



U.S. Department of Justice
Immigration and Naturalization Service

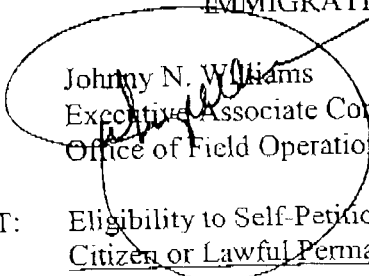
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Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

AUG 21 2002

MEMORANDUM FOR REGIONAL DIRECTORS
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES DIVISION

FROM:  Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Eligibility to Self-Petition as an Intended Spouse of an Abusive U.S.
Citizen or Lawful Permanent Resident.

On October 28, 2000, the President signed the Victims of Trafficking and Violence Protection Act (VTVPA). Title V of the VTVPA is entitled the Battered Immigrant Women Protection Act (BIWPA), and contains several provisions amending the self-petitioning eligibility requirements contained in the Immigration and Nationality Act (Act). The purpose of this memorandum is to inform Immigration and Naturalization Service (Service) officers in the field of the change in the law concerning the eligibility to self-petition as an *intended spouse* of an abusive United States citizen (USC) or lawful permanent resident (LPR). This provision of the BIWPA applies to all self-petitions pending on or filed on or after October 28, 2000.

Prior to the enactment of the BIWPA, an alien was ineligible to file a self-petition as a battered spouse of a USC or LPR if s/he was not legally married to the abusive USC or LPR spouse on the date the petition was properly filed with the Service. This left no relief for a battered alien who believed s/he was married to a USC or LPR, but later discovered the marriage was not legitimate **because of the bigamy of the USC or LPR.** The BIWPA defines a battered alien in this situation as an 'intended spouse' and amends the Act to preserve self-petitioning eligibility for intended spouses.

Sections 1503(b)(1) and (c)(1) of the BIWPA provide that an alien who can demonstrate that s/he believed s/he had entered into a bona fide marriage with a USC or LPR and with whom a marriage ceremony was actually performed, but such marriage is not legitimate solely because of the bigamy of such USC or LPR, is eligible to file a self-petition as a battered spouse. In other

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words, if the self-petitioner can demonstrate that:

1. s/he married a USC or LPR who s/he believed was free to enter into a marriage;
2. that a marriage ceremony was actually performed; and,
3. the requirements for the establishment of a bona fide marriage were otherwise met

the self-petition should not be denied on the grounds of failure to demonstrate a legally valid marriage.

Evidence Required

Whether the self-petitioner is an intended spouse, as defined by the BIWPA, is a matter of evidentiary proof. That proof must demonstrate that the self-petitioner believed that s/he entered into a legally valid marriage with the USC or LPR. The focus is therefore on the intent of the self-petitioner not that of the alleged abuser. Primary evidence shall be a marriage certificate issued by civil authorities in the United States or abroad.

Proof of the abuser's prior divorces shall no longer be required since a finding that the marriage is not legally valid due to the abuser's bigamy cannot render the self-petitioner ineligible. A self-petitioner who has been married prior to the current relationship intended by him or her to be legally a marriage must, however, continue to demonstrate the lawful termination of any such marriages prior to entering the current relationship.

An alien who demonstrates eligibility to file a self-petition as an intended spouse must nevertheless fully satisfy all other eligibility requirements and demonstrate that:

1. the person s/he believed s/he was married to is a USC or LPR;
2. that s/he entered the relationship intended to be legally a marriage in good faith;
3. that there was battering or extreme mental cruelty perpetrated by the USC or LPR during the relationship intended to be legally a marriage;
4. s/he resided with the abuser at some point; and,
5. that s/he is a person of good moral character.

Evidence submitted to meet these eligibility requirements may also be used when determining the intent of the battered alien at the time s/he entered into the relationship with the USC or LPR.

Please direct any questions concerning these changes to Laura Dawkins, Office of Adjudications, (202) 514-4754.