

Section 384 Overview AND District Returns on VAWA-based filings

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Topics to be covered

- I-360 General Information
- Section 384 Protections and Prohibitions
- Revocation Process
- Revocation reasons



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General VAWA Information



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Fraud Detection at VSC

- Close partnership between VAWA team and VSC Fraud Detection Unit
- Patterns that are identified are reported to the Fraud Unit
- VAWA unit applauded in 2007 VSC FDNS report for identifying, tracking, and deterrence of fraud



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Section 384

Special Protections and Prohibitions



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Prohibitions and Protections

- Section 384 of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) of 1996. (See 8 USC 1367)
 - Provides prohibitions for making adverse determinations based on information from certain sources
 - Prohibits disclosure of information



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Protections and Prohibitions

- Relates to any alien who is the beneficiary of an application for relief under:
 - INA 204(a)(1)(A)—Battered spouse or battered child of a USC
 - INA 204(a)(1)(B)—Battered spouse or battered child of an LPR
 - INA 216(c)(4)(C)—CPR seeking removal of conditions based on a waiver for hardship or battered/extreme cruelty



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Protections and Prohibitions

- Relates to any alien who is the beneficiary of an application for relief under:
 - INA 101(a)(15)(U)—U nonimmigrant
 - INA 101(a)(15)(T)—T nonimmigrant



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Protections and Prohibitions

- No official or employee of the Secretary of Homeland Security may make an adverse determination of admissibility or deportability using information furnished solely by:
 - Spouse/parent who battered or subjected the alien to extreme cruelty
 - Member of batterer's family/household
 - Spouse/parent who battered the alien's child or subjected the child to extreme cruelty
 - Member of family/household of the individual who battered the alien's child or subjected the child to extreme cruelty



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Protections and Prohibitions

- What does it mean?
 - Cannot use squeal letters from the abuser, the abuser's family or the abuser's household members
 - Cannot use statements made by the abuser to USIS (ex. Stokes interview)
- What can you use?
 - Information from an independent, 3rd party source
 - Information from the self-petitioner (new and historical)



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Protections and Prohibition

Disclosure Prohibition:

No official or employee of the Secretary of Homeland Security may permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureaus, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the INA....



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Protections and Prohibitions

- What does this mean?
 - Cannot disclose any information about the following forms:
 - I-360 battered spouse/ battered child
 - I-918, U-visa petitions
 - I-914, T-visa petitions
 - I-751, battered spouse/child waivers
 - Disclosure prohibition includes information as basic as the fact that there is a filing



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Exceptions for Disclosure

- Census information
- Legitimate law enforcement purpose
- Judicial review
- Applicant waives the confidentiality
- Public benefits
- Congressional oversight authority



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General Information

- VAWA officers receive intensive training in the following areas:
 - Domestic violence (types, recognition and evidence)
 - Requirements for immigrant relationships
 - Classification eligibility requirements
 - Confidentiality issues
 - Evidence restrictions



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General Information

- Regulations are not up to date
 - Sweeping changes to the law occurred in 2000
 - Additional changes in 2006
- VSC denial rate averages over 30 percent
- VSC averages 100 district returns per year
 - Majority are for issues that are permitted in the INA but not reflected in regulation



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Penalties

Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the INA shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation.



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INA 239(e)

Includes restrictions on immigration enforcement actions at specified locations (e.g. shelters, victim services, courthouses) and required that there must be a certification that IIRIRA § 384 was not violated when such actions are taken.



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I-485 interview with underlying I-360

- Tips:
 - Do not re-adjudicate the I-360
 - Questions asked at time of adjustment interview should pertain to information related to the I-485
 - Evidence provided by abuser cannot be used
 - If information can be independently corroborated, it can be used
 - Do not ask about the abuse



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I-485 interview with underlying I-360

- Tips:
 - Ensure use of safe address for correspondence
 - If application filed initially with VSC, refer to safe address worksheet
 - Verify source of information
 - Confirm information with publicly available information sources
 - No contact with abuser



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District Return Process



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District Return Process

- Only VSC has jurisdiction to revoke an I-360 based on VAWA
- Process governed by August 5, 2002 memo:
 - District officer details reasons for revocation request in a memo
 - Supervisor must concur and sign memo
 - File returned to VSC
 - VSC reviews request. Re-affirmations require VSC supervisory concurrence.



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District Return Process

- Only *new* information previously unavailable to the VSC at time of adjudication warrants review by VSC of an approved I-360
- Must have “good and sufficient cause”—not just disagree with the decision



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Common Reasons for District Returns



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Reasons for District Returns

- Self-petitioner remarried prior to the I-360 approval
 - Remarriage allowed after I-360 approval
- Inadmissibility issues related to criminality revealed by fingerprint results
 - Self-petitioners have an ongoing good moral character requirement through the time of adjustment



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Reasons for District Returns

- Abusive marriage terminated more than 2 years at the time I-360 filed
 - Termination of the abusive marriage allowed if termination occurred within 2 years of the I-360's filing date
 - Termination allowed after filing of I-360
- INA 204(c) or 204(g) not addressed
 - Remarks block should indicate "204(c) resolved" or "204(g) resolved"



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Reasons for District Returns

- Step-relationship created after child's 18th birthday (self-petitioning children only)
- Fraud/misrepresentation associated with the I-485
 - Fraud/misrepresentation may reflect on discretionary issues
 - Need evidence not prohibited from use by section 384



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Common Return Errors



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Angelidis, Theodora P

From: Zaragoza, Conrad J
Sent: Friday, May 16, 2014 11:45 AM
To: Sorges Collins, Rima L; Watson, Natalie R; Lombardo, Rosio
Cc: Angelidis, Theodora P; Bailey Boutte, Maria D
Subject: VAWA - Self-Petitioner can Remarry following Approval of a VAWA I-360

Follow Up Flag: Follow up
Flag Status: Flagged

Chiefs-

Please ensure this e-mail is shared with our staff and is incorporated into our training. Roger nicely explains the issue below.

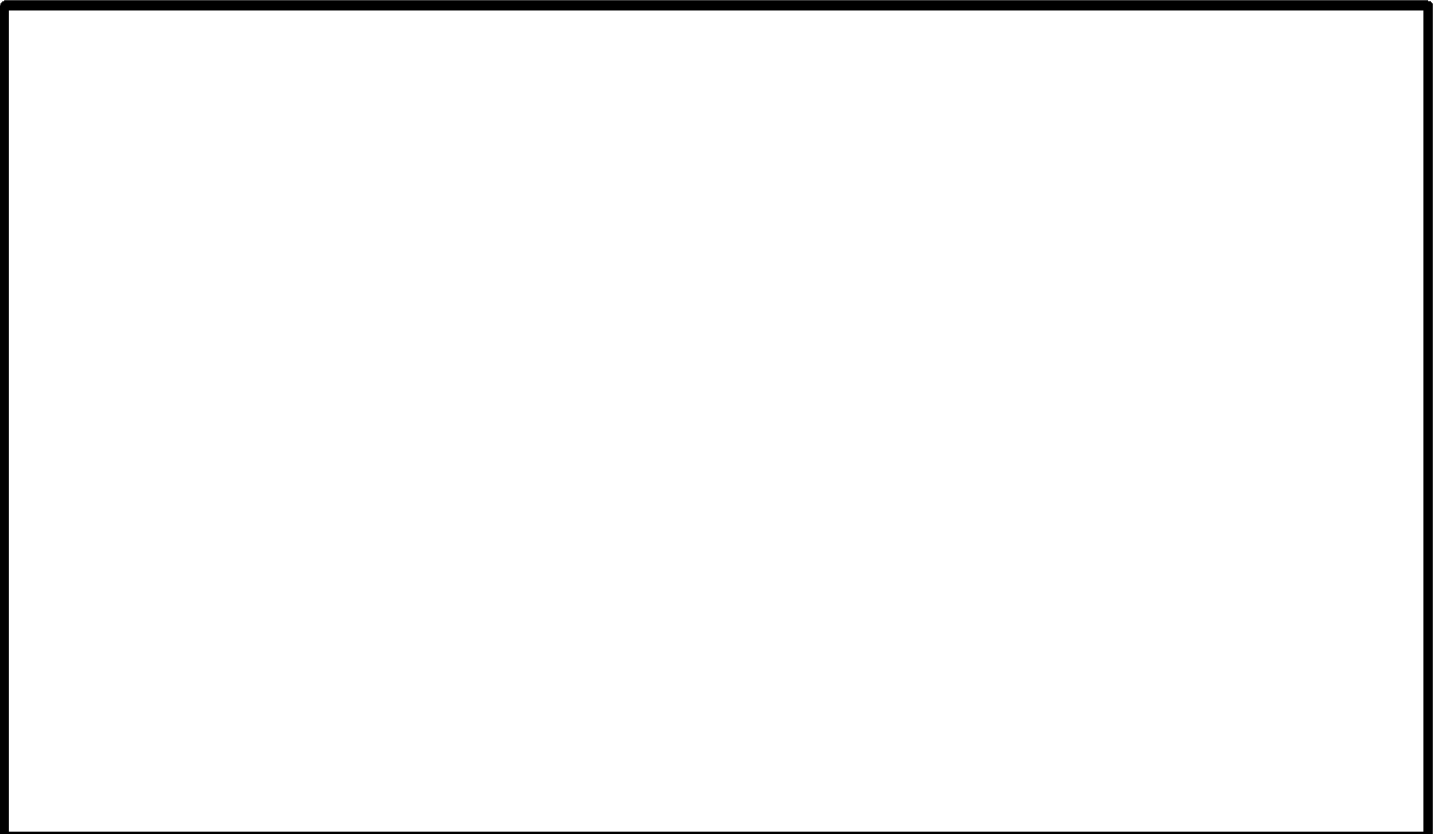
Best regards,

Conrad J. Zaragoza
Field Office Director
Baltimore-District 6
DHS/USCIS

From: Picker, Roger K
Sent: Friday, May 16, 2014 9:39 AM
To: Zaragoza, Conrad J
Cc: Clemens, Kimberly A; Warnke, Derek J; Collett, Greg L
Subject: VAWA - Self-Petitioner can Remarry following Approval of a VAWA I-360

(b)(5)

Conrad,





Roger

Roger K. Picker
Associate Counsel
Office of Chief Counsel
DHS/USCIS/Baltimore Field Office

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HQDOMO 70/23.1
AFM Update AD08-16

Memorandum

TO: Field Leadership

FROM: Michael L. Aytes /s/ Donald Neufeld
Associate Director, Domestic Operations

DATE: April 11, 2008

SUBJECT: Adjustment of status for VAWA self-petitioner who is present without inspection

Revision of *Adjudicator's Field Manual (AFM) Chapter 23.5*
(AFM Update AD 08-16)

1. Purpose

This memorandum provides guidance to USCIS adjudicators for adjudicating adjustment of status applications filed by VAWA self-petitioners who are present in the United States without having been inspected and admitted or paroled.

2. Background

As a general rule, an alien seeking adjustment of status under section 245(a) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255(a), must have been inspected at a port-of-entry and either admitted or paroled into the United States. Under section 245(a)(2) of the Act, the adjustment applicant must also be admissible as an immigrant. Section 212(a)(6)(A) of the Act renders inadmissible an alien who is present in the United States without inspection. Section 212(a)(6)(A)(ii) of the Act, in turn, provides for a waiver of inadmissibility for a VAWA self-petitioner who can show a "substantial connection" between the VAWA self-petitioner's unlawful entry and the VAWA self-petitioner's having been subjected to battery or extreme cruelty. Thus, section 245(a) provides two separate bars to denying adjustment of status, in the case of an alien who is present without inspection.

In October 2000, section 1506(a) of Public Law 106-386 amended section 245(a) of the Act so that the “inspection and admission or parole” requirement does not apply to an alien who is seeking adjustment of status as a VAWA self-petitioner. Section 1506(a), therefore, eliminated at least one bar to granting adjustment of status to a VAWA self-petitioner. Public Law 106-386 did not, however, specify what effect, if any, the amendment to the introductory text in section 245(a) should have on the second bar to granting adjustment of status. In particular, section 106-386 amended neither section 245(a)(2) of the Act, which requires an adjustment applicant to be admissible, nor the inadmissibility ground in section 212(a)(6)(A)(i) of the Act.

Effective immediately, USCIS interprets the introductory text in section 245(a) of the Act as effectively waiving inadmissibility under section 212(a)(6)(A)(i) of the Act for any alien who is the beneficiary of an approved VAWA self-petition. All USCIS adjudicators will follow this interpretation in adjudicating a VAWA self-petitioner’s adjustment of status application.

USCIS adjudicators will also deem this changed interpretation to be a sufficient basis to accept and approve, without filing fee, a motion to reconsider or reopen a VAWA self-petitioner’s adjustment application the VAWA self-petitioner filed the application on or after January 14, 1998, and USCIS denied the application solely because the VAWA self-petitioner was inadmissible under section 212(a)(6)(A) of the Act.

3. Field Guidance and Adjudicator’s Field Manual (AFM) Update

The adjudicator is directed to comply with the following guidance.

1. Chapter 23.5 of the AFM entitled, “Adjustment of Status to Lawful Permanent Residence,” is amended by adding a new section (k), “VAWA-based Adjustment of Status Applications.”

23.5 Adjustment of Status under Section 245 of the INA

(k) VAWA-based Adjustment of Status Applications. Under section 245(a) of the Act, the alien beneficiary of a VAWA self-petition may apply for adjustment of status even if the alien is present without inspection and admission or parole. USCIS has determined that this special provision in section 245(a) of the Act, in effect, waives the VAWA self-petitioner’s inadmissibility under section 212(a)(6)(A)(i) for purposes of adjustment eligibility. Thus, a USCIS adjudicator will not find, based solely on the VAWA self-petitioner’s inadmissibility under section 212(a)(6)(A)(i), that the VAWA self-petitioner cannot satisfy the admissibility requirement in section 245(a)(2) of the Act. The VAWA self-petitioner is *not* required to show a “substantial connection” between the qualifying battery or extreme cruelty and the VAWA self-petitioner’s unlawful entry.

As with adjustment applicants under section 245(i) of the Act, this interpretation applies only to inadmissibility under section 212(a)(6)(A) of the Act. *Cf. Matter of Briones*, 24 I&N Dec. 355 (BIA 2007). A VAWA self-petitioner who, by repeated violations of the Act, has made himself or herself inadmissible under section 212(a)(9) of the Act may obtain adjustment of status only if the VAWA self-petitioner applies for, and obtains, the related form of relief from inadmissibility. *Cf. section 212(a)(9)(A)(iii), (B)(III)(iv), (9)(C)(iii) of the Act.*

2. Current section 23.5(k), "Precedent Decisions Pertaining to Adjustment of Status," is re-designated as section 23.5(l).

4. Contact Information

Questions regarding this memorandum may be directed to Amanda Atkinson, Office of Policy and Strategy, or David Tu, Service Center Operations. Inquiries should be vetted through appropriate supervisory channels.

Distribution List: Regional Directors
 District Directors
 Field Office Directors
 Service Center Directors
 National Benefits Center Director

Common Return Errors

- No memo
 - Without a memo, VSC does not know the reason the file returned
 - Will be shipped back without any detailed review or action
- No sign off from supervisor
 - Supervisory concurrence for revocation request is required
- No usable adverse information provided



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Common Return Errors

- Abuser lost status after I-360 filing
 - LPR abuser may also have lost status within 2 years preceding I-360 filing
 - USC abuser may relinquish citizenship within 2 years preceding I-360 filing
- Marriage termination after I-360 filed
 - Marriage may also be terminated within 2 years preceding I-360 filing



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Common Return Errors

- Marriage not legal due to bigamy
 - INA allows for bigamy on the part of the abuser
- Self-petitioning child over 21 at time of approval
 - Self-petitioning children do not age out if they met the age requirements at the time of filing
- Self-petitioning child over 21 at time of filing
 - Law change in 2006 allows for certain self-petitioning children to be over 21 but under 25 at the time of filing



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QUESTIONS?



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