



U.S. Department of Justice
Immigration and Naturalization Service

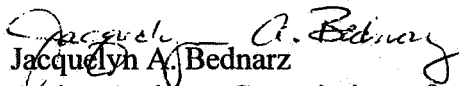
HQADN/70/6.1P

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MAR 27 1998

MEMORANDUM FOR Paul Novak
Acting Director, Vermont Service Center
Regional Directors
District Directors
Officers In Charge

FROM:


Jacquelyn A. Bednarz
Acting Assistant Commissioner for Adjudications

SUBJECT: Field Guidance Re: Prima Facie Review of Form I-360
when filed by a Self-Petitioning Battered Spouse/ Child

This field guidance is directed specifically to the Vermont Service Center, the direct mail location for Form I-360 when filed by self-petitioning battered spouses or children. However, these instructions provide important information for dissemination to the public and should be distributed to appropriate personnel, and especially to the designated Points of Contact for issues related to the Violence Against Women Act (VAWA).

On November 13th, 1997, the Service published an interim rule in the Federal Register, *Prima Facie Review of Form I-360 When Filed by a Self-Petitioning Battered Spouse/Child* (copy attached). This interim rule, which became effective on the date of publication, enables the Service to consider and determine whether a self-petitioner has established a *prima facie* ("at first view") case for immigration status as the battered spouse or child of a USC or LPR.

Such determinations have become critical as a result of Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

The new law amends the definition of "qualified alien" to include battered aliens who have an **approved** self-petition, or who have **filed** a self-petition. A favorable prima facie review of Form I-360 allows certain battered spouses or children to be regarded as "qualified aliens" for the purpose of establishing eligibility for public assistance.

Review of Form I-360 for prima facie determination focuses on the following:

A *Notice of Prima Facie Case* (NPFC) is not a benefit or immigration status for which petitioners may apply and it is solely at the discretion of the Service to issue the Notice.

Self-petitioners **must** be physically resident in the United States to obtain the *Notice of Prima Facie Case*. Self-petitioners who are outside the United States are not eligible for public assistance benefits and should await the adjudication of the I-360 petition.

The decision to issue a *Notice of Prima Facie Case* is based upon an initial review of the I-360 petition and supporting documentation. It is **not** an adjudication of the petition. Officers should ascertain that the applicant has addressed each of the required elements. However, self-petitioners need not provide all of the supporting evidence which might or must be submitted prior to the final adjudication.

The NPFC will be printed on Form I-797 and valid for 150 days from the date of issuance. In nearly all cases this will be sufficient time to adjudicate the I-360. During that time, the self-petitioner will have the opportunity to improve the petition by submitting additional evidence and documentation. In those instances where the adjudication of the petition can not be completed within that time frame, the Adjudicating Officer may issue an extension of the NPFC.

Self-petitioners who are unable to establish a *prima facie* case in the first instance will be notified of the deficiencies of the petition with a request for additional evidence or documentation. Upon receipt of the second submission, the adjudicating officer may determine that the I-

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360 now meets the *prima facie* standard, and may issue an NPFC for the self-petitioner's use while the I-360 is adjudicated.

Where the self-petitioner has failed to respond to the Service's request for additional documentation the NPFC will expire. To extend the validity of the NPFC under such circumstances, the applicant must submit a written request to the Service for an extension and include a copy of the initial NPFC. Instructions to this effect are contained within the Notice of Prima Facie Case. Adjudications officers may either issue an extension of the NPFC or decide to complete the adjudication of the petition and not extend the NPFC. The NPFC will only be extended for an additional 60 days.

A Notice of Prima Facie Case will not be issued for I-360 petitions which are approveable upon initial review. The approval notice serves the same purpose of establishing qualified alien status for petitioners seeking public assistance.

The issuance (or non-issuance) of a NPFC Case **must not** be considered or weighed in the adjudication of the I-360.

In those cases where the I-360 is denied, the NPFC will not be re-issued or extended, this includes denied cases which are on appeal. Filing an appeal does not entitle the applicant to a NPFC, nor does it extend the validity of an existing NPFC.

If you have any questions concerning the interim rule and guidance provided in this memorandum or any other aspect of the VAWA provisions, please contact Karen FitzGerald, Headquarters, Adjudications, (202) 514-5014, or by fax at (202) 514-8661.

Attachment