



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

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##### (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.
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**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.

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.