

U.S. Citizenship and Immigration Services
National Records Center
FOIA/PA Office
PO Box 648010
Lee's Summit, MO 64064
uscis.foia@uscis.dhs.gov

Re: Freedom of Information Act Request Regarding Battered Spouse Waiver Case Processing and Procedures

Background

The Battered Spouse Waiver (BSW) came into effect through the Immigration and Nationality Act (INA) of 1990. This waiver allows spouses of U.S. Citizens and lawful permanent residents who have conditional residency status to apply and obtain full lawful permanent residency without the assistance or knowledge of their abusive spouse. Those who qualify for the BSW are spouses who suffered battering or extreme cruelty or are parents of a child who suffered battering or extreme cruelty. The abuser has to be a U.S. Citizen or lawful permanent resident spouse of the applicant.¹ The BSW allows the immigrant spouse who has been abused or whose child has been abused to confidentially file an application to remove the conditional limitation on their lawful permanent residency status before the two year required waiting period has been completed and without the assistance or knowledge of the abuser. This is extremely helpful for the victim spouse, since reliance on the offender to sign a joint application seeking full lawful permanent residency often gives the abuser an additional tool to maintain control over the victim spouse.

The National Immigrant Women's Advocacy Project (NIWAP) is a non-profit organization, which educates, trains, and offers technical assistance and advocacy to a wide range of professionals working with immigrant women and children at local, state and federal levels. Our work is designed to promote the development, implementation, and use of laws, policies, and practices that benefit immigrant women and children.

NIWAP staff were involved in the enactment of amendments to the BSW and BSW case processing procedures contained in the Violence Against Women Acts (VAWA) of 1994, 2000 and 2005. NIWAP was instrumental in including BSW in the definition of VAWA self-petition,² which means that the BSW application process is entitled to the full protections offered by VAWA Confidentiality.³

1 I.N.A. §216(c)(4)(C); 8 U.S.C.A. §1186a(c)(4)(C)

2 I.N.A. §101(a)(51)(C); 8 U.S.C.A. §1101(51)(C)

3 8 U.S.C.A. §1367

Request

To further the humanitarian interests of immigrant survivors of abuse, we are requesting the information below from U.S. Citizenship and Immigration Services (USCIS).

Please provide the following information on BSW applications from January 2006 through June 2016: (1) reporting data separately for each regional service center and (2) for each fiscal year –

Approval Rates

1. Number of BSW applications filed
2. Number of requests for further evidence (RFEs) issued
3. Number of BSW applications **approved**
 - a. Of the total number of cases approved, the number of cases approved without requiring an interview
 - b. Of the total number of cases approved, those in which approval followed a district office interview
4. Number of BSW applications **denied**
 - a. Of the total number of cases denied, the number of cases that were denied without requiring an interview
 - b. Of the total number of cases denied, those in which the denial followed a district office interview

Confidentiality

5. Number of BSW cases entered into the USCIS Central Index System that are labeled/coded “384”⁴
6. Provide data for cases in which BSW cases were not coded as “384” in the Central Index System

Timeline

7. The **shortest** length of time between:
 - a. Receipt of BSW applications and the BSW case being entered into the Central Index System
 - b. Receipt of the BSW application and adjudication of the BSW application by the Regional Service Center for cases that are adjudicated without requiring an interview by the district office

⁴ See Attachment A: DHS Broadcast Message on New 384 Class of Admission Code, available at <http://niwaplibrary.wcl.american.edu/pubs/dhs-broadcast-class-admission-code/>

- c. Receipt of the BSW application and adjudication of the BSW application when the BSW case is sent to the District Office for an interview
 - d. Receipt of the BSW application and approval of the BSW application for cases that are approved after interview
8. The **longest** length of time between:
- a. Receipt of BSW applications and the BSW case being entered into the Central Index System
 - b. Receipt of the BSW application and adjudication of the BSW application by the Regional Service Center for cases that are adjudicated without requiring an interview by the district office
 - c. Receipt of the BSW application and adjudication of the BSW application when the BSW case is sent to the District Office for an interview
 - d. Receipt of the BSW application and approval of the BSW application for cases that are approved after interview
9. The **average** length of time between:
- a. Receipt of BSW applications and the BSW case being entered into the Central Index System
 - b. Receipt of the BSW application and adjudication of the BSW application by the Regional Service Center for cases that are adjudicated without requiring an interview by the district office
 - c. Receipt of the BSW application and adjudication of the BSW application when the BSW case is sent to the District Office for an interview
 - d. Receipt of the BSW application and approval of the BSW application for cases that are approved after interview

Training on Topics Relevant to Battered Spouse Waivers

10. Please provide copies of policies, field manuals, and other directions provided by USCIS to the following:
- a. Service center staff responsible for battered spouse waiver adjudication of BSW cases
 - b. District office staff involved in BSW case interviews and/or adjudications
11. The dates of all trainings staff responsible for BSW adjudications/interviews received on each of the following topics for (1) each Regional Service center and, (2) each district office involved in BSW adjudications and interviews, including:
- a. Dynamics of domestic violence (battering or extreme cruelty) against adult victims
 - b. Dynamics of domestic violence (battering or extreme cruelty) against child victims
 - c. VAWA and BSW legislative history and purpose
 - d. VAWA confidentiality
 - e. For each training, please also list the format in which the training was delivered (e.g., In-person training, webinar, on-line course, etc.)

Process

12. A description of the procedures used in the mailroom for each Regional Service Center to screen for BSW cases, to separate them from other cases received, and to clearly label the cases as VAWA confidentiality protected

13. A description of the procedures used at each regional service center and each District Office for providing separate and secure confidential storage, filing and handling of BSW cases

Public and Humanitarian Interests Served by this FOIA Request

The release of this information will improve victim safety, promote consistency in adjudications by USCIS, and provide much needed information to law enforcement and prosecutors.

Immigrant Survivors with Conditional Residency Status: The ability of a victim to obtain *permanent* residency without having to rely on the abuser takes away one of the tools used by the abuser to control the victim spouse. It therefore gives the victim the choice of leaving a home where the victim or the victim's children suffer abuse on a regular basis.

Knowledge and predictability about the amount of time it will take to adjudicate the victims' BSW case also helps direct service practitioners work with the victims to plan for economic sustenance and ensure that victims have access to housing, health care, and other benefits needed to become independent from the abuser. Accurate timelines of BSW cases assures victims they will be able to obtain immigration status and legal work authorization to provide for their families and themselves, and gives them certainty they will be allowed to remain in the United States with their families.

Victims also need assurance that their immigration cases will receive the full protection of VAWA Confidentiality. Victims are often scared of how the abusive U.S. Citizen or LPR spouse will react if he/she learns the victim is seeking relief through BSW, and risks to the victim and the children should the abuser learn about the victim's BSW are high. Without assurance that all Regional Service Center and District Office staff have been fully trained on VAWA Confidentiality, and mandated prohibitions on release of any information about the existence of the BSW case, a victim may choose not to file or a service provider may not be able to advise the survivor to file if this could pose a deathly risk. Ensuring confidentiality of the BSW case is protected consistent with VAWA Confidentiality provisions is key to the safety of the survivor and the future likelihood that BSW eligible victims will break free of abusive homes and seek help.

Assistance to Law Enforcement and Prosecutors: Survivors are often afraid to contact law enforcement for fear of being deported. This is equally true of abused immigrant spouses and children who have conditional permanent residency who are told by their abusers that if the victim does not comply with the abuser's demands, the abuser will refuse to sign the joint application required for the victim to attain full lawful permanent residency. This coercive control over the victim's immigration status has been shown to deter victims from calling the police for help and from

following through with criminal cases brought against their citizen and lawful permanent resident spouse abusers.⁵

Uncertainty of the length of time it will take to obtain permanent residency makes it more difficult for police and prosecutors to hold perpetrators of domestic violence and child abuse accountable by leaving the victim in limbo and at risk. Knowledge that they are protected as victims of abuse with the BSW will incentivize victims to report crimes committed against them by their abusive spouses. BSW applicants and the police and prosecutors working with them currently have no way of predicting the length of the BSW adjudication. Information about BSW case processing times by Regional and District office is essential to allowing law enforcement, prosecutors, and victim advocates to plan for victim safety and for successful prosecutions of domestic violence offenders. This information and consistency in the timelines for adjudication of BSW cases will enhance the ability of law enforcement and prosecutors to find, investigate, and prosecute abusers and prevent further crime.

Consistency and efficiency by U.S. Citizenship and Immigration Services: BSW cases offer protection to a group of abused immigrant spouses and children who are virtually identical to VAWA self-petitioners who file for immigration relief under INA Section 204(a)(1)(A) and (B). The sole difference between VAWA self-petitioners and BSW applicants is that the abusive spouse filed an immigration case for the victim spouse in the BSW cases. Both cases receive VAWA Confidentiality protection and both should be adjudicated in the same fashion. Adjudication of every type of VAWA self-petition except the BSW is handled by a team of specially trained adjudicators at the Vermont Service Center VAWA Unit and are adjudicated without requiring interviews. BSW cases are adjudicated in a complicated system that requires filing at two different Regional Service Centers and involvement of District offices in an interview process in many cases. Adjudication by a trained unit is more efficient and produces more consistent results. With the information we seek in this FOIA, we will be able to document Regional Service Center and District Office variations in adjudication speed, RFEs and approval rates. Obtaining this information will further the Congressional Intent of VAWA 2005 of promoting consistent adjudication of all forms of VAWA self-petitions by specially trained adjudicators.⁶

We believe that releasing this information will improve victim's safety, make communities safer, and promote transparency and improved consistency in BSW adjudications and compliance with VAWA Confidentiality requirements by USCIS. When all VAWA Confidentiality protected cases are treated equally, it promotes victim safety and protects USCIS officials and DHS enforcement officials from penalties that flow from VAWA confidentiality violations of up to \$5,000 per violation.

⁵See Leslye Orloff & Olivia Garcia, *Dynamics of Domestic Violence Experienced by Immigrant Victims*, available at <http://library.niwap.org/wp-content/uploads/2015/CULT-Man-Ch1.1-DynamicsDomesticViolence2016.pdf>

⁶ Attachment B: Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009. H.R. Rep. No. 109-233 at 116 (2005).

When USCIS officials consistently enter VAWA Confidentiality protected cases in the Central Index System and assign them a 384 code of entry in a timely manner USCIS, ICE and CBP officials are on notice that the victim's case is protected. Delays and inconsistencies in entering cases in the Central Index System could lead to DHS officials unknowingly violating VAWA confidentiality when a case has protections and the officials have no knowledge of it. In the context of abusive marriages where perpetrators are actively involved in trying to maintain control over their abused spouses and trying to involve DHS personnel in taking action against the victim spouse, the risk that untrained DHS officials could be tricked by a perpetrator into violating VAWA confidentiality is high.

Access to the information we seek will help prevent VAWA Confidentiality violations from occurring in BSW cases by helping document the extent to which there are differences in adjudication times and approaches among BSW cases and between BSW cases and VAWA self-petitions adjudicated at the VAWA unit. Access to the information we are seeking will also help counter the high level of uncertainty that currently exists for advocates, attorneys and victims of abuse in battered spouse waiver cases.

We are willing to pay fees for this request up to a maximum of \$ 50.00. If you estimate that the fees will exceed this limit, please inform us first.

Thank you for your consideration of this request.

Sincerely,

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