U.S. Department of Justice

Immigration and Naturalization Service

HQ 70/8.1-C
HQ 70/8.2-C

425 Eye Street N.W.
Washington, D.C. 20536

AUG 22 1996

Ms. Leslye Orloff
Director of Program Development
Ayuda, Inc.
1736 Columbia Road, N.W.
Washington, D.C. 20009

Dear Ms. Orloff:

Thank you for your letter of June 13 suggesting ways in which the Immigration and Naturalization Service ("the Service") can assist domestic abuse victims who are applying for immigration benefits. In your letter, you recommend that I issue a directive to Service offices concerning the adjudication of visa petitions filed by abusive U.S. citizen or lawful permanent residents on behalf of their spouses. You ask that this directive prohibit Service officers from contacting the U.S. citizen or lawful permanent resident petitioner without the beneficiary's consent and "ensure that the approval of I-130 applications is not dependent on the abuser's cooperation."

The Service is committed to implementing the immigration-related provisions of the Violence Against Women Act("the VAWA") portions of the Violent Crime Control and Law Enforcement Act of 1994 in a manner that is sensitive to the needs of abused spouses and children of citizens and lawful permanent residents of the United States. At the same time, of course, we must also respect the rights and needs of all our clients and fulfill our mandate to implement and enforce the provisions of the Immigration and Nationality Act ("the Act").

As you know, prior to enactment of the immigration-related portions of the VAWA, most abused alien spouses and children could become lawful permanent residents based on the relationship to the abuser only if the abuser filed and cooperated in the adjudication of a relative petition. This situation created an imbalance of power which some abusers choose to exploit as a means of furthering their excessive control over the lives of their spouses and/or children.

The VAWA self-petitioning provisions and the Service's related implementing regulations equalize the balance of power in this area between the abuser and a qualified self-petitioner by providing the

abuse victim with an alternative path to immigrant classification based on the relationship to the abuser. They allow a qualified abuse victim to exert a level of control over his or her self-petition which equals the control accorded a U.S. citizen or lawful permanent resident over a relative petition.

In adding the parallel self-petitioning process, the VAWA did not eliminate the provisions of the Act that allow a U.S. citizen or lawful permanent resident to petition for certain family members. The VAWA also did not shift control of a relative petition filed by a citizen or lawful permanent resident to the beneficiary, nor did it give the beneficiary the right to limit actions necessary to properly adjudicate a relative petition.

A petition, whether a relative petition or a self-petition, essentially remains a matter between the person who filed the petition and the Service. Other persons, with the exception of attorneys or other qualified representatives of petitioners, have no standing in the petitioning process even though they may benefit from the approval of the petition and may be understandably concerned with the outcome of the petition. The Service must notify the petitioner of formal actions concerning the petition he or she filed, including, if applicable, the need for additional evidence and/or the Service's intent to deny the petition.

A qualified spouse or child of an abusive U.S. citizen or lawful permanent resident may seek adjustment of status based on either a self-petition or a relative visa petition, whichever is most advantageous to the applicant. Under the Service's recently promulgated self-petitioning regulations, the visa petition priority date may be assigned to the self-petition if that would be advantageous to the self-petitioner. If the spouse or child chooses to proceed with an adjustment of status based on the abuser's petition, the Service must direct any formal requests for additional documentation necessary to adjudicate the petition to the petitioner. The Service must also address any notice of intent to deny a petition or any denial notice concerning a petition to the petitioner.

Although the Service cannot adopt those of your suggestions that would improperly infringe on the rights of a citizen or lawful permanent resident in the relative visa petition process, I agree that Service officers can and should exercise appropriate discretion when conducting interviews or adjudicating petitions concerning relationships that may be abusive. In my attached policy memorandum concerning implementation of the VAWA self-petitioning provisions, dated April 16, I reminded adjudicators

that the purpose of interviewing the petitioner in a relative petition case was to determine whether a basis exists for denial or revocation of the visa petition. I also pointed out the inherently sensitive nature of cases involving domestic abuse and asked adjudicators to give careful consideration to the available information concerning the case. I further reminded interviewing officers that they could use their discretion to conduct separate interviews of the petitioning relative and the beneficiary, possibly on different dates or at different times.

I note that five out of the six incidents identified in your letter preceded issuance of my April 16 policy memorandum, and several took place prior to enactment of the VAWA immigration-related provisions and before publication of the interim rule implementing the self-petitioning provisions of the VAWA. The sixth example occurred only shortly after dissemination of my April 16 memorandum, and I trust that matter was easily resolved by informing the supervisory official that his staff was unaware of his decision to allow the applicant and her spouse to be interviewed separately.

Since each application or petition for benefits filed with the Service is reviewed individually and the facts of each case vary, I would encourage petitioners, applicants, and those representing them to promptly contact local supervisory officials if they feel that a Service employee has incorrectly or insensitively handled a case or cases. Local officials are in the best position to review these cases and, if necessary, to take timely and appropriate remedial action.

Of course, I would appreciate being apprised of continuing problems or issues that must be addressed at a national level. As discussed in the supplementary information to the interim rule implementing self-petitioning, the Service will develop and provide further interpretive guidance concerning self-petitioning cases, including training courses and other policy and procedural directives. I anticipate issuance of further directives once Service officers have begun to accumulate experience in adjudication of self-petitions and we have had the opportunity to assess the extent and type of additional guidance needed. I have also asked my staff to review formal training options to determine the optimum training format for those Service officers who will adjudicate these cases.

I greatly appreciate the assistance that you and your organization have provided in enhancing the Service's understanding of the dynamics of domestic violence and in suggesting ways in

which to prevent abusers from misusing the immigration process. I look forward to working with you and other similarly interested and knowledgeable persons and groups in the future to ensure that unnecessary obstacles are not placed in the path of abuse victims who are seeking to obtain immigration benefits.

Sincerely,

T. Alexander Aleinikoff
for Executive Associate Commissioner
Programs