CUBAN ADJUSTMENT ACT
WITH VIOLENCE AGAINST WOMEN ACT 2000 AND 2005 AMENDMENTS[1]

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Legislative History and Purpose

One of Congress' key goals in Violence Against Women Act (VAWA) 2000 and VAWA 2005 was to sever dependence on the abusive spouse by treating spouses and children subjected to battering or extreme cruelty by Cuban principals in a manner identical to abused spouses and children of citizens and lawful permanent residence. Under Violence Against Women Act amendments to the Cuban Adjustment Act (VAWA CAA), spouses and children of Cuban immigrants Cuban Adjustment Act applicants[2] who had been subjected to battering or extreme cruelty by their CAA eligible spouse or parent would be able to directly self-petition for VAWA CAA when the Cuban spouse was eligible to file an application for adjustment of statue to lawful permanent residency. The goal of the VAWA statutory amendments was to ensure that spouses and children subjected to battering or extreme cruelty would maintain access to VAWA CAA adjustment of status under a range of circumstances:[3]

- When the CAA eligible spouse, former spouse, parent or step-parent perpetrator had not filed their own CAA application for adjustment of status to lawful permanent residency through the CAA --
    - The goal was to allow abused spouses and children to flee the abusive home and no longer be forced to stay with the abuser until the abuser filed for lawful permanent residency through CAA and until the abuser had included the abused spouse and children in the application
- When the perpetrator had filed for an application for CAA adjustment of status to lawful permanent residency --
    - The goal was to allow the abused spouse and/or child to not have to stay with the abuser because there was a pending CAA case awaiting adjudication. This approach also offered protection by addressing the problem of cases in which the abuser filed for CAA adjustment of status to lawful permanent residency and had refused to include their CAA eligible abused spouse or child in their CAA application. When family violence was present in the home this is a common form of the immigration related abuse and coercive control dynamics in the relationship.[4]
- When the perpetrator filed an application for CAA adjustment of status to lawful permanent residency and was granted lawful permanent residency under CAA and did

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[2] The Cuban Adjustment Act eligible spouse or parent in immigration law is called the "principal" applicant and that principal applicant's spouse or children who are also eligible to apply for CAA protection are called "derivative" applicants.

[3] See http://niwaplibrary.wcl.american.edu/pubs/vawa2000senrecord page S10196 http://niwaplibrary.wcl.american.edu/pubs/hr3402legrpt-vawa-2005-leg-history pp 116 and 120

[4] http://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors pp 292 http://niwaplibrary.wcl.american.edu/pubs/cult-rsch-immsouthasianwomenriskdv-03-03

not include their abused immigrant spouse or child whom the Cuban perpetrator battered or subjected to extreme cruelty in their lawful permanent residency application.

The VAWA CAA provisions were designed to provide self-petitioning protections for abused spouses and children of CAA eligible Cuban immigrants virtually identical to the protections available to self-petitioning abused spouses and children of citizens and lawful permanent residents. VAWA CAA was designed to be available to:

- Abused immigrant spouses and children of Cuban CAA applicants who have been subjected to battering or extreme cruelty by their CAA eligible spouse or parent[5]
- Abused immigrant spouses and children of Cuban CAA principal applicants where the abused immigrant spouse was admitted or paroled into the United States
- Abused immigrant spouses and children of Cuban CAA principal applicants without regard to the abused immigrant spouse or child's citizenship, nationality or country of origin.

The goal with to provide direct self-petitioning access to VAWA CAA protection that would not be under the power and coercive control of the abusive Cuban principal spouse or parent. Congress understood that once the CAA eligible abuser attained lawful permanent residency through CAA, their abused immigrant spouse would be able to file a VAWA self-petition under INA Section 204(a)(1)(B). However, there was a concern that making abused immigrant spouses and children of CAA Cuban principal applicants wait until after the Cuban abusive immigrant spouse attained lawful permanent residency would lock that battered immigrant spouse and child in the relationship where they would be subject to ongoing abuse.[6]

To address this concern the VAWA CAA provisions were written to allow a victim to file whether or not the victim continued to reside with the abuser. This provision allowed the victim to flee the abusive home without losing the path to lawful permanent residency the abused spouse or child had though the CAA or when the abusive Cuban principal spouse adjusted status. VAWA 2005 amendments expanded these protections to give spouses and children subjected to

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[5] VAWA CAA was designed to help abused immigrant spouses and children without regard to the abused spouse or child's immigration status or country of origin. VAWA 2005 included VAWA CAA applicants on the list of domestic violence victims who were defined in INA 101(a) (51) as VAWA self-petitioners. VAWA CAA applicants like all every other category of self-petitioner described in INA 101(a) (51) abused immigrant victim spouses and children both those who are undocumented and those who may have some form of temporary legal immigration status (e.g., student visa, work visa, temporary protected status, humanitarian parole).

[6] It is important to note that many battered immigrant VAWA self-petitioners and U visa applicants continue to reside with their abusive spouses until the VAWA self-petition or U visa application is adjudicated and the victim receives work authorization. The research findings provide a clear picture of the frequency with which abused spouses continue to be subjected to abuse. It is this ongoing abuse that the VAWA CAA amendments to VAWA 2000 and VAWA 2005 were designed to avoid. See generally, Attachment C: Krisztina E. Szabo, David Stauffer, Benish Anver & Leslye E. Orloff, *Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014), *available at* http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf.

battering or extreme cruelty by Cuban spouse the same two years post-divorce to file their VAWA CAA application that VAWA 2000 gave all VAWA self-petitioners.

Below is the complete text of the Cuban Adjustment Act of 1966, interlineated with highlights on the VAWA 2000 and VAWA 2005 abused spouse and child amendments of the Cuban Adjustment Act statute.

VAWA 2000 changes are *underlined and italics;* ~~with deletions.~~

VAWA 2005 amendments are **underlined and bold,** ~~with deletions~~

The Cuban Adjustment Act of 1996 (H.R. 15183)[7]

To adjust the status of Cuban refugees to that of lawful permanent residents of the United States and for other purposes

Adjustment Provisions Cuban Adjustment Act (Public Law 89-732, November 2, 1966, as Amended by the Violence Against Women Acts of 2000 and 2005

SEC 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding the provisions of section 245(c)[8] of the Immigration and Nationality Act the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States~~.~~*, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section ~~204(a)(1)(H).~~* **204(a)(1)(J). An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or, if later; 2 years after the date of enactment of Violence Against Women and Department of justice Reauthorization Act of 2005), or for 2 years after the date of termination of the marriage (or; if later, 2 years after the date of enactment of Violence Against Women and Department of Justice Reauthorization Act of 2005) if there is demonstrated a connection**

[7] 79 Stat.919

[8] INA Section 245(c); 8 U.S.C. 1255(c)(governing immigrants eligible for adjustment of status to lawful permanent residency)

between the termination of the marriage and the battering or extreme cruelty by the Cuban alien.

SEC. 2. In the case of any alien described in section 1 of this Act who, prior to the effective date thereof, has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act, whichever date is later.

SEC. 3. § 13 of the ACT entitled "An Act to amend the Immigraiton and Nationality Act , and for other purposes", approved October 3, 1965 (Pub. L. 89-236) (8 U.S.C. 1255(c)), is amended by adding at the end the following new subsection: (This subsection has since been removed from the INA)

> "(c) Nothing contained in subsection (b) of this section shall be construed to affect the validity of any application for adjustment under section 245 filed with the Attorney General prior to December 1, 1965, which would have been valid on that date; but as to all such applications the statues or parts of statues repealed or amended by this Act are, unless otherwise specifically provided therein, continued in full force and effect."

SEC. 4. Except as otherwise specifically provided in this Act, the definitions contained in section 101 (a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration nationality, or naturalization.

SEC. 5. The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 1 or this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in any class in any alien who is physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1976.[9]

Motions to Reopen Suspension of Deportation and Cancellation of Removal Cases for VAWA CAA Applicants

Section 825 Motions to Reopen: VAWA 2005 there is no filing deadline for motions to reopen for VAWA suspension of deportation, VAWA cancellation of removal cases, removal cases involving VAWA self-petitioners, T visa applicants and abused spouses whose abusive citizen or lawful permanent residents filed family based visa petitions (I-130) on their behalf. The following section first reports the motion to reopen statute that applies to VAWA suspension of deportation cases and then is followed by the amendments VAWA 2005 made to the VAWA cancellation of removal rule which also cites VAWA suspension of deportation.

Motions to Reopen VAWA Suspension of Deportation Cases

[9] Section 5 was added by the Immigration and Nationality Act Amendments of 1976.

Section 825(b) VAWA 2005:

(b) DEPORTATION AND EXCLUSION PROCEEDINGS.— Section 1506(c)(2) of the Violence Against Women Act of 2000 (8 U.S.C. 1229a note) is amended—

(1) by striking subparagraph (A) and inserting the following:

(A) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen or rescind deportation proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note))[10]*—*

(I) *there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3)*[11] *of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1252b(c)(3)) does not apply—*

(i) *if the basis of the motion is to apply for relief under*

(I) *clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)),*

(II) *clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)),*

(III) ~~*or*~~ *section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1254(a)(3));*

(IV) **the first section of Public Law 899-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty; or**

(V) **section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);** *and*

(ii) *if the motion is accompanied by a suspension of deportation* **or adjustment of status** *application to be filed with the Secretary of*

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[10] April 1, 1997

[11] 8 U.S.C. 1252b(c)(3) INA of 1995

(c) Consequences of failure to appear

(1) In general --Any alien who, after written notice required under subsection (a)(2) of this section has been provided to the alien or the alien's counsel of record, does not attend a proceeding under section 1252 of this title, shall be ordered deported under section 1252(b)(1) of this title in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is deportable. The written notice by the Attorney General shall be considered sufficient for purposes of this paragraph if provided at the most recent address provided under subsection (a)(1)(F) of this section.

(2) No notice if failure to provide address information -- No written notice shall be required under paragraph (1) if the alien has failed to provide the address required under subsection (a)(1)(F) of this section.

(3) Rescission of order -- Such an order may be rescinded only—

(A) upon a motion to reopen filed within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (f)(2) of this section), or

(B) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with subsection (a)(2) of this section or the alien demonstrates that the alien was in Federal or State custody and did not appear through no fault of the alien.

The filing of the motion to reopen described in subparagraph (A) or (B) shall stay the deportation of the alien pending disposition of the motion.

Homeland Security or by a copy of the self-petition[12] *that will be filed with the Department of Homeland Security upon the granting of the motion to reopen;* **and**

(II) any such limitation shall not apply so as to prevent the filing of one motion to reopen described in section 240(c)(7)(C)(iv)[13] **of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(7)).**

(ii) PRIMA FACIE CASE.—The filing of a motion to reopen under this subparagraph shall only stay the removal of a qualified alien (as defined in section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B))[14] **pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.''**;

(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens **who re physically present in the United States and** *who—*

(i) are, or were, in deportation **or exclusion** *proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and*

(ii) have become eligible to apply **for relief described in subparagraph (A)(i)** ~~*for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as in effect before the title III–A effective date in section 309 of the Illegal*~~

[12] Self-petition includes all of the forms of self-petitioning relief covered in INA Section 101(a)(51) (VAWA self-petition for spouses and children of U.S. citizen and lawful permanent residents who perpetrate battering or extreme cruelty, VAWA self-petition for parents of citizen over 21 year old daughters and sons who battered or subject their parent to extreme cruelty, battered spouse waiver applicants, VAWA Cuban Adjustment Act (VAWA CAA), VAWA Haitian Refugee and Immigrant Fairness Act (VAWA HRIFA), and VAWA Nicaraguan and Central American Relief Act (VAWA NACARA).

[13] For text of VAWA cancellation of removal motions to reopen see the next section of this document

[14] Qualified alien is defined in 8 U.S.C. 1641(c)(1)(B)

(c)Treatment of certain battered aliens as qualified aliensFor purposes of this chapter, the term "qualified alien" includes—

(1)an alien who—

(A)has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)has been approved or has a petition pending which sets forth a prima facie case for—

(i)status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)], (*VAWA self-petitioner abused by citizen spouse, parent, son or daughter)*

(ii)classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)], (*VAWA self-petitioner abused by citizen spouse or parent)*

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996). (*VAWA suspension of deportation)*

(iv)status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)]; (*Immigrant spouse or child abused by their citizen or lawful permanent resident spouse or parent who had filed a family based visa petition on the immigrant spouse or child's behalf)*

(v)cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)]; (*VAWA cancellation of removal)*

~~*Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note))*~~ *as a result of the amendments made by—*

(I) subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.)[15]*; or*
(II) this title.

Motions to Reopen VAWA Cancellation of Removal Cases

For the cancellation of removal motion to reopen statue we include the text of the INA code section current as of April 2020 and identifies the sections that were added by VAWA 2005.

Section 825 (a) VAWA 2005:

240(c)(7)Motions to reopen in VAWA Cancellation or Removal Cases

(A) In general -- An alien may file one motion to reopen proceedings under this section, **except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv).**

(B) Contents -- The motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material.

(C)Deadline

(i)In general -- Except as provided in this subparagraph, the motion to reopen shall be filed within 90 Faizadays of the date of entry of a final administrative order of removal.

(ii)Asylum -- There is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under sections 1158 or 1231(b)(3) of this title and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.

(iii)Failure to appear --The filing of a motion to reopen an order entered pursuant to subsection (b)(5) is subject to the deadline specified in subparagraph (C) of such subsection.

(iv) Special rule for battered spouses, children, **and parents** A**ny limitation under this section on the deadlines for filing such motions shall not apply—**

(I) if the basis for the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) of this title, (*VAWA self-petition abusive citizen spouse or parent*) clause (ii) or (iii) of section 204(a)(1)(B) of this title, (*VAWA self-petition lawful permanent resident spouse or parent*) section 240A(b) of this title, (*VAWA*

[15] VAWA 1994

cancellation of removal) **or section 244 (a)(3) of this title (as in effect on March 31, 1997)** *(VAWA suspension of deportation)*;

(II)if the motion is accompanied by a cancellation of removal application to be filed with the Attorney General or by a copy of the self-petition that has been or will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen;

(III)if the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the Attorney General may, in the Attorney General's discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child; **and**

(IV) if the alien is physically present in the United States at the time of filing the motion.

The filing of a motion to reopen under this clause shall only stay the removal of a qualified alien (as defined in section 1641(c)(1)(B))[16] of this title pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

[16] Qualified alien is defined in 8 U.S.C. 1641(c)(1)(B)

(c)Treatment of certain battered aliens as qualified aliensFor purposes of this chapter, the term "qualified alien" includes—

(1)an alien who—

(A)has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)has been approved or has a petition pending which sets forth a prima facie case for—

(i)status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)], (*VAWA self-petitioner abused by citizen spouse, parent, son or daughter)*

(ii)classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)], (*VAWA self-petitioner abused by citizen spouse or parent)*

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996). (*VAWA suspension of deportation)*

(iv)status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)]; (*Immigrant spouse or child abused by their citizen or lawful permanent resident spouse or parent who had filed a family based visa petition on the immigrant spouse or child's behalf)*

(v)cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)]; (*VAWA cancellation of removal)*