

Barnes, Maria I

From: Rachal, Terri L
Sent: Thursday, October 16, 2014 10:07 AM
To: Barnes, Maria I; Maxwell, Reginald G
Subject: FW: I-751 - Battered and/or Abused Waiver

FYI

Terri

From: Johnson, Cheryl L
Sent: Thursday, October 16, 2014 7:17 AM
To: Aerts, Kellee A; Coleman, Christal A; Head, Toni M; Nnabue, Tony C; Pantos, Stephen J; Paredes, Marianna; Perkins, Vanessa K; Rachal, Terri L; Whitehead, Esther A
Cc: Williams, Jaclyn M; DeBoe, Mayburn E
Subject: FW: I-751 - Battered and/or Abused Waiver

Please share the below information with ISOs.

Thank you.

Cheryl Johnson

Branch Chief

USCIS Atlanta Field Office - District #8

*"The achievements of an organization are the results of the combined effort of each individual."
-Vince Lombardi*

From: Parker, Vanessa
Sent: Wednesday, October 15, 2014 4:58 PM
Subject: FW: I-751 - Battered and/or Abused Waiver

SER Leadership –

Below is the I-751 – Battered and/or Abused Waiver Interim Guidance and SME contact information provided by the VSC following the teleconference scheduled with the region on October 14, 2014.

Please distribute this information to the Immigration Services Officers in order to assist the field in processing of I-751E and F Waiver filings when such cases are forwarded for interview.

The national work group is currently developing a I-751 Waiver training module and we will be reaching out to the field with the information when it is made available to the region.

If you need additional information, please email the VSC I-751 Waiver SMEs at Field, VSC or the VSC, Hotline Follow Up and copy Keri Yeager-Bowser or Vanessa Parker.

Thank you for your support of the SER!

Vanessa Parker
Immigration Services Officer
Southeast Region
390 N. Orange Avenue
Orlando, FL 32801
(407)237-8823

From: Lynch, Mary A
Sent: Wednesday, October 15, 2014 3:10 PM
Subject: RE: I-751 - Battered and/or Abused Waiver

Hi Keri,

Sorry that you missed the teleconference yesterday as it was certainly beneficial from the VSC perspective and hopefully for the District and field offices also. As agreed upon, we are sending along what will hopefully be some interim guidance for SER officers to assist them in processing of I-751 E and F abuse Waiver filings when they are relocated from the VSC for interview, and until such time as the national work group completes development of a broad based I-751 Waiver training module. As follows:

Two separate email addresses to obtain information from VSC I-751 Waiver SMEs:

- Field, VSC : this email address is used to contact VSC for a variety of issues to include I751s for which the filing basis is E or F (Waiver due to battery or extreme mental cruelty).
- VSC, Hotline Follow Up is used to contact the VSC VAWA unit for I-360 Filings, but can also be used secondarily for questions regarding I-751 E and F filings

Below are the call ups used by the VSC for requests for evidence. This should help to clarify for district officer the type of information VSC looks for when specifically adjudicating I751 s for which the filing basis (E or F- Waiver due to battery or extreme mental cruelty)

1. This is the most commonly used call up for extreme mental cruelty:
 - *You must submit evidence to support your claim that your relationship included mental and/or emotional abuse. However, non-battering abuse must meet the standard of extreme cruelty. A finding of extreme cruelty involves the examination of the dynamics of the relationship, the victim's sense of well-being before the abuse, the specific acts during the period of abuse, and the victim's quality of life and ability to function after the abuse. Your own testimony should cover these factors.*

Extreme Cruelty

- *Further evidence or testimony is needed in order to promote a finding of extreme cruelty. Such testimony might involve an explanation of the type of abuse suffered and the after-effects of the abuse to include answers or descriptions of the following:*

- Verbal: What were the words, names used? What tone of voice was used? How did the incident end? Who left the room or residence? Did things go back to "normal" or was there a need for apologies, appeasement or "walking on eggshells"?
- Social isolation: Were you socially isolated? If so, please explain the manner and duration of the isolation. What specific actions did your alleged abuser take? What did you do in response? How did you feel as a result of your alleged abuser's actions?
- Possessiveness: Was your alleged abuser possessive? If so, please explain the manner of the possessiveness. What did your alleged abuser do? What did you do in response? How did you feel as a result of your alleged abuser's actions?
- Quality of life: How did your life change? How were you affected by the abuse? What do you feel caused the changes? What did you do to deal with the abuse?
- It is important to understand the above factors in order to determine if the abuse qualifies as extreme cruelty. Any further explanations or descriptions you can provide or anything further you may wish to share would be of great assistance in making an informed determination.
- You may also submit the following which may be of assistance to USCIS in making an informed decision:
 - Police reports,
 - Psychological reports, or
 - Affidavits from third parties which corroborate your claim.
- Please note that affidavits must be written statements sworn to or affirmed by individuals, other than yourself, who were living at the time the event(s) occurred, and who have personal knowledge of the event you are trying to prove—for example, the incident of abuse.
- The affiants may be required to testify before a United States Citizenship and Immigration Services Officer.

2. This is the call up used when requesting evidence of battery:

Battery (Physical Abuse)

- You may submit one or more of the following types of evidence to establish your eligibility for a waiver based on battery (physical abuse) perpetrated by your abuser:
 - A statement in your own words describing the relationship with your abuser. Be as specific as possible.
 - Complete reports and affidavits from police, judges, court officials, or school officials that include the signature of the individual who completed the report.
 - Reports or findings from counselors, medical personnel, social workers, or other social service agency personnel who provided counseling for the abuse.
 - Copies of doctor reports, hospital reports, or other medical treatment facilities that treated you for injuries sustained from the abuse. These reports may include, but are not limited to, diagnosis, treatment plans, etc.
 - Evidence that you have sought refuge in a shelter for victims of domestic abuse.
 - If photographs were taken of any visible physical injury, provide clear color photos.

- Any additional explanations, descriptions or documentation you wish to share that would assist USCIS in making an informed determination.

Affidavits

- Affidavits from third parties which corroborate your claims may be submitted in addition to any other documentation submitted.
 - Affidavits are written statements sworn to or affirmed by individuals, other than yourself, who were living at the time the events(s) occurred, and who have personal knowledge of the event you are trying to prove--for example, the incident of abuse.
 - The affiants may be required to testify before a U.S. Citizenship and Immigration Services Officer.
3. This call up is a short list of evidence of a good faith marriage:

Please submit evidence to demonstrate you have resided with your abusive parent or step-parent. Satisfactory evidence may include, but is not limited to:

1. Leases or rental agreements listing you as an occupant.
2. Photocopies of your parent's income tax filing listing you as a dependent.
3. Insurance policies, banking and other financial records.
4. School records listing your parent/guardian and address of record.
5. Medical records or a statement from your physician.
6. Affidavits of friends and family. Please submit evidence to demonstrate that you have resided with your abusive parent or step-parent. Satisfactory evidence may include, but is not limited to:

4. This is the informational paragraph that describes that marital tensions are not necessarily abuse:
- This immigration classification was created to provide a means of securing legal status for individuals who had been battered by or were the victims of extreme cruelty at the hands of citizen or lawful permanent resident spouses or parents. Extreme cruelty generally demonstrates an attempt by the perpetrator to control through psychological means that include emotional abuse, humiliation, degradation, and isolation. It may also include economic coercion or control. Acts of extreme cruelty demonstrate a pattern or intent on the part of the perpetrator directed at achieving compliance from or control over the victim.
 - Marital tensions and incompatibilities such as apathy toward the relationship by one party, infidelity or substance abuse of a spouse, which place strains sometimes severe enough to result in a marriage's disintegration, do not by themselves, constitute extreme cruelty. The evidence provided in the present case does not suggest that the marital difficulties claimed by you were beyond those encountered in many marriages. Additional evidence to demonstrate your claims is needed.

Also cited below are the three relocation memos that VSC uses when relocating a file to the field for interview, and the filing status is either an E or F Waiver cases:

- 1751 RAB Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has not established that it was a "good faith marriage" and/or has not established their claim of Battery and/or Extreme Mental Cruelty.
- 1751 RAE Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has already established that it was a "good faith marriage", but has not established their claim of Battery and/or Extreme Mental Cruelty.
- 1751 RGF Memo notifies the field office that VSC is relocating the A File and Petition, that we have reviewed the file and the CPR has already established the claim of Battery and/or Extreme Cruelty, but has not established their claim of a good faith marriage.

For I-751 Waiver filings, it is critical to note that, "credible evidence" is the standard for both "good faith marriage" and the claim of Battery and/or Extreme Mental Cruelty. Chapter 25 of the Adjudicator's Field Manual states the following concerning the evidence and adjudication of a Battery and/or Extreme Cruelty Waiver:

(3) Battering or Extreme Cruelty .

The original IMFA (as enacted in 1986) did not contain a separate waiver provision for victims of battering or extreme cruelty. Although in most cases, such victims could easily qualify for either of the two waiver provisions, Congress found that there was a need to spell out that victims of such treatment are entitled to special consideration under the law. As a result, section 216 of the Act was amended by section 701 of the Immigration Act of 1990 to add this waiver. It is important that in adjudicating such waiver applications INS officers are aware of and in accord with the views of Congress in passing this legislation. Other issues to bear in mind when adjudicating a battering or extreme cruelty waiver include:

- Persons who have been subjected to such treatment may have difficulty in discussing their experiences. While it is almost always necessary to discuss the abusive events with the applicant, such discussions should be carried on in a professional manner which does not further abuse the applicant by forcing him or her to unnecessarily re-live abusive episodes.
- Police reports and hospital records can be key documents in establishing that battering or extreme cruelty existed, but not all cases of abuse contain these items. Officers must be prepared to accept and evaluate other, less traditional, forms of documentation. Conversely, in the worst marriage fraud cases it is not unheard of for evidence of abuse or battering to be fabricated (someone who is willing to commit marriage fraud would not be unwilling to file a false police report).

Thanks to all that participated in the call today. We hope that the information provided during the call and the information included in this email will help the field with the adjudication of these petitions.

The VSC I-751 Team: SC Mary A Lynch, SISO Gary Lefebvre, and ISO3s Art Lambesis, Christina Martel, and Eric Oberg

- *Compliance with Section 384 confidentiality regulations*
- *Understanding the sensitive nature of E and F abuse issues, specifically related to safe address concerns and the correct application of the, "credible evidence" standard cited below:*

Standard of Proof

The standard of proof that an officer must apply is "any credible evidence". There is no specific primary or secondary evidentiary requirement and the CPR spouse or CPR child is not required to demonstrate the unavailability of secondary or primary evidence.

The "any credible evidence" standard is discussed in the memorandum from Paul W. Virtue, General Counsel, Office of the General Counsel, "Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children, (Subject file HQ 90/15-P & HQ 70/8-P)(October 16, 1998) available at website.

http://vsc.uscis.dhs.gov/ADJ_Memos/751/waiver_sop.pdf. The memo discusses the following:

- The determination of what evidence is credible is one that must be made by the adjudicating officer on a case-by-case basis. Frequently, evidence that is credible in one setting will not be so in another.
- More weight will be given to primary evidence and evidence provided in court documents, medical reports, police reports, and other official documents.
- A CPR spouse or CPR child who submits affidavits are urged, but not required, to provide affidavits from more than one person.
- A CPR spouse or CPR child filing under an "e" or "f" waiver may not have access to the range of documents normally available for a variety of reasons, such as having been forced to flee from the abuse and not having access to critical documents, destruction of documents by the abuser to prevent a waiver filing or filing without the knowledge or consent of the abuser.
- Give the CPR spouse or CPR child ample opportunity to add to the evidence submitted in support of the petition if necessary.
- Determine each case based on the facts and circumstances of that case only, taking into account the limitations that pertain to a battered spouse or child.

Also of note is that earlier this year the VSC was working with some POCs in the SER to provide remote training to be given by two of our VSC Waiver SME's in Orlando (back in April 2014), but that training was eventually cancelled by FOD in early May, based on a determination that such training should be provided by the ATC. Since that time a larger group has been teleconferencing on a weekly basis to develop an I-751 Waiver training package which I believe is intended to become a module for BASIC Academy training in the future. Our two VSC Waiver SME's have been full participants in that group and will be able to provide updated information on that effort when we teleconference with you later this week or next. Please advise as to a convenient time for us to speak with you and let us know who should receive a calendar invite. Thanks.

Mary A Lynch, Section Chief
Family Division, Vermont Service Center

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