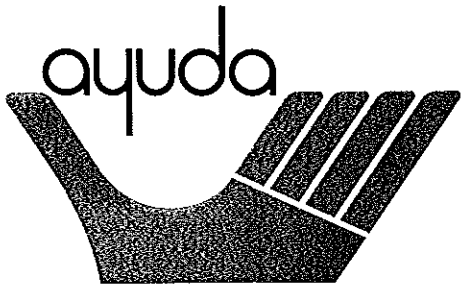

June 13, 1996

Mr. T. Alexander Aleinikoff
Executive Associate Commissioner for Programs
Immigration and Naturalization Service
425 Eye Street
Washington, D.C. 20001

Dear Mr. Aleinikoff,

This letter is in response to your request during our recent telephone conversation for a description of the petition adjudication problems encountered by battered women who have pending I-130 cases, but whose abusive spouses fail to appear at the adjustment interview.

Under current law, to obtain permanent residency through an I-130 application filed by an abusive spouse, a battered immigrant woman who is the beneficiary of that application need only prove that she was in a good faith marriage to a United States citizen or lawful permanent resident at the time of the application and that she is not excludable. She need not prove the current validity of the marriage, the existence of abuse, good moral character, or extreme hardship if deported. This is true even if the application filed by her spouse has been pending for one or more years and/or if the spouse refuses to appear at the adjustment interview.

INS regulations require only that "Each *applicant* for adjustment of status [...] be interviewed by an immigration officer." 8 C.F.R. section 245.6 (emphasis added). Case law states that even if a marriage is not viable at the time the adjustment application is filed, this fact by itself cannot be the basis for a denial of the application. *See* Matter of Boromand, 17 I&N Dec. 450 BLA (1980). The statute itself requires only a "good faith marriage," not an untroubled one. There are many instances where the application for adjustment of status is based on a verifiable bona fide marriage though the petitioning spouse is absent from the interview due to circumstances which developed during the marriage.

Unfortunately, some local INS offices are failing to apply the law correctly, and refusing to adjudicate the I-130 petition if the husband is not present at the interview or if evidence of current abuse is disclosed. These problems are also arising in other cases where spousal interviews are required, such as hearings to remove conditions on residency, and those where the abused spouse is coming in on a derivative visa.

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It is particularly important in I-130 cases that beneficiaries be permitted to obtain approval of the I-130 and I-485 simply by providing proof of good faith marriage along with evidence of abuse, without requiring any additional cooperation of the abusive spouse. Since domestic violence only occurs within a family setting, we strongly believe that evidence of the abuse provides substantial proof that the relationship at issue is a bona fide marriage. This evidence, when considered with the abused spouse's additional proof, will in most cases provide a sufficient basis for approval of the I-130 without the abusive spouse's participation.

When victims present INS with evidence of abuse, INS examiners need to be made aware that contacting abusers can place abused beneficiaries at great risk of danger. INS examiners should not contact petitioners when the victims have presented evidence of abuse. Since in many cases INS will find it possible to grant the I-130 based on the abused beneficiaries' evidence alone, INS officers should be prohibited from contacting an abusive petitioner except when they have notified the beneficiary that they cannot grant the I-130 based on her evidence alone. In that notification, INS should inform her that they will decide her case based on the evidence she has presented or that she may sign a written statement permitting INS to contact her abusive spouse to obtain further evidence. INS should also explain to her why she has not presented sufficient evidence to establish a good faith marriage and permit her to submit any evidence that is lacking before asking her to allow INS to communicate with her abuser. This approach allows INS to decide I-130 applications based on the evidence presented by either or both parties and protects the safety of abuse victims.

Requiring that abusive spouses appear at I-130 interviews does not provide for a more reliable determination of the bona fides of the marriage. When the abuser has filed a visa petition for his spouse, he has already provided the INS with evidence about the validity of the marriage. Here the evidence that the citizen or resident spouse provided INS in his I-130 petition supplements and corroborates the evidence presented by the abuse victim. When the evidence provided by the petitioner and the beneficiary is examined together with the evidence of abuse, INS will, in the vast majority of cases, find that the marriage was bona fide and the petition can be granted. There is enough of a fraud check built into this process, and abused women should not be required to meet VAWA's more rigid extreme hardship test.

In response to these problems we are asking you to issue a directive informing officers that they can and should grant an application for adjustment where there has been proof of the bona fides of the marriage, whether or not the petitioning spouse is present at the interview. We suggest that INS officers also be instructed to use any evidence of violence in the relationship as evidence of the bona fides of the marriage, rather than as a reason to question the marriage. INS officers should be cautioned against contacting the absent spouse in cases of abuse, as this is unnecessary to prove good faith marriage, and may put a battered woman in danger. Directing INS interviewers to ask about the possibility of violence when the petitioning spouse fails to appear would prevent communication with the abuser that is unsafe for a battered woman who may not yet have disclosed abuse.

It is important that INS offices implement the requirements properly to ensure that the approval of I-130 applications is not dependent on the abuser's cooperation. When aware that he possesses control over his spouse's residency application, an abuser will often purposefully fail to

appear at an interview in order to thwart a battered woman's application, or will use the fact that the application is pending as leverage for abuse.

Especially when there has been abuse or violence in the marriage, it is logical that the parties will be separated at the time of the interview. It can be dangerous to force them to attend the interview together. Family courts across the country have struggled to resolve the safety issues that arise for court personnel and the parties in domestic violence cases. Many courts have metal detectors, bailiffs, and marshalls, that help them reduce the chances of violence at the courthouse, but tragically, deaths still occur. Requiring both parties to appear at an INS interview when INS knows that there is a history of domestic violence is dangerous not only for the parties involved, but also for INS staff.

What follows is a sampling of the diverse problems arising in I-130 cases, and other cases where joint spousal interviews might occur, that are being reported by domestic violence advocates and immigration attorneys from around the United States.

1. **INS offices refuse to interview the beneficiary of an I-130 petition unless both spouses jointly appear at an interview.**

> **NEW YORK:** In March of 1996, a woman's case was administratively closed pending the joint appearance of both spouses at an interview. Her petitioning husband did not appear at the adjustment interview because he was incarcerated at the time it occurred. Even though the INS office is fully aware that her husband is still in prison for an indefinite period of time, it is refusing to receive any evidence from her about the bona fides of the marriage unless her husband accompanies her to the interview.

2. **INS offices deny applications because the petitioning spouse does not appear for the adjustment interview.**

> **SAN DIEGO:** In a case that began approximately two years ago, a woman filed an adjustment application concurrent with an I-130 petition based on the marriage to her United States citizen spouse. By the time of her interview, about one and a half years ago, the spouse had disappeared, and his whereabouts were (and still are) unknown. The petition was never withdrawn and neither party has sought a divorce. The client went to the initial interview alone. She was peremptorily interviewed and her work permit renewed, but nothing further occurred. In February of 1996, the woman retained an attorney who then contacted the INS and requested an adjudication of the case. At a second interview he presented further evidence of the original bona fides of the marriage along with case law indicating that adjustment application based on a good faith marriage should be approved regardless of whether the petitioning spouse appears at the interview. The client was notified by the INS that a denial would be written up "in the near future" because the cases the attorney had cited were only relevant if the "I-130 petition had been approved prior to adjustment."

3. **INS offices refuse to adjudicate adjustment applications based on valid I-130 petitions unless the petitioning spouse is present at the interview.**

CHICAGO: Ms. Doe and her 10 year old child filed for adjustment in November of 1993 in conjunction with an I-130 petition through Ms. Doe's United States citizen husband. Her husband refused to appear at two interviews, and the INS refused to interview Ms. Doe by herself. In June of 1995 Ms. Doe submitted documentation of the physical abuse she was suffering at the hands of her husband, including protection orders and police reports, and requested another interview. In August, 1995 the INS denied the adjustment without an interview, based on the fact that they denied the I-130 previously. No reason was given for denying the I-130. This denial has made her ineligible for adjustment because there is no approved immigrant visa. Ms. Doe has not been placed in deportation proceedings.

4. **INS offices unnecessarily delay the adjudication of adjustment applications based on I-130 petitions when the petitioning spouse is not present at the interview.**

LOS ANGELES: In 1993 and 1994, an immigration attorney handled two cases where the INS initially refused to conduct adjustment interviews with the beneficiaries of I-130 petitions (both battered women) who were married to lawful permanent residents because the petitioning spouse was not present. When the INS finally agreed to conduct interviews, they held off on adjudicating the petitions, going so far as to contact the batterer in one case to ask if he wanted to withdraw the petition, which he did. In the other case the batterer withdrew the petition before the adjustment application was adjudicated.

LOS ANGELES: In February of 1994, this same attorney attended an adjustment interview with another client who had an approved I-130 petition. The INS interviewed the client, but again delayed in adjudicating the I-485. The client became so anxious while waiting for the petition to be adjudicated that she returned to her batterer, who promised to help her with her immigration status. After he spoke with an INS officer, the I-485 was approved. This woman's petition would likely not have been approved had she not returned to her batterer.

Similar problems are also arising where immigration applications that may require joint interviews are being adjudicated, such as hearings to remove conditions on residency and applications to which the battered spouse is a derivative applicant. Following are examples of these situations.

5. **INS offices fail to approve petitions when there is ample evidence of the bona fides of the marriage because the husband is uncooperative at the interview.**

HELENA, MT: In one case the husband and wife had jointly filed an I-751, and jointly attended an interview. During the interview it was disclosed that there was marital trouble, and the husband left before the interview was completed. Even though sufficient evidence of the bona fides of the marriage had been demonstrated, the INS office did not remove the

wife's conditional residency. When the wife moved to San Francisco, her husband started divorce proceedings. Since the INS failed to grant the previous joint petition, the subsequent divorce forced her to apply for a waiver.

SAN FRANCISCO: At the woman's interview, the examiner questioned the woman extensively about her marital problems, asked whether she loved her husband, and asked about her relationship with her in-laws, with whom she had been having problems. The examiner, who was very insensitive to domestic violence issues, questioned why the woman did not move out, and why she wanted to stay married to her husband if he battered her.

The examiner also conducted the interview in a very disorganized and confusing manner. This caused the client to become very upset and confused. After asking the questions listed above, the examiner suddenly asked the woman whether she had ever tried to set the house on fire, or chased her in-laws with a knife. When her attorney asked where the questions came from, the examiner could only state that there was a "note in the file" mentioning a statement by her husband. When the woman's attorney asked whether the husband had been contacted and if she could be notified of his testimony in order to respond, the examiner again referred only to the note in the file. When the woman's attorney repeatedly asked the relevance of some of the examiner's questions, he answered that he did not know the relevance.

6. **Where both spouses must be interviewed, INS offices are refusing to grant separate interviews when they have knowledge of a history of domestic violence.**

LOS ANGELES: In May of 1996, a woman who is a derivative on her husband's approved employment visa came to an attorney asking that she not be forced to attend an interview with her abuser. Not only was she being battered, but her batterer's son had also sexually assaulted her daughter. The woman had already filed a restraining order against the abuser and moved out of the house. Both her and her husband had filed adjustment applications, and were scheduled for a joint interview in June of 1996. The attorney called the INS office asking if it would be possible to arrange separate interviews. She spoke with Dennis Perry, Supervisor of Adjudications, who said that separate interviews would be fine, and that it might even be possible to schedule them on separate days. The attorney then referred the case out to a pro bono attorney who called INS to schedule the separate interview. The pro bono attorney was told by an adjudicator that both spouses were required to attend the interview together. Even though the INS acknowledged that the couple did not have to live together, they would only schedule joint interviews because, they said, to judge whether the marriage is bona fide they must see how the couple interacts. The woman is now forced to attend the interview with her abuser.

As these cases illustrate, a directive from your office would help ensure that INS handles I-130 cases, and other cases where similar problems arise, in a manner that promotes the safety of domestic violence victims and INS staff. There will be many cases where INS will be able to grant the I-130 application without contacting the abusive spouse. In those cases where INS contemplates

contacting the spouse, abuse victims must be provided the opportunity to assess the danger that INS contact with the abuser might pose, and be allowed to request that INS adjudicate her claim without such contact. Finally, many of these problems arise because INS staff lack understanding of, or familiarity with, the dynamics of domestic violence. We encourage you to conduct local trainings of INS staff on domestic violence, or ensure that those INS administrators who have received domestic violence training are assigned to any cases where violence may be an issue.

The curriculum for these trainings should be developed in conjunction with advocates who have expertise working with battered immigrant women. All major trainings of judges and health professionals occuring across the country (such as the National Council of Juvenile and Family Court Judges, American Medical Association, American College of Nurse Midwives, International Women, and the Judges Association) recognize that the most effective domestic violence trainings result from a partnership of faculty, some of whom come from the professional group being trained and some of whom are battered women's advocates. Both have input into curriculum development and work together in teams as the training faculty. We would be happy to assist you in developing and implementing these important trainings.

If I can assist you by providing you with further information on these cases, or on why these practices are so harmful for battered women, please feel free to contact me. When I have finished contacting the service centers about the other cases we discussed, I will update you on the status of those cases. Thank you for your assistance and your concern for protecting battered immigrant women.

Sincerely,

Leslye Orloff
Director of Program Development