



U.S. Department of Justice
Immigration and Naturalization Service

HQISD 70/33

425 I Street NW
Washington, DC 20536

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POLICY MEMO #89

MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS-IN-CHARGE
SERVICE CENTER DIRECTORS

FROM: William R. Yates /s/
Deputy Executive Associate Commissioner
Office of Field Operations
Immigration Services Division

SUBJECT: Instructions Regarding the Expanded Meaning of Section 319(a)

Public Law 106-386 amended section 319(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1430(a)) by extending the benefit of this section of law to persons who obtained status as a lawful permanent resident by reason of being a spouse or child who was subjected to battering or extreme cruelty by a United States citizen. This Memorandum is issued in order to provide guidance in the adjudication of applications filed pursuant to the expanded language. Section 319(a) of the INA now reads:

Sec. 319. [8 U.S.C. 1430]

- (a) Any person whose spouse is a citizen of the United States, *or any person who obtained status as a lawful permanent resident by reason of his or her status as a spouse or child of a United States citizen who battered him or her or subjected him or her to extreme cruelty* (added text), may be naturalized upon compliance with all the requirements of this title except the provisions of paragraph (1) of section 316(a) if such person immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his application has been living in marital

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union with the citizen spouse (*except in the case of a person who has been battered or subjected to extreme cruelty by a United States citizen spouse or parent*) (added text), who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months.

I. Qualified Applicants

In order to be eligible for Section 319(a) benefits as a battered spouse or as a battered child, the applicant must have obtained lawful permanent residence status based on either an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant in a case in which an abusive spouse or parent was a U.S. citizen or through cancellation of removal and adjustment of status pursuant to INA 240A(b)(2)(A)(i)(I). If the applicant obtained lawful permanent resident status based on an approved Form I-360 as the self-petitioning battered or abused spouse or child of a U.S. citizen or pursuant to INA 240A(b)(2)(A)(i)(I), the special requirements of demonstrating eligibility as a battered spouse or child pursuant to Section 319(a) shall be considered as having been met.

Any applicant who claims eligibility for benefits under Section 319(a) of the INA as a battered spouse or child must comply with all of the requirements of 8 C.F.R. § 319.1(a), except clause (3).

II. Benefits Available

The amendments made to section 319(a) of the INA by Pub. L. 106-386 do not change the usual requirements for section 319(a) applicants who acquired lawful permanent resident status on any basis and are currently married to U. S. citizens. Any applicant who would have been eligible to file an application under section 319(a) of the INA before it was amended is still eligible to file under the amended law. A qualifying spouse must meet all of the general requirements for naturalization except that the five years after lawful admission for permanent residence requirement is reduced to three years after lawful admission for permanent residence.

Any person who obtained status as a lawful permanent resident by reason of the approval of an I-360 based on being a spouse of a United States citizen who battered the applicant or subjected the applicant to extreme cruelty or pursuant to INA 240A(b)(2)(A)(i)(I) is excused the requirement of residing together with the citizen spouse. The ongoing validity or the termination of the marriage to the U.S. citizen will not be determinative of eligibility under Section 319(a) of a battered spouse or child. Once the applicant has established that he or she was properly granted status as a lawful permanent resident based on an approved I-360 or pursuant to INA 240A(b)(2)(A)(i)(I), length or continuity of cohabitation with the United States citizen spouse is not an issue in determining the applicant's eligibility for naturalization. Also it is not required

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that the United States citizen spouse still be alive or be a United States citizen at the time the applicant who obtained status as a lawful permanent resident by reason of an approved I-360 or pursuant to INA 240A(b)(2)(A)(i)(I) files an application for naturalization.

An application also can be filed under section 319(a) as amended by an applicant who obtained lawful permanent resident status through the approval of a Form I-360 or cancellation of removal and adjustment of status pursuant to INA 240A(b)(2)(A)(i)(I) as a child of a U.S. citizen who battered the child or subjected the child to extreme cruelty. It is not required that the U.S. citizen parent still be alive or be a U.S. citizen at the time the applicant files an application for naturalization (Form N-400). Also, at the time of lawful admission for permanent residence, whether through immigration or adjustment of status, the applicant would have to have met the requirements of being a child of a U.S. citizen parent pursuant to section 101(b)(1) of the INA. The applicant therefore is not required to meet the definition of child pursuant to sections 101(b)(1) or (c)(1) at the time of filing the N-400.

All applicants under section 319(a) as amended are excused from the usual requirement of residing in the United States for five years after being lawfully admitted for permanent residence and are eligible to file an N-400 once they are within three months of completing the three years of continuous residence after being lawfully admitted for permanent residence required by section 319(a) of the INA.

The amendments made to section 319(a) of the INA by Pub. L. 106-386 do not waive the requirement of section 334(b) of the INA that no person shall file a valid application for naturalization unless he shall have attained the age of eighteen years.