

Appendix III

Memorandum



96act.036

Subject Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA §384	Date MAY - 5 1997
To All INS Employees	From Office of Programs

This memorandum is designed to inform all INS employees of their obligations under Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the potential liability for violation of these obligations. As discussed in more detail below, section 384 (copy attached) prohibits the release of any information relating to aliens who are seeking or have been approved for immigrant status under the provisions for battered spouses and children in the Violence Against Women Act ("the VAWA"). Moreover, section 384 prohibits any Department of Justice employee — including both INS officers and immigration judges — from making an adverse determination of admissibility or deportability using information provided solely by the abusive spouse or parent or other member of the household. Violation of either of these prohibitions can result in disciplinary action or in civil penalties of up to \$5,000 for each violation.

Prohibition on Disclosure of Information

Section 384(a)(2) provides that in no case may any INS employee "permit use by or disclosure to anyone . . . of any information which relates to an alien who is the beneficiary of an application for relief" under the VAWA provisions, which relate to battered spouses and children who:

- self-petition for immigrant status under §204(a)(1)(A)(iii)-(iv) or §204(a)(1)(B)(ii)-(iii) of the Immigration and Nationality Act ("INA"); or
 - petition for removal of conditions upon residency pursuant to INA §216(c)(4)(C); or
 - seek suspension of deportation under INA §244(a)(3).
- [Note: there is no parallel cite to the new cancellation of removal provisions, but Congress may include this in future technical correction legislation.]

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It is important to emphasize that the prohibition extends to any information relating to the battered spouse or child, which could include verification of status or any other routine information. Exceptions to the prohibition are provided for:

- disclosure to another Department of Justice employee for legitimate Department of Justice purposes;
- disclosure to law enforcement officials for legitimate law enforcement purposes, at the discretion of the Service;
- disclosure for purposes of judicial review in a manner that protects the confidentiality of the information; and
- disclosure in such manner as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. § 8.

The statute provides that an adult can execute a waiver to allow disclosure of information pertaining to him/herself, but does not provide for any waiver allowing disclosure of information pertaining to a child. Benefit granting agencies seeking verification for benefit eligibility purposes will be obtaining such waivers and submitting them with their verification requests. Additional guidance on this issue will be provided to immigration status verifiers.

Although the legislative history is scant, this provision appears to have been enacted in response to concerns from the advocacy community that INS officers have provided information on the whereabouts of self-petitioners or on their pending applications for relief to the allegedly abusive spouse or parent. The VAWA provisions enumerated above were created by Congress so that the battered alien can seek status independent of the abuser. Thus, disclosure of information to the alleged abuser or any other family member was inappropriate even prior to the new law. With enactment of section 384, however, such inappropriate conduct is now also grounds for disciplinary action or fine, or both.

Limitations on Use of Information Provided by Abusive Family Members

Section 384(a)(1) is a complex provision which prohibits any employee of the Department of Justice from making "an adverse determination of admissibility or deportability of an alien ... using information furnished solely by" any person falling within one of four categories:

- a spouse or parent who has battered the alien or subjected the alien to extreme cruelty;

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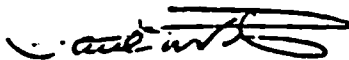
- a member of the spouse's or parent's family, residing in the same household as the alien, who has battered the alien or subjected the alien to extreme cruelty, with the spouse's or parent's acquiescence;
- a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (and the alien has not participated in the abuse); or
- a member of the spouse's or parent's family, residing in the same household as the alien, who has battered the alien's child or subjected the alien's child to extreme cruelty, with the acquiescence of the alien's spouse or parent (and the alien has not participated in the abuse).

In the interests of full compliance in what could be difficult fact situations, the following guideline is to be followed:

If an INS employee receives information adverse to an alien from the alien's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, the INS employee must obtain independent corroborative information from an unrelated person before taking any action based on that information.

While the first category of potential abusers enumerated above -- spouse or parent -- parallels the category which can give rise to a claim of immigration status under the VAWA provisions, the other three categories reflect an expansion of protection to battered aliens who are not eligible for status under VAWA. Such expansion to include those who have suffered abuse at the hands of another family member in the same household is similar to IIRIRA section 501, which makes individuals abused by other members of the spouse or parent's family "qualified aliens" for purposes of public benefits.

These provisions, and the Congressional and public scrutiny which accompany them, warrant particular care whenever an INS officer or employee suspects that an alien with whom they are dealing might have been subject to domestic violence. It is important to note, however, that nothing in IIRIRA changes the eligibility standards of the basic VAWA provisions identified at p. 1, above, nor does IIRIRA alter the effectiveness of the interim VAWA self-petitioning rule published in the Federal Register on March 28, 1996.



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