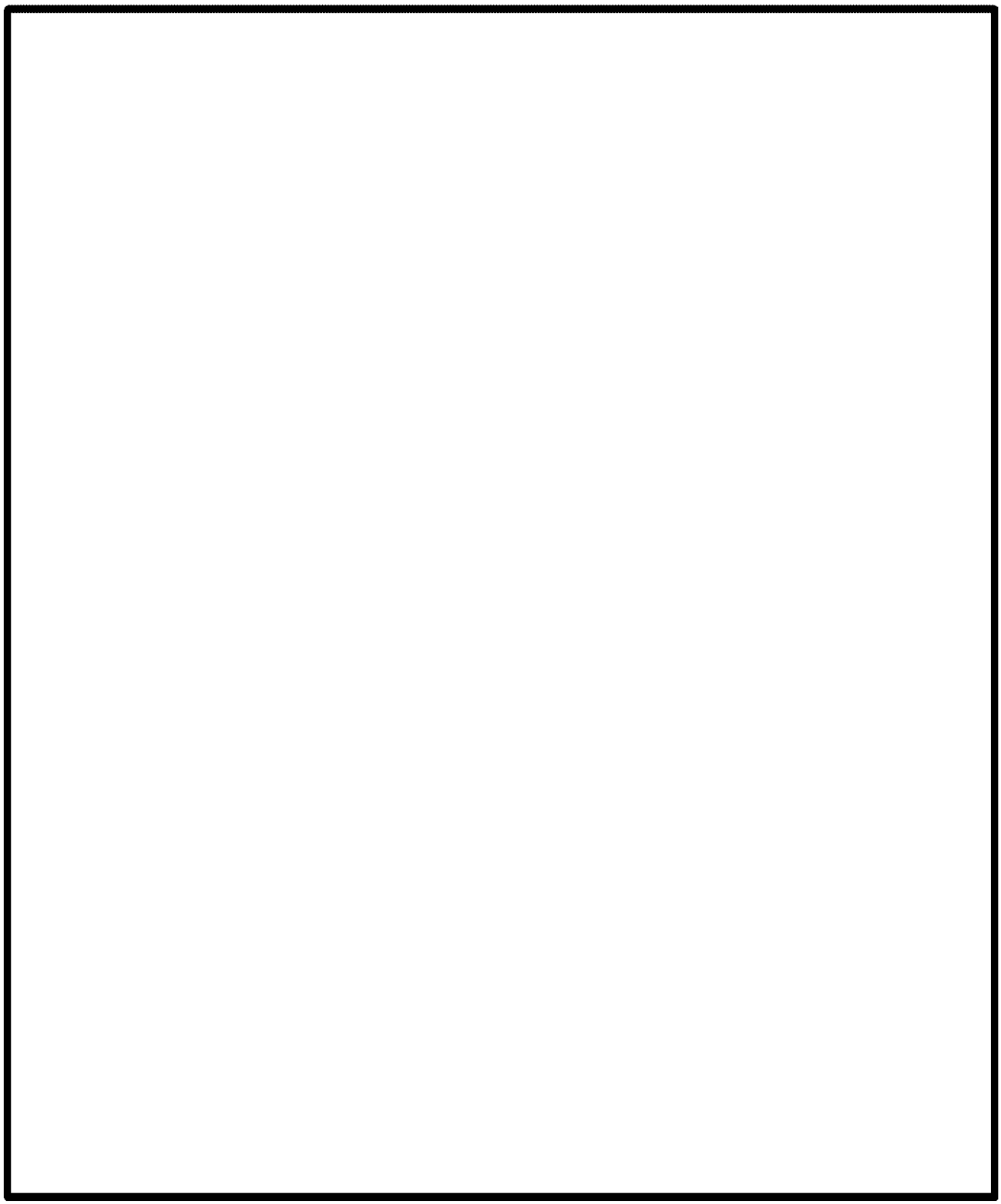
Mary A Lynch, Section Chief
Family Division, Vermont Service Center

[redacted] (b)(6)

FRAUD INDICATORS:

Violence Against Women Act (VAWA)
I-360, Self-Petitioning Spouse of Abusive USC or LPR

(b)(5)



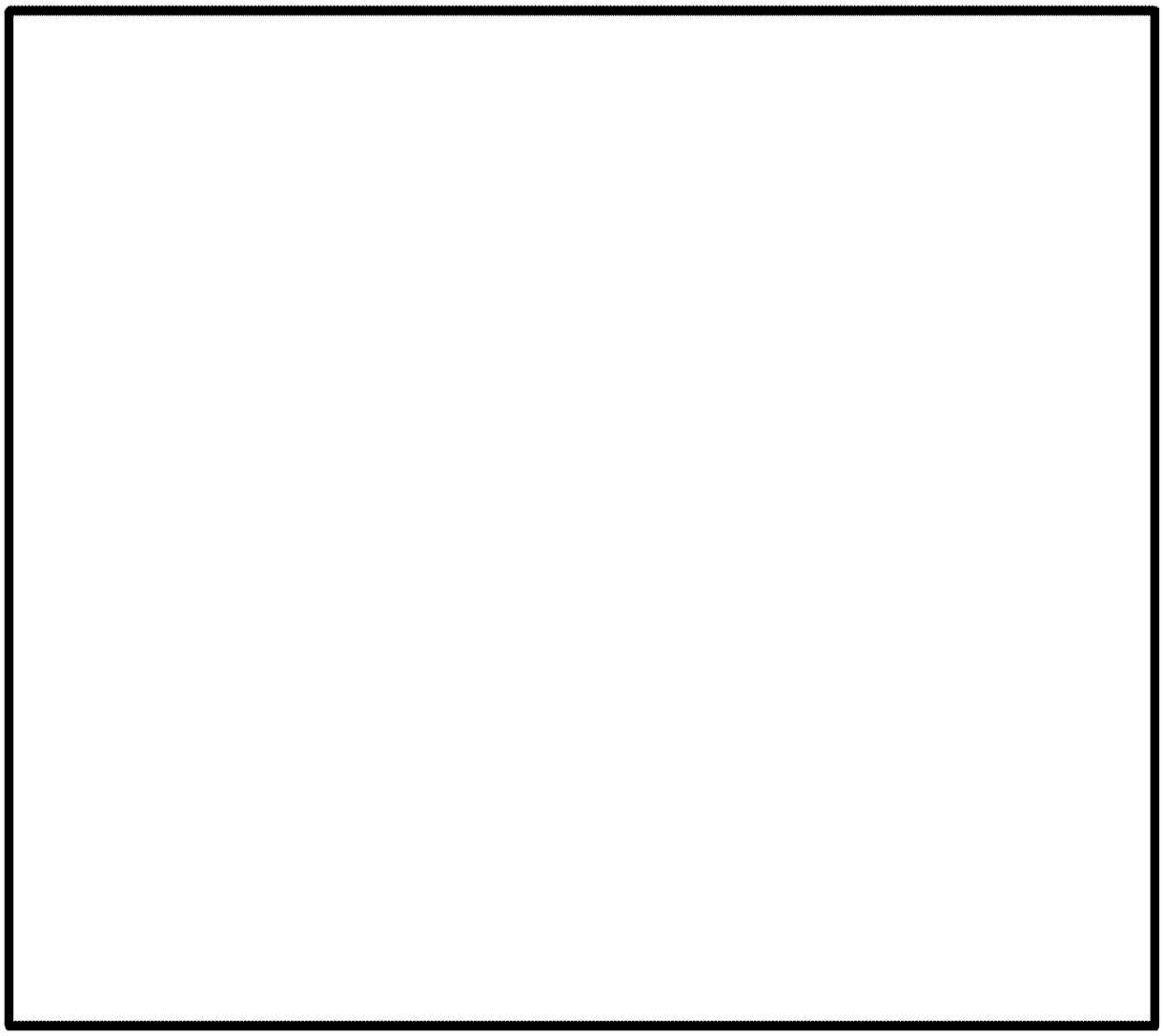
Supporting Evidence:

- One-sided or "wrong-way" evidence in which only the applicant is identified (i.e. bank statements, bills, and payments all addressed to or by the applicant).
- Copies of personal documentation associated specifically with the alleged abuser are provided by the applicant (i.e. driver's license, medical records, credit cards).
- Incomplete or not processed applications/forms (i.e. applications for housing, income tax returns).
- Birth certificate for a child born during the allegedly abuse relationship in which only the applicant or alleged abuser is identified as a parent.
- Bank statements in which the balance and activity on the account are minimal.
- Evidence is dated or established just prior to application or request for additional information; or is dated or established just prior or after significant events (i.e. marriage).
- Evidence is not consistent with evidence provided with previous applications/petitions associated with the applicant.
- Evidence is not consistent with open source information (i.e. LexisNexis, Autotrack).
- Documentation appears altered and/or counterfeit.

Miscellaneous:

- Applicant is in removal proceedings.
- Applicant has been previously denied benefits (i.e. I-589 application, I-130 petition).
- Applicant and/or alleged abuser have been previously suspected of committing fraud, or are known to have committed fraud.

(b)(5)



Catalano, Michael A

From: NER Adjustment of Status
Sent: Friday, April 24, 2015 10:34 AM
To: #NER-DD-FOD-COS; #NER SISOs and Section Managers
Cc: Goodwin, Shelley M; Kern, Suzanne C; Spencer, Julie C; Palmer, Justin J (Justin); Bibona, Lisa M
Subject: Changes to the Interim Process/Guidance for request to amend a joint filed I-751 to a e or f battered spouse or child filing document
Attachments: Interim Process Guidance for e and f filings APR 25 2015.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning Field Leadership,

The Field Operations Directorate (FOD) has requested that field offices immediately begin implementing the attached Interim Process/Guidance for request to amend a jointly filed I-751 to an (e) or (f) battered spouse or child filing. Attached is an updated Interim Process/Guidance from FOD which has only altered the language from the earlier messages regarding which Service Center the ISO scans and emails the new Form I-751 and G-28 for residents of the state of Florida in Step 1 of the document. Please note that the prior messages had an invalid email mailbox for contacting the Vermont Service Center (VSC) which has now been corrected.

Background

The Form I-751, Petition to Remove Conditions, is currently filed with the Service Centers (CSC and VSC). In most cases, the I-751 is filed jointly by the married couple in order to remove the conditions on the residence of the foreign national spouse. Sometimes, the foreign national spouse will indicate during the I-751 interview at the USCIS field office, that he or she wants to now change the filing category to a waiver filing based on battery or extreme cruelty.

Information

Due to the Marriage Fraud Amendment System (MFAS) limitations, the change of the Form I-751 from a joint filing to an (e) or (f) is challenging. ISO's currently do not have access to change the filing category or to place the identifier code of "384" for the safe address (to flag the case and avoid violating the VAWA provisions as stated in 8 U.S.C. § 1367), once the ISO has determined that the case warrants the change to an e or f filing. A work order has been placed with the C3 team and they are working on a system change that will allow the ISO's to convert the I-751 joint filing to an (e) or (f), however this may not occur until late September 2015.

Guidance

All employees who adjudicate I-751s should be in receipt of and in full understanding of the attached document that outlines a process/guidance to be followed effective immediately and until further notice.

Please submit any questions or concerns to the NER Adjustment of Status mailbox.

Thank you.

Very respectfully,

Dana Clemens
Regional Immigration Services Officer
Northeast Region

U.S. Citizenship & Immigration Services
Department of Homeland Security
South Burlington, Vermont
(802)660-5035 (office)
(802)660-1192 (fax)

Interim Process for Form I-751, Petition to Remove Conditions on Residence (Form I-751), Basis of Filings from "a" joint filing to "e" or "f" battered spouse or child

STEP 1– At the U.S. Citizen Immigration Services (USCIS) Field Office

- Applicant informs an Immigration Services Officer (ISO) that he/she wants to change the jointly filed Form I-751 to a filing under "e" or "f" (battered spouse or child)
- ISO requests that the applicant complete a new Form I-751 at the time of the interview and indicate the new filing category. **No application fee will be required**
- ISO will ADMIN Close/Other the jointly filed Form I-751 in the Marriage Fraud Amendment System (MFAS)
- ISO scans and emails* the new Form I-751 and G-28, if applicable, to California Service Center (CSC) or Vermont Service Center (VSC) depending upon the applicant's address to the applicable mailbox :
    - CSC: CSC.OSB1.Field@uscis.dhs.gov
        - If the applicant resides within Alaska, American Samoa, Arizona, California, Colorado, Florida, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming;
    - VSC: vscdoi751.amended@uscis.dhs.gov
        - If the applicants resides within Alabama, Arkansas, Connecticut, Delaware, Washington, D.C., Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, U.S. Virgin Islands, and West Virginia;
- ISO will place the new Form I-751 in the A-file

***Note: WinZip and password-protect the Form I-751. Send the password in a separate email since PKI encrypted emails cannot be sent to group mailboxes.**

Step 2 – At California Service Center or Vermont Service Center

- Data enters new I-751 into system and assigns a receipt number within 72 hours
    - Original signatures are not required for data entry into system because field offices will retain the original document in the file
- Service Centers will update CIS with the safe address COA "384"
- Create the Approved Removal Conditions Form (CRI-89) for the new receipt number
- Upload biometrics to new CRI89
- Service Center emails* the field office with a scanned copy of the newly created I-751 with the receipt number and provides CRI89 receipt number
- Determine safe address and complete safe address determination form
- Destroy scanned copy of I-751 once it is emailed to the field office

- Service Centers will check the email account daily for new requests

***Reminder:** WinZip and password-protect the Form I-751. Send the password in a separate email since PKI encrypted emails cannot be sent to group mailboxes.

Step 3 – At USCIS Field Office

- ISO places the new I-751 in the applicant's A-file
- ISO ensures that all background and security checks are completed and valid, to include the FD-258
- ISO interviews the applicant on the newly filed I-751
- If the applicant is unable to present sufficient supporting documentation at the time of the interview, the ISO will issue an RFE
- If the applicant submits sufficient supporting documentation at the time of the interview, the ISO will adjudicate the case
- ISO will hold the A-file with the newly filed petition until the Service Center enters the new I-751 into the system and assigns a receipt number.
- ISO will receive the email containing Form I-751 with the receipt number on the newly filed I-751 and the receipt number for the newly created CRI89
- ISO attaches the scanned I-751 to the original I-751 with signature
- The ISO will make a check mark in the "Approved under INA 216(c)(4)(C) Battered Spouse/Child" block.
- The applicant will be informed in writing of the decision on the newly filed I-751
- ISO will route the file to the appropriate Service Center for card production using the standardized routing sheet.

Catalano, Michael A

From: Kazimer, Joann R on behalf of NER Adjustment of Status
Sent: Thursday, June 05, 2014 9:31 AM
To: #NER-DD-FOD-COS; #NER SISOs and Section Managers
Cc: Goodwin, Shelley M; Kern, Suzanne C; Palmer, Justin; Spencer, Julie C; Martin, Jessica C; O'Neill, Anne M
Subject: Confidentiality Provisions of 8 U.S.C. § 1367 and I-751 Adjudication

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning NER Field Leadership,

HQ Field Operations Directorate would like to remind the field offices of the confidentiality provisions set forth in 8 U.S.C. § 1367 in regards to the adjudication of I-751s.

Background
The purpose of 8 U.S.C. § 1367 is to protect victims of domestic violence from harm that could result from the inappropriate disclosure of covered information.

Prohibition on Evidence for Adverse Decisions
USCIS is prohibited from making an adverse determination on a I-751 self-petitioner's eligibility if the adverse determination is based on evidence provided by:

- A spouse or parent who has allegedly battered the alien or the alien's child OR;
- A spouse or parent who has subjected the alien or the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty to the alien's child);
- A member of the spouse's or parent's family residing in the same household as the alien who has allegedly battered the alien OR the alien's child or subjected the alien or the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty to the alien's child.
- "Poison pen" letters and any other information (including confessions, or admissions, or accusations, etc. during interviews at the field office) provided by the alleged abuser or alleged abuser's family.

Exception
USCIS may use adverse information if it is provided by an independent, credible, third-party source.

NOIDs and Denials for marriage fraud must reflect specific information such as the date and method (written, telephonic, etc.) that such information was obtained, except when prohibited by 8 U.S.C. § 1367.

Penalties for Violations
8 U.S.C. § 1367 provides for disciplinary sanctions and civil penalty of up to $5000 against individual officers for each willful violation of the above.

If you have any questions please contact he NER Adjustment of Status mailbox.

Thank you,

JoAnn Kazimer
Regional Immigration Services Officer
Northeast Region
T: 412-390-3944

U.S. Department of Homeland Security
Office of the District Director
300 North Los Angeles Street, Room 3010
Los Angeles, CA 90012

U.S. Citizenship and Immigration Services

Interoffice Memorandum

To: Field Office Directors
Section Managers
Supervisory Immigration Services Officers
District 23

From: Jane E. Arellano
District Director
District 23

Date: June 29, 2011

Re: Standard Operating Procedure (SOP) for Processing VAWA Cases

The purpose of this memorandum is to establish a Standard Operating Procedure (SOP) for handling and processing VAWA cases in District 23. I established this SOP after consulting with members of the VAWA Working Group, i.e. Nancy Reyes-Rubi, and after reviewing proposals from Field Office Directors in D23.

Each Field Office has designated a VAWA point of contact (POC), who will be responsible for overseeing the processing of all VAWA cases at his/her respective field office. This VAWA POC will also be responsible for handling any inquiries from our stakeholders about VAWA cases. The contact information for the VAWA POCs at each field office is provided on the attached list. The Chief of Staff for D23 will be responsible for maintaining the accuracy of this list and for providing the updated list to the VAWA Working Group.

Each month the VAWA POC will coordinate with the first-line supervisors for the VAWA-trained ISOs to generate pre-scheduled appointment notices for the 3rd Tuesday of the month. Each VAWA officer will be expected to conduct no more than 6 I-751 and/or I-485 VAWA interviews each day. These pre-scheduled appointment notices will be used according to the procedures described below.

Every effort will be made to ensure that a VAWA applicant is scheduled for an interview with a VAWA officer within 45 calendar days of the file arriving at the Field Office[1].

Processing I-751 Cases

All I-751 cases that are referred to the field office from the California Service Center must be reviewed and triaged to determine whether an interview needs to be scheduled. The ISO assigned to triaging these files will check to see which box is checked under Part 2 (Basis for Petition) on the I-751. If box "e" or "f" is checked, the ISO will refer the case to one of the VAWA-trained officers or to the VAWA POC for the field office. The VAWA POC or the VAWA-trained officer will determine whether an interview needs to be scheduled. If an interview is necessary, the VAWA ISO will obtain a pre-scheduled appointment from the VAWA POC or his/her first-line supervisor, and mail the appointment notice to the applicant. If there are less than 14 calendar days until the next available VAWA appointment, the first-line supervisor will issue a VAWA appointment notice for the succeeding month. The VAWA POC will need to maintain a log to keep track of the I-751 VAWA appointments that are scheduled each month.

Occasionally, neither box "e" nor "f" on the I-751 petition will be checked, and the VAWA concerns may not come to our attention until an ISO is conducting an interview on the case. If the interview is not being conducted by one of our VAWA officers, the ISO will terminate the interview and refer the case to the VAWA POC or to the first-line supervisor for a VAWA-trained officer. The first-line supervisor (SISO) will determine whether a VAWA officer is available to complete the interview the same day, or whether the case needs to be rescheduled at a later date. If the I-751 needs to be rescheduled, the first-line supervisor will hand-deliver a pre-printed appointment notice to the applicant before he/she leaves the office.

For VAWA-trained officers adjudicating I-751 petitions, they must address all eligibility grounds checked on the I-751 when they are rendering their final decision. This will prevent any unnecessary delays that may occur when the petitioner appears in Immigration Court and the Immigration Judge confirms that all eligibility issues have been addressed by USCIS.

Processing I-485 Cases

Attorneys from the VAWA Working Group have agreed to contact the VAWA POC at the appropriate Field Office when they receive an appointment notice for an interview from the National Benefits Center. The VAWA POC for the field office will work with the first-line supervisor to determine whether the VAWA-trained officers are available to conduct the I-485 interview on the date and time on the appointment notice. If the appointment needs to be rescheduled, the VAWA POC will provide the attorney of record with a new appointment notice for his/her client. These appointments will be scheduled on the 3rd Tuesday of the each month (as described above).

In other circumstances, an I-485 VAWA case may not be identified until an ISO has been assigned the case and begins to conduct the interview. The moment an ISO realizes that he/she is handling an

[1] Either more appointments will be scheduled for the 2nd Tuesday of the month, or additional qualified ISOs will be trained to handle VAWA cases on the 3rd Tuesday of the month.

I-485 case with VAWA concerns; he/she will immediately refer the case to the VAWA POC or to the first-line supervisor for the VAWA-trained officers. The first-line supervisor will determine whether a VAWA ISO is available to complete the interview the same day. If the case needs to be rescheduled, the first-line supervisor will provide the applicant with a pre-printed appointment notice to return to the field office for another appointment (see above).

I would like the Field Offices to begin implementing this SOP no later than Monday, August 1, 2011. If you have any questions or concerns about this SOP, please contact Martha Flores at (213) 830-5400.

Gonzalez, Deliana

(b)(6)

From: Gonzalez, Deliana
Sent: Tuesday, February 09, 2016 3:11 PM
To: Amaro, Saskia; Bonano, Miguel A [redacted] Catala, Yamil A (CTR); Claudio, Maria L [redacted] Cruz, Jose L; Diaz, Copernico; Diaz, Marianela [redacted] Dvornik, Sally A [redacted] Figueroa, Natalia V; Gaston, Gabriela A [redacted] Gaston, Victor; Gonzalez-Ferrer, Deliana [redacted] Lopez, Carmen L [redacted] Martinez, Esperanza P [redacted] Nunez, Ibrahim; Ortiz, Carlos A [redacted] Torres, Rosa Noelia; Vasquez, Ada [redacted] Vitola, Julio T; Walsh, Neil R [redacted]
Subject: Reminder about the CIS Class of Admission "384"

This is a reminder

If the Class of Admission (COA) in the Central Index System (CIS) is 384, the individual is a victim of domestic violence, trafficking, or other crimes who has filed for immigration relief and thus is covered by the confidentiality provisions of section 384. This was created to alert DHS personnel that the individual is protected by these provisions. Information about the location, status, or other identifying information or any individual with the code "384" may not be released.

For detailed information on how to navigate the CIS, click here.

Thanks,

Deliana Gonzalez-Ferrer
Field Office Director
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
San Juan Field Office, District 9
Plaza 273
273 Ponce de Leon Avenue, Suite 1100
San Juan, PR 00917
| ☎: 787.773.8500| 🖷: 787.773.8556| ✉ [redacted]

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before printing, please think about the environment

(b)(6)

Gonzalez, Deliana

From: Espinal, Pedro
Sent: Monday, November 29, 2010 8:45 AM
To: Gaston, Victor; Claudio, Maria L; Lopez, Carmen L; Diaz, Marianela; Gomez, Edwin A; Walsh, Neil R; Dvornik, Sally A; Gonzalez, Teresa C; Ortiz, Carlos A
Cc: Gonzalez-Ferrer, Deliana; Soto, Maritza P; Vasquez, Ada; Martinez, Esperanza P; Figueroa, Ivonne E; Gaston, Gabriela A; Castaner, Maria M
Subject: FW: New 384 Class of Admission Code

FYI. And action, if any is required.

Pedro J. Espinal | Lead Immigration Services Officer | United States Department of Homeland Security/United States Citizenship and Immigration Services, Miami and Caribbean District, San Juan Field Office | ☎ 787.706.2304 Ext. 252 | 🖷: 787.706.2308 | ✉: [redacted] (b)(6)

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save a tree - please don't print this e-mail unless you really need to.

From: Cintron, Roberto
Sent: Friday, November 26, 2010 8:28 AM
To: Gonzalez-Ferrer, Deliana; Castaner, Maria M; Espinal, Pedro; Bonano, Miguel A
Cc: Cintron, Roberto
Subject: FW: New 384 Class of Admission Code

FYI and dissemination as appropriate.

Roberto

Roberto Cintron
Acting, USCIS San Juan Field Office Director
(WP) 787-706-2343
(Cell) [redacted] (b)(6)

From: Tierney, Terry
Sent: Wednesday, November 24, 2010 10:35 AM
To: Adair, Jerri; Allain, Jeannie L; Bae, Connie J; Baranowski, Katherine L; Barbee, Beth H; Bazylak, Mary; Bradley, Lisa D; Castro, Anouchka; Cavanaugh, Daniel M; Cintron, Roberto; Conner, Lorelie C; Crawford, Jonathan E; Cruz, Cindy A; Dalziel, Karen L; Dennis, Lynuel W; Fernandez, Rosalinda; Flint, Donna K; Garcia, Iris M; Gonzalez-Ferrer, Deliana; Gottlieb, Richard H; Hackbarth, Joseph M; Hesles, Monica M; Hill, Robert O; Iglesias, Margaret; Meeker, Leslie A; Mendez, Gladys M; Morrow, Meredith A; Muttuswamy, Sivaloganathan L; Olguin, Christina; Onyango, Paul O; Patterson, Katherine R; Quiles, Elvis; Ramos, Michelle O; Reither, Stephanie; Rinehart, Brett R; Ruggiero, Phyllis; Sapko, Jeffrey M; Smith, Kristen J; Smith, Sara A; Stulz, Enid; Topping, Ellen L; Vasquez, Kenneth
Cc: Pietropaoli, Lori; Ferguson, Tyrone; Perilla, Daniel A; Yeager-Bowser, Keri; Ashley, Tina J; Dorochoff, Ruth A; Frazier, Denise M; Gomez, Cindy N; Kerns, Kevin J; McDonald, Pamela L; Ow, Alanna; Pecinovsky, Steven; Swacina, Linda; Tilley, Peter S
Subject: New 384 Class of Admission Code

Field Leadership,

On December 01, 2010, the Department of Homeland Security (DHS) will implement a new **Code of Admission (COA): "384"**, for all pending VAWA, T, and U applications and petitions. Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) protects the confidentiality of certain victims who have filed for certain types of immigration relief, such a VAWA/T/U status. These protections are commonly referred to as "384 provisions." Because all DHS components have access to Central Index, DHS decided to add a "**384**" COA, after the section of law that created confidentiality, to the Identity Management System standard tables of Central Index.

The Vermont Service Center will assign the "**384**" COA to all pending VAWA, T and U applications/petitions. Once the I-485 is adjudicated, the COA will be changed to reflect the correct classification.

The "**384**" COA for all aliens with pending VAWA, T, and U cases clearly identifies these individuals, thereby simplifying our compliance with the confidentiality provisions of IIRAIRA.

Terry Tierney
Assistant Regional Director for Adjudications, SER
390 N. Orange Ave, Rm 220
Orlando, FL 32801-1640
Ph: 407-237-8824
BB: [redacted] (b)(6)
SER docushare: http://docs.uscis.dhs.gov/dsweb/View/Collection-11124

Gonzalez, Deliana

From: Gonzalez, Deliana
Sent: Wednesday, October 15, 2014 5:05 PM
To: Ramos, Ignacio
Subject: FW: I-751 - Battered and/or Abused Waiver

I'm glad that they put together more information regarding this topic after yesterday's meeting.

Please refer to the information below and share it with the ISOs.

Thanks,

Deliana Gonzalez-Ferrer
Field Office Director
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
San Juan Field Office, District 9
Plaza 273
273 Ponce de Leon Avenue, Suite 1100
San Juan, PR 00917
| ☎: 787.773.8500| 🖷: 787.773.8556| ✉: [redacted] (b)(6)

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From: Parker, Vanessa
Sent: Wednesday, October 15, 2014 4:58 PM
To: SERLEADERSHIP
Cc: Bace, Philip R; Yeager-Bowser, Keri K; Tilley, Wendy M; Quiles, Elvis A; Alvarado, Mario; Tierney, Therese A
Subject: FW: I-751 - Battered and/or Abused Waiver

SER Leadership –

Below is the I-751 – Battered and/or Abused Waiver Interim Guidance and SME contact information provided by the VSC following the teleconference scheduled with the region on October 14, 2014.

Please distribute this information to the Immigration Services Officers in order to the assist the field in processing of I-751E and F Waiver filings when such cases are forwarded for interview.

The national work group is currently developing a I-751 Waiver training module and we will be reaching out to the field with the information when it is made available to the region.

If you need additional information, please email the VSC I-751 Waiver SMEs at Field, VSC or the VSC, Hotline Follow Up and copy Keri Yeager-Bowser or Vanessa Parker.

Thank you for your support of the SER!

Vanessa Parker
Immigration Services Officer
Southeast Region
390 N. Orange Avenue
Orlando, FL 32801
(407)237-8823

From: Lynch, Mary A
Sent: Wednesday, October 15, 2014 3:10 PM
To: Yeager-Bowser, Keri K
Cc: Bace, Philip R; Parker, Vanessa; Flores, Mary F; Ruggiero, Phyllis S; Rosado, Eugenio; Malaniak, Joseph; Lefebvre, Gary T; Lambesis, Arthur D; Martel, Christina M; Oberg, Eric H; Ramos, Michelle O
Subject: RE: I-751 - Battered and/or Abused Waiver

Hi Keri,

Sorry that you missed the teleconference yesterday as it was certainly beneficial from the VSC perspective and hopefully for the District and field offices also. As agreed upon, we are sending along what will hopefully be some interim guidance for SER officers to assist them in processing of I-751 E and F abuse Waiver filings when they are relocated from the VSC for interview, and until such time as the national work group completes development of a broad based I-751 Waiver training module. As follows:

Two separate email addresses to obtain information from VSC I-751 Waiver SMEs:

- Field, VSC : this email address is used to contact VSC for a variety of issues to include I751s for which the filing basis is E of F (Waiver due to battery or extreme mental cruelty.
- VSC, Hotline Follow Up is used to contact the VSC VAWA unit for I-360 Filings, but can also be used secondarily for questions regarding I-751 E and F filings

Below are the call ups used by the VSC for requests for evidence. This should help to clarify for district officer the type of information VSC looks for when specifically adjudicating I751 s for which the filing basis (E or F- Waiver due to battery or extreme mental cruelty)

1. This is the most commonly used call up for extreme mental cruelty:

- *You must submit evidence to support your claim that your relationship included mental and/or emotional abuse. However, non-battering abuse must meet the standard of extreme cruelty. A finding of extreme cruelty involves the examination of the dynamics of the relationship, the victim's sense of well-being before the abuse, the specific acts during the period of abuse, and the victim's quality of life and ability to function after the abuse. Your own testimony should cover these factors.*

  Extreme Cruelty

- *Further evidence or testimony is needed in order to promote a finding of extreme cruelty. Such testimony might involve an explanation of the type of abuse suffered and the after-effects of the abuse to include answers or descriptions of the following:*

- *Verbal: What were the words, names used? What tone of voice was used? How did the incident end? Who left the room or residence? Did things go back to "normal" or was there a need for apologies, appeasement or "walking on eggshells"?*

- *Social isolation: Were you socially isolated? If so, please explain the manner and duration of the isolation. What specific actions did your alleged abuser take? What did you do in response? How did you feel as a result of your alleged abuser's actions?*

- *Possessiveness: Was your alleged abuser possessive? If so, please explain the manner of the possessiveness. What did your alleged abuser do? What did you do in response? How did you feel as a result of your alleged abuser's actions?*

- *Quality of life: How did your life change? How were you affected by the abuse? What do you feel caused the changes? What did you do to deal with the abuse?*

- *It is important to understand the above factors in order to determine if the abuse qualifies as extreme cruelty. Any further explanations or descriptions you can provide or anything further you may wish to share would be of great assistance in making an informed determination.*

- *You may also submit the following which may be of assistance to USCIS in making an informed decision:*

  - *Police reports,*
  - *Psychological reports, or*
  - *Affidavits from third parties which corroborate your claim.*

- *Please note that affidavits must be written statements sworn to or affirmed by individuals, other than yourself, who were living at the time the events(s) occurred, and who have personal knowledge of the event you are trying to prove--for example, the incident of abuse.*

- *The affiants may be required to testify before a United States Citizenship and Immigration Services Officer.*

2. This is the call up used when requesting evidence of battery:

Battery (Physical Abuse)

- *You may submit one or more of the following types of evidence to establish your eligibility for a waiver based on battery (physical abuse) perpetrated by your abuser:*

- *A statement in your own words describing the relationship with your abuser. Be as specific as possible.*

- *Complete reports and affidavits from police, judges, court officials, or school officials that include the signature of the individual who completed the report.*

- *Reports or findings from counselors, medical personnel, social workers, or other social service agency personnel who provided counseling for the abuse.*

- *Copies of doctor reports, hospital reports, or other medical treatment facilities that treated you for injuries sustained from the abuse. These reports may include, but are not limited to, diagnosis, treatment plans, etc.*

- *Evidence that you have sought refuge in a shelter for victims of domestic abuse.*

- *If photographs were taken of any visible physical injury, provide clear color photos.*

- *Any additional explanations, descriptions or documentation you wish to share that would assist USCIS in making an informed determination.*

Affidavits

- *Affidavits from third parties which corroborate your claims may be submitted in addition to any other documentation submitted.*
- *Affidavits are written statements sworn to or affirmed by individuals, other than yourself, who were living at the time the events(s) occurred, and who have personal knowledge of the event you are trying to prove--for example, the incident of abuse.*
- *The affiants may be required to testify before a U.S. Citizenship and Immigration Services Officer.*

3. This call up is a short list of evidence of a good faith marriage:

Please submit evidence to demonstrate you have resided with your abusive parent or step-parent. Satisfactory evidence may include, but is not limited to:.

1. *Leases or rental agreements listing you as an occupant.*
2. *Photocopies of your parent's income tax filing listing you as a dependent.*
3. *Insurance policies; banking and other financial records.*
4. *School records listing your parent/guardian and address of record.*
5. *Medical records or a statement from your physician.*
6. *Affidavits of friends and family. Please submit evidence to demonstrate that you have resided with your abusive parent or step-parent. Satisfactory evidence may include, but is not limited to:*

4. This is the informational paragraph that describes that marital tensions are not necessarily abuse:

- *This immigration classification was created to provide a means of securing legal status for individuals who had been battered by or were the victims of extreme cruelty at the hands of citizen or lawful permanent resident spouses or parents. Extreme cruelty generally demonstrates an attempt by the perpetrator to control through psychological means that include emotional abuse, humiliation, degradation, and isolation. It may also include economic coercion or control. Acts of extreme cruelty demonstrate a pattern or intent on the part of the perpetrator directed at achieving compliance from or control over the victim.*

- *Marital tensions and incompatibilities such as apathy toward the relationship by one party, infidelity or substance abuse of a spouse, which place strains sometimes severe enough to result in a marriage's disintegration, do not by themselves, constitute extreme cruelty. The evidence provided in the present case does not suggest that the marital difficulties claimed by you were beyond those encountered in many marriages. Additional evidence to demonstrate your claims is needed.*

Also cited below are the three relocation memos that VSC uses when relocating a file to the field for interview, and the filing status is either
an E or F Waiver cases:

- *I751 RAB Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has not established that it was a "good faith marriage" and/or has not established their claim of Battery and/or Extreme Mental Cruelty.*

- *I751 RAE Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has already established that it was a "good faith marriage", but has not established their claim of Battery and/or Extreme Mental Cruelty.*
- *I751 RGF Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has already established the claim of Battery and/or Extreme Cruelty, but has not established their claim of a good faith marriage.*

For I-751 Waiver filings, it is critical to note that, "credible evidence" is the standard for both "good faith marriage" and the claim of Battery and/or Extreme Mental Cruelty. Chapter 25 of the Adjudicator's Field Manual states the following concerning the evidence and adjudication of a Battery and/or Extreme Cruelty Waiver:

(3) Battering or Extreme Cruelty.

The original IMFA (as enacted in 1986) did not contain a separate waiver provision for victims of battering or extreme cruelty. Although in most cases, such victims could easily qualify for either of the two waiver provisions, Congress found that there was a need to spell out that victims of such treatment are entitled to special consideration under the law. As a result, section 216 of the Act was amended by section 701 of the Immigration Act of 1990 to add this waiver. It is important that in adjudicating such waiver applications INS officers are aware of and in accord with the views of Congress in passing this legislation. Other issues to bear in mind when adjudicating a battering or extreme cruelty waiver include:

· Persons who have been subjected to such treatment may have difficulty in discussing their experiences. While it is almost always necessary to discuss the abusive events with the applicant, such discussions should be carried on in a professional manner which does not further abuse the applicant by forcing him or her to unnecessarily re-live abusive episodes.

· Police reports and hospital records can be key documents in establishing that battering or extreme cruelty existed, but not all cases of abuse contain these items. Officers must be prepared to accept and evaluate other, less traditional, forms of documentation. Conversely, in the worst marriage fraud cases it is not unheard of for evidence of abuse or battering to be fabricated (someone who is willing to commit marriage fraud would not be unwilling to file a false police report).

Thanks to all that participated in the call today. We hope that the information provided during the call and the information included in this email will help the field with the adjudication of these petitions.

The VSC I-751 Team: SC Mary A Lynch, SISO Gary Lefebvre, and ISO3s Art Lambesis, Christina Martel, and Eric Oberg

- *Compliance with Section 384 confidentiality regulations*
- *Understanding the sensitive nature of E and F abuse issues, specifically related to safe address concerns and the correct application of the, "credible evidence" standard cited below:*

Standard of Proof

The standard of proof that an officer must apply is "any credible evidence". There is no specific primary or secondary evidentiary requirement and the CPR spouse or CPR child is not required to demonstrate the unavailability of secondary or primary evidence.

The "any credible evidence" standard is discussed in the memorandum from Paul W. Virtue, General Counsel, Office of the General Counsel, "Extreme Hardship" and Documentary Requirements Involving Battered Spouses and Children, (Subject file HQ 90/15-P & HQ 70/8-P)(October 16, 1998) available at website http://vsc.uscis.dhs.gov/ADJ Memos/751/waiver sop.pdf. The memo discusses the following:

- *The determination of what evidence is credible is one that must be made by the adjudicating officer on a case-by-case basis. Frequently, evidence that is credible in one setting will not be so in another.*
- *More weight will be given to primary evidence and evidence provided in court documents, medical reports, police reports, and other official documents.*
- *A CPR spouse or CPR child who submits affidavits are urged, but not required, to provide affidavits from more than one person.*
- *A CPR spouse or CPR child filing under an "e" or "f" waiver may not have access to the range of documents normally available for a variety of reasons, such as having been forced to flee from the abuse and not having access to critical documents, destruction of documents by the abuser to prevent a waiver filing or filing without the knowledge or consent of the abuser.*
- *Give the CPR spouse or CPR child ample opportunity to add to the evidence submitted in support of the petition if necessary.*
- *Determine each case based on the facts and circumstances of that case only, taking into account the limitations that pertain to a battered spouse or child.*

Also of note is that earlier this year the VSC was working with some POCs in the SER to provide remote training to be given by two of our VSC Waiver SME's in Orlando (back in April 2014), but that training was eventually cancelled by FOD in early May, based on a determination that such training should be provided by the ATC. Since that time a larger group has been teleconferencing on a weekly basis to develop an I-751 Waiver training package which I believe is intended to become a module for BASIC Academy training in the future. Our two VSC Waiver SME's have been full participants in that group and will be able to provide updated information on that effort when we teleconference with you later this week or next. Please advise as to a convenient time for us to speak with you and let us know who should receive a calendar invite. Thanks.

Mary A Lynch, Section Chief
Family Division, Vermont Service Center

[redacted] (b)(6)

Gonzalez, Deliana

From: Gonzalez, Deliana
Sent: Monday, April 20, 2015 1:31 PM
To: Ramos, Ignacio
Subject: FW: Interim Process/Guidance for request to amend a joint filed I-751 to a e or f battered spouse or child filing
Attachments: Interim Process Guidance for e and f filings 4-8-15.docx

Ignacio,

*Please share/discuss this information with the ISOs.

Attached is the Interim Process Guidance that the field offices must follow when an applicant who filed a Joint I-751 wishes to change the joint filing ("a") to a waiver for battered spouse or child ("e" or "f"). According to the VAWA provisions the service must protect the applicant and do not share the applicants' address with the abuser (this is called the "safe address"). For this, there is an identifier code which is "384" used in the system. Currently, ISOs in the field does not have access to place this identifier code and to convert the joint to a waiver.

The guidance attached is very specific and ALL the steps must be followed. This guidance will be used until further notice.

Thanks,

Deliana Gonzalez-Ferrer
Field Office Director
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
San Juan Field Office, District 9
Plaza 273
273 Ponce de Leon Avenue, Suite 1100
San Juan, PR 00917
| ☎: 787.773.8500| 🖷: 787.773.8556| ✉ [redacted] (b)(6)

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From: Yeager-Bowser, Keri K
Sent: Friday, April 17, 2015 3:18 PM
To: SERLEADERSHIP
Cc: SERDIR; Alvarado, Mario; Parker, Vanessa; Quiles, Elvis A; Tilley, Wendy M
Subject: FW: Interim Process/Guidance for request to amend a joint filed I-751 to a e or f battered spouse or child filing

Field Leadership--

The Form I-751, Petition to Remove Conditions, is currently filed with the Service Centers (CSC and VSC). In most cases, the I-751 is filed jointly by the married couple in order to remove the conditions on the residence of the foreign national spouse. Sometimes, the foreign national spouse will indicate during the I-751 interview at the USCIS field office, that he or she wants to now change the filing category to a waiver filing based on battery or extreme cruelty.

Due to the Marriage Fraud Amendment System (MFAS) limitations, the change of the Form I-751 from a joint filing to an e or f is challenging. ISO's currently do not have access to change the filing category or to place the identifier code of "384" for the safe address (to flag the case and avoid violating the VAWA provisions as stated in 8 U.S.C. § 1367), once the ISO has determined that the case warrants the change to an e or f filing. A work order has been placed with the C3 team and they are working on a system change that will allow the ISOs to convert the I-751 joint filing to an e or f, however this may not occur until late September 2015.

I have attached a document that outlines a process/guidance to be followed by the field offices that will be effective upon receipt and until further notice.

If you have any questions contact me or Vanessa Parker.

Thank you and have a great day!

Keri Yeager-Bowser
Regional Immigration Services Officer
Southeast Regional Office
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Interim Process for Form I-751, Petition to Remove Conditions on Residence (Form I-751), Basis of Filings from "a" joint filing to "e" or "f" battered spouse or child

STEP 1– At the U.S. Citizen Immigration Services (USCIS) Field Office

- Applicant informs an Immigration Services Officer (ISO) that he/she wants to change the jointly filed Form I-751to a filing under "e" or "f" (battered spouse or child)
- ISO requests that the applicant complete a new Form I-751 at the time of the interview and indicate the new filing category. **No application fee will be required**.
- ISO will ADMIN Close/Other the jointly filed Form I-751 in the Marriage Fraud Amendment System (MFAS)
- ISO scans and emails*-the new Form I-751and G-28, if applicable, to California Service Center (CSC) or Vermont Service Center (VSC) depending upon the applicant's address to the applicable mailbox :
    - CSC: CSC.OSB1.Field@uscis.dhs.gov
        - If the applicant resides within Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming;
        - Or if the receipt number on the I-751 begins with WAC
    - VSC: VSCDOI751amended@uscis.dhs.gov
        - If the applicants resides within Alabama, Arkansas, Connecticut, Delaware, Washington, D.C., Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, U.S. Virgin Islands, and West Virginia;
        - Or if the receipt number on the I-751 begins with EAC.
- ISO will place the new Form I-751 in the A-file

***Note: WinZip and password-protect the Form I-751. Send the password in a separate email since PKI encrypted emails cannot be sent to group mailboxes.**

Step 2 – At California Service Center or Vermont Service Center

- Data enters new I-751 into system and assigns a receipt number within 72 hours
    - Original signatures are not required for data entry into system because field offices will retain the original document in the file
- Service Centers will update CIS with the safe address COA"384"

- Create the Approved Removal Conditions Form (CRI-89) for the new receipt number
- Upload biometrics to new CRI89
- Service Center emails* the field office with a scanned copy of the newly created I-751 with the receipt number and provides CRI89 receipt number
- Determine safe address and complete safe address determination form
- Destroy scanned copy of I-751 once it is emailed to the field office
- Service Centers will check the email account daily for new requests

***Reminder:** WinZip and password-protect the Form I-751. Send the password in a separate email since PKI encrypted emails cannot be sent to group mailboxes.

Step 3 – At USCIS Field Office

- ISO places the new I-751 in the applicant's A-file
- ISO ensures that all background and security checks are completed and valid, to include the FD-258
- ISO interviews the applicant on the newly filed I-751
- If the applicant is unable to present sufficient supporting documentation at the time of the interview, the ISO will issue an RFE
- If the applicant submits sufficient supporting documentation at the time of the interview, the ISO will adjudicate the case
- ISO will hold the A-file with the newly filed petition until the Service Center enters the new I-751 into the system and assigns a receipt number.
- ISO will receive the email containing Form I-751 with the receipt number on the newly filed I-751 and the receipt number for the newly created CRI89
- ISO attaches the scanned I-751 to the original I-751 with signature
- The ISO will make a check mark in the "Approved under INA 216(c)(4)(C) Battered Spouse/Child" block.
- The applicant will be informed in writing of the decision on the newly filed I-751
- ISO will route the file to the appropriate Service Center for card production using the standardized routing sheet.

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Gonzalez, Deliana

From: Gonzalez, Deliana
Sent: Tuesday, April 05, 2016 2:51 PM
To: Amaro, Saskia; 'Claudio, Maria L [redacted]'; Cruz, Jose L; 'Diaz, Marianela [redacted]; Gaston, Gabriela A; Gaston, Victor; 'Lopez, Carmen L [redacted]'; 'Walsh, Neil R [redacted]
Subject: I-751 VSC Memo - battered spouses

ISOs,

Please be aware of the following information regarding I-751 petitions filed as battered spouses:

Apparently the Vermont Service Center is sending I-751s to the field offices with a memorandum stating that they have made a determination that the CPR entered the marriage in good faith; however, because the CPR has not provided sufficient credible evidence of abuse, they are sending it for a standard interview to determine if there is credible evidence of the abuse.

One of the offices from the District brought the concern that according to the VAWA unit we were not supposed to question the CPR about the abuse. The District raised the issue to the region and the region responded: "The office still conducts the interview or refers it for investigation to determine if there is credible evidence of abuse. The evidence can consist of reports from phycologists, social workers, battered shelter personnel, etc. The safe address must be used if an interview is conducted and there is a worksheet in the file with that address." As you know we need to be careful to not send any information to the USC or LPR spouse when dealing with battered spouse cases, but instead use the "safe" address, which is the one that the beneficiary provides to receive any information from the service. Remember these are considered self-petitions, and the claimed "abuser" must not receive any information from the service related to the claimed abused.

Another issue was brought regarding the templates used to deny these cases. The region responded the following: "The issue of templates has been floating around HQ for a while, but I see no final ones in the future. HQ and regional counsel have advised to use the ones your offices uses and have them confer with local counsel."

If you are dealing with these cases and have any concern or question, please let me know.

Thank you!

Deliana Gonzalez-Ferrer
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