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RE: **[CIS No. 2499–10; DHS Docket No. USCIS–2010–0012] RIN 1615–AA22**
Inadmissibility on Public Charge Grounds

Comments of the National Immigrant Women's Advocacy Project, American University, Washington College of Law

The National Immigrant Women's Advocacy Project (NIWAP), American University Washington College of Law is writing to address an error in the proposed regulations that misinterpret current federal statutes and fails to fully exempt T visa recipient human trafficking victims for public charge. This exemption of human trafficking victims from public charge was created in Section 804 of the Violence Against Women Act of 2013 (8 U.S.C. 1182(a) (4) and applies at all stages of a T visa applicant and a T visa recipient's immigration case including both 1) the application for a T visa and 2) to all applications for lawful permanent residency filed by T visa applicants.

These comments explain why this is true and how to correctly read the statutory provisions that require this conclusion. These comments also point out a series of legal errors contained in the proposed regulations.

Proposed Rule Preamble Footnote 67 is Legally Incorrect

On page 51126 of the Federal Register in the preamble discussion of qualified aliens, the proposed rule preamble discusses PRWORA's list of qualified immigrants. The footnote correctly cites Section 431 of PRWORA's original list of qualified immigrants. Section 431 of PRWORA was amended by four subsequent statutes to add additional categories of qualified immigrants to this section. However, the footnote also cites the Trafficking Victims Protection Act of 2000 (TVPA 2000) Section 107(b)(1) 22 U.S.C. 7105(b)(1) allegedly acting as a source for trafficking victims being qualified immigrants. This is legally incorrect.

Section 107(b)(1) of the TVPA of 2000 did not make T visa applicants and T visa recipients qualified immigrants, this section instead created an obligation under federal law independent of the qualified immigrant category to treat T visa applicants in the same way that refugees are treated for purposes of access to public benefits. Because access to public benefits

have time limitations for some programs for refugees,[1] in the Trafficking Victims Protection and Reauthorization Act of 2008, Congress decided to add T visa applicants with bona fide determinations and T visa recipients to the list of qualified immigrants.[2] This statutory change ensured that T visa recipients, including those who were granted lawful permanent residency based on their having been granted T visas, received more access to federal public benefits than refugees.

The Proposed Rule Fails to Recognize that Federal Statutes Require That T Visa Recipient Human Trafficking Victims are Exempt From Public Charge in Their Applications for Lawful Permanent Residency

The proposed rule is directly contrary to this Congressional intent. The proposed public charge rule recognizes that Public Charge INA Section 212(a)(4) requirements do not apply to refugees applying for lawful permanent residency both for purposes of the Form I-944 declaration of self-sufficiency and refugees are exempt from the affidavit of support requirement.[3] However, with regard to human trafficking victims, the proposed rule's chart first correctly recognizes that T visa applicants and recipients of T nonimmigrant status are exempt from public charge under INA Section 212(d)(13)(A).[4] The proposed rule then goes on to state that this 212(d) exemption does not create an exemption for T visa recipients when they apply for adjustment of status. This is statutorily incorrect.

INA Section 212(d)(13)(A) states as follows:

> "(A)The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title, except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant."

This statutory language applies by the plain language of the text to both

- Applicants for T visas who are "described in 101(a)(15)(T)" for purposes of adjudicating the T visa; and
- T non-immigrants who are T visa applicants who are granted T visas that have T nonimmigrant status. Once a T visa holder is granted non-immigrant status the only purpose of the public charge exemption would be to exempt T visa holders from public charge inadmissibility when they apply for adjustment of status.

When DHS issued the T and U adjustment regulations in 2008, the regulations did not state that T visa applicants for adjustment of status were subject to public charge. The preamble to the regulations, however, discussed that it USCIS view at the time that the 212(d)(13)

[1] *See* Balanced Budget Act, Pub. L. 105-33, Title V, § 5302, 111 Stat. 599, 638, 640, 643 (1997).

[2] William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, Title II, § 211(a), 122 Stat. 5063 (2008). I do not believe you need "TVPRA" in this citation.

[3] Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 196 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, and 248).

[4] Table 8. Applicability of INA 212(a)(4) to Refugee, Asylee, and Parolee Adjustment of Status Applications, 83 Fed. Reg. 51,114, 51,153 (proposed Oct. 10, 2018)(to be codified at 8 C.F.R. pt. 103, 212-14, 245, and 248).

exemption may not apply to T visa adjustment of status cases. It is important to note that USCIS in practice never implemented the suggestion in the T and U visa adjustment regulations preamble and T visa victims applying for adjustment of status were not required to file for public charge waivers that could be granted in the national interest as a matter of discretion under INA Section 245(1)(2)(A). It is this preamble suggestion that USCIS is currently seeking to make part of the new public charge regulations.

One reason why USCIS cannot make the proposed regulatory change is that Section 804 of VAWA 2013 exempted T visa applicants and T nonimmigrant recipients applying for lawful permanent residency from public charge. See INA Section 212(d)(4)(E)(iii). The VAWA 2013 Section 904 Exemption from public charge created exemptions from public charge for immigrant crime victim filing both applications for immigration status through the VAWA, T and U visa programs and applications for lawful permanent residency for filed by successful applicants through these same programs. Section 804 exempted VAWA self-petitioners and U visa applicants and U visa holders from public charge fully for the purposes of the self-petition or U visa application and for all applications for lawful permanent residency that these applicants file. The proposed rule on public charge correctly recognized the full extent of these VAWA 2013 exemptions from public charge for these victims.[5]

The proposed rule, however, ignores the fact that VAWA 2013 section 804 grants the exact same exemptions from public charge inadmissibility to all other immigrant victims who are qualified immigrants under Section 431(c) of PRWORA; 8 U.S.C. 1641(c). There were several groups of immigrant victims that Congress covered in the VAWA 2013 amendments creating INA 212(d)(4)(iii). One of the primary groups that Congress' citation to 8 U.S.C. 1641(c) were T visa holders with T nonimmigrant status. The list of additional immigrants covered by 8 U.S.C. 1641(c) includes:

- 8 U.S.C. 1641(c) (1)(iii) (Victims applying for VAWA suspension of deportation and lawful permanent residency based on an approved application)
- 8 U.S.C. 1641(c)(1)(iv) (Immigrant spouses who have been subjected to battering or extreme cruelty by their U.S. citizen or lawful permanent resident spouse when the abusive citizen or lawful permanent resident spouse had filed an I-130 family-based visa petition on the abuse spouses or child's behalf)
- 8 U.S.C. 1641(c)(1)(v) (Victims applying for VAWA cancellation of removal and lawful permanent residency based on an approved application); and
- 8 U.S.C. 1641(4) (T visa applicants who have received prima facie determinations and T visa holder/T visa nonimmigrants.

Congress explicitly sought to cover T visa victims applying for lawful permanent residency in section 212(d)(4)(iii) out of concern that the T and U adjustment rule preamble language might be interpreted to require that T visa victims applying for lawful permanent residency could be forced through an extra application step of applying for a waiver that the preamble language stated that DHS had the discretion to deny. Since at the application for the T visa stage T visa applicants are exempt from public charge under INA 212(d)(13)(a), the only T

[5] S. REP. NO. 112-153, at 29 (2012).

visa related group that the public charge exemption in the VAWA 2013 Section 804 would provide protection to would be T visa applicants for lawful permanent residency.

The Proposed Rule Is Legally Incorrect in Applying Public Charge to Extension of Stay Applications Filed By T Visa Holders

VAWA 2013 created an exemption from public charge inadmissibility for T visa victim's applications for lawful permanent residency and adjustment of status. This VAWA 2013 exemption also prevents USCIS through the proposed rule from imposing any public charge tests on T visa applicants applying for an extension of status. The proposed rule would violate the statutory requirements of Section 804 of VAWA 2013 by imposing a public charge test on T visa applicants for extensions of stay/status from nonimmigrants.[6]

All of the following T visa holders who are T nonimmigrants must statutorily be exempt from public charge inadmissibility in their application for extension of stay and lawful permanent residency and adjustment of status. The exemption applies to all of the following statuses:

- T-1 (T visas received by primary T visa victims with T nonimmigrant status)
- T-2 Spouse of a T-1
- T-3 Child of a T-1
- T-4 Parent of a T-1 under 21 years of age
- T-5 Unmarried sibling under the age of 18 of a T-1
- T-6 Adult or minor child of a derivative beneficiary of a T-1

Proposed rule 8 CFR 212.23(a)(17) must be amended to conform to VAWA 2013's statutory requirements and should be amended to read as follows:

> "An applicant for, or individual who is granted, nonimmigrant status under section 101(a)(15)(T) of the Act in accordance with section 212(a)(4)(E)(ii) of the Act;"

Any final regulation will need to amend the regulatory language and all of the charts contained in the preamble which will need to be amended and included in the preamble to the final regulations to reflect that T visa victims are to receive the full public charge exemption available to them under INA Section 212(a)(4)(E). This includes the references to T visa cases in Table numbers: Table 4[7]; Table 9[8]; and Table 3. [9]

[6]Table 4. Summary of Nonimmigrant Categories Subject to Public Benefit Condition, 83 Fed. Reg. 51,114, 51,145 (proposed Oct. 10, 2018)(to be codified at 8 C.F.R. pt. 103, 212-14, 245, and 248); Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,157 (proposed Oct. 10, 2018)(to be codified at 8 C.F.R. pt. 103, 212-14, 245, and 248). See also S. REP. NO. 112-153, at 29 (2012).

[7] Table 4. Summary of Nonimmigrant Categories Subject to Public Benefit Condition, 83 Fed. Reg. 51,114, 51,145 (proposed Oct. 10, 2018)(to be codified at 8 C.F.R. pt. 103, 212-14, 245, and 248).

[8] Table 9. Applicability of INA 212(a)(4) to Other Applicants Who Must Be Admissible, 83 Fed. Reg. 51,114, 51,153 (proposed Oct. 10, 2018)(to be codified at 8 C.F.R. pt. 103, 212-14, 245, and 248).

[9] Table 39. Classes of Applicants for Admission, Adjustment of Status, or Registry Exempt from Inadmissibility Based on Public Charge According to Statute or Regulation, Table 4. Summary of Nonimmigrant Categories Subject to Public Benefit Condition, 83 Fed. Reg. 51,114, 51,239 (proposed Oct. 10, 2018)(to be codified at 8 C.F.R. pt. 103, 212-14, 245, and 248).

Overview of Relevant Federal Statutes

The final section of these comments is included to provide USCIS officials reviewing these comments and the public easy access to the federal statutes that ensure that VAWA, T and U visa victims and all other immigrants covered by 8 U.S.C. 1641(c) are not now and cannot under federal statues be subject to public charge inadmissibility in any type of immigration case including but not limited to applications for an immigration benefit, applications for lawful permanent residency including through adjustment of status and applications for extensions of stay or any other type of application victims covered by this section are now required to file or may be required to file in the future.

8 U.S. Code § 1641(§ 431 of PRWORA)

Full text included below is color-coded to demonstrate the history and evolution of the statue and its amendments.

Statutory Amendment History

- Pub. L. 104–193, title IV, § 431, Aug. 22, 1996, 110 Stat. 2274 – PRWORA - ‘‘Personal Responsibility and Work Opportunity Reconciliation Act of 1996’’.
- Pub. L. 104–208, div. C, title III, § 308(g)(8)(E), title V, § 501, Sept. 30, 1996, 110 Stat. 3009–624, 3009–670; IIRAIRA - Illegal Immigration Reform and Immigrant Responsibility Act of 1996
- Pub. L. 105–33, title V, §§ 5302(c)(3), 5562, 5571(a)–(c), 5581(b)(6), (7), Aug. 5, 1997, 111 Stat. 599, 638, 640, 643; Balanced Budget Act of 1997
- Pub. L. 106–386, div. B, title V, § 1508, Oct. 28, 2000, 114 Stat. 1530; VAWA 2000 – Violence Against Women Act of 2000
- Pub. L. 110–457, title II, § 211(a), Dec. 23, 2008, 122 Stat. 5063 TVPRA 2008 – William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

§ 431 (a) IN GENERAL
Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)].

§ 431 (b) QUALIFIED ALIEN For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

(2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],

(3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208),

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980; [1] or

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

§ **431** **(c) TREATMENT OF CERTAIN BATTERED ALIENS AS QUALIFIED ALIENS** For 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)],

(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)],

(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).[2]

(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)]; [3]

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

(2) an alien—

(A) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), 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 or acquiesced to such battery or cruelty, and the alien did not actively participate 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) who meets the requirement of subparagraph (B) of paragraph (1);

(3) an alien child who—

(A) resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to 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) who meets the requirement of subparagraph (B) of paragraph (1); or

(4) an alien who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms "battery" and "extreme cruelty", and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program.

How the last section of 8 U.S.C. 1641 was implemented

Implementation by the Attorney General of the guidance requirement was through the following regulations and guidance:

- [AG Order No. 2129-97] Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; Federal Register: November 17, 1997 (Volume 62, Number 221) pages 61365-61378.

- [AG Order No. 2131-97] Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits; Federal Registr Volume 62, Number 238 (Thursday, December 11, 1997) pages 65285-65287.

Full Text of the Federal Public Charge Statute

The following is the full text of the public charge statute including statutory exemptions from public charge included in sections)

8 U.S.C. 1182 (a)(4) Public charge

(A) In general

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) Factors to be taken into account

(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

(I) age;

(II) health;

(III) family status;

(IV) assets, resources, and financial status; and

(V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

(C) Family-sponsored immigrants Any alien who seeks admission or adjustment of status under a visa number issued under section 1151(b)(2) or 1153(a) of this title is inadmissible under this paragraph unless—

(i) the alien has obtained—

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 1154(a)(1)(A) of this title;

(II) classification pursuant to clause (ii) or (iii) of section 1154(a)(1)(B) of this title; or

(III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 1183a(f) of this title or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(D) Certain employment-based immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1153(b) of this title by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this

paragraph unless such relative has executed an affidavit of support described in section 1183a of this title with respect to such alien.

Added by VAWA 2013 127 Stat. 110, 111-118, 140, 144, 156-159) § 804 of VAWA 2013

(E) Special rule for qualified alien victims (Subparagraphs (A), (B), and (C) shall not apply to an alien who—

(i) is a VAWA self-petitioner;

(ii) is an applicant for, or is granted, nonimmigrant status under section 1101(a)(15)(U) of this title; or

(iii) is a qualified alien described in section 1641(c) of this title.

(5) Labor certification and qualifications for certain immigrants

(A) Labor certification

(i) In general Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) Certain aliens subject to special rule For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or
(II) has exceptional ability in the sciences or the arts.

(iii) Professional athletes

(I) In general A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) "Professional athlete" defined For purposes of subclause (I), the term "professional athlete" means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

(iv) Long delayed adjustment applicants A certification made under clause (i) with respect to an individual whose petition is covered by section 1154(j) of this title shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B) Unqualified physicians An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) Uncertified foreign health-care workers Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(i) the alien's education, training, license, and experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) Application of grounds

The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title.

INA Section 212(d)(13)(A) 8 U.S.C. 1182(d)(13(A)

Provides special rules for exceptions and waivers that apply in the processing of T visa applications.

212 (d) TEMPORARY ADMISSION OF NONIMMIGRANTS

(13)

(A) *The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title, except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant*.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 1101(a)(15)(T) of this title, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's [6] discretion, may waive the application of—

(i) subsection (a)(1); and

(ii) any other provision of subsection (a) (excluding paragraphs (3), (4), (10)(C), and (10(E)) [7] if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

Statutory Definition of VAWA Self-Petitioner

8 U.S. Code § 1101 – Definitions (Parentheticals explain each code section cited)

(51) The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under—

(A) clause (iii), (iv), or (vii) of section 1154(a)(1)(A) of this title;

(Self-petition applicants and recipients who are abused spouses, parents and children of U.S. citizen abusers)

(B) clause (ii) or (iii) of section 1154(a)(1)(B) of this title;

(Self-petition applicants and recipients who are abused spouses or children of lawful permanent residents)

(C) section 1186a(c)(4)(C) of this title;

(Battered spouse waiver applicants and recipients)

(D) the first section of Public Law 89–732 (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; (VAWA Cuban Adjustment Act applicants and recipients)

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note); (VAWA HRIFA applicants and recipients)

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; (VAWA NACARA 202 applicants and recipients) or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208). (VAWA NACARA 203 applicants and recipients).

Thank you in advance for considering these comments. If you have any questions about these comments and you want further information, please do not hesitate to contact us at (202) 274, 4457 or info@niwap.org.

Sincerely,

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