

## IF AN ORDER OF PROTECTION IS SOMETHING YOU ARE CONSIDERING

Please review the following to ensure that you are well informed and prepared to proceed with this legal process. To get an order of protection, you must go to 555 W Harrison, 1<sup>st</sup> Floor. While there, you can request a domestic violence legal advocate to assist you.

### For a criminal case when you want to press criminal charges in addition to getting an order of protection

1. You need a police report or an RD #. If a police report was not made, one can be made on the phone by calling 311.
2. Plan on spending at least 4 hours at court.
3. An Assistant State's Attorney (ASA) will interview you to see if you are eligible for a criminal Emergency Order of Protection (EOP). Examples of questions: What is the nature of the abuse that took place? Is there any evidence (bruises, hospital records etc.) or witnesses (neighbors, friends, coworkers etc.)? How many times and in what period of time did the abuse occur?
4. If you are deemed eligible, you must be ready and willing to press charges and put out a warrant for the abuser's arrest (if he/she hasn't already been arrested).
5. You may bring your children. There is a children's advocacy center on the 1st floor which will keep your child(ren) if they are potty trained and do not have a cold or any contagious illness.
6. An ASA will be presenting your case in court. This is the State's case. You are their star witness.
7. There will be at least one other court date at which you will need to appear. You will be notified of each mandatory court date, and an ASA will present your case each time, so you don't need your own attorney.

### For a civil order of protection

1. You do not need a police report, evidence or witnesses. Although, if your case should go to a hearing, any of those will be helpful in supporting/proving your case.
2. This is an EMERGENCY order of protection. Therefore, the judge needs to find that a) some form of abuse has indeed taken place, which places you in danger of, or in fear of the abuser (it does not have to be physical abuse!) and b) that the abuse took place recently (within 1-2 weeks). Note that only the most recent incident needs to have taken place within 1-2 weeks. There is space provided for you to tell the judge about other incidents of abuse that have taken place throughout the relationship.
3. The entire process will take at least 2-3 hours. This includes: a) filling out the EOP forms (1hr) b) going before the judge to explain why you need an EOP and answering some basic questions (30-60mins.) Please be aware that courtrooms close down from 11:30 to 2:00.
4. A Cook County Sheriff will serve the abuser with the EOP; usually within 24-48 hours of receiving it from the judge. *This means you need to have an address for the abuser, where the sheriffs may find him/her in order to serve the EOP. This address can be a home, work, family member's, etc.* Keep in mind that this also means that the abuser will have a copy of everything you wrote.
5. The abuser will also be informed of the next court date, in case he/she wants to be heard before the judge. If there is information that you do not want the abuser to know (such as your home address or telephone number), ask your advocate or court staff what your options are
6. If the judge grants your EOP, you will be given a new court date (because the EOP only lasts for 21 days). It is EXTREMELY important that you show up to this court date and that you be on time! This is YOUR case, so if you don't show up (or if you are late, and your case is called), the judge has no choice but to dismiss it. You are allowed to request that the order be extended for up to 2 years. This would now become a Plenary Order of Protection (POP) if granted. *Remember that the abuser may be present, since the Sheriff made him, aware of the date, and that he/she has a right to disagree to the order. If this should happen, the judge will set a hearing date in order to hear both sides of the whole story (which is where your evidence or witnesses will be helpful)*

**IF YOU HAVE ANY QUESTIONS REGARDING ORDERS OF PROTECTION, PLEASE FEEL FREE TO CALL US AT VIOLENCE RECOVERY SERVICES, A PARTNER OF HEARTLAND ALLIANCE: (773) 847-4417.**

## **List of Domestic Violence Crisis Hotlines and Social Service Providers**

### **24-hour Crisis Hotlines:**

City of Chicago Domestic Violence Helpline: 877-863-6338

Chicago Abused Women Coalition: 773-278-4566

Between Friends (Near North): 1-800-603-4357 (1-800-603-HELP)

Apna Ghar (Uptown): 1-800-717-0757

Rainbow House (South): 1-877-863-6338 (1-877-TO-END-DV)

Neopolitan Lighthouse (West): 773-722-0005

Mujeres Latinas en Acción: 312-738-5358

Mutual Ground (Kane and Kendall Counties): 630-897-0080 or 630-897-8383

Sarah's Inn (West/Oak Park) 708-386-4225

Family Rescue (Chicago): 800-360-6619

### **Other Social Service Providers:**

LifeSpan (DesPlaines): 847-824-0382

Greenhouse Shelter: 773-278-4566

House of the Good Shepherd (Chicago): 773-935-3523

Casa Central (DV Intervention): 773-645-2407

Community Counseling Centers of Chicago (Child Abuse and Sexual Assault): 773-769-0205

*\*Please note: This list is compiled by staff at the National Immigration Justice Center based on information available to the public through each organization's website.\**

## 8 § 1153

### INA § 203

CJS Aliens § 946, Immediate Relatives and Special Immigrants.

CJS Aliens § 1184, Immigrants.

CJS Aliens § 1222, Aliens Subject to Final Order for Document Fraud.

CJS Aliens § 1228, Immigrants.

CJS Aliens § 1465, Nature of Relief.

CJS Aliens § 1478, General Rule.

CJS Aliens § 1504, Motions to Reopen Removal or Deportation Proceedings.

CJS Aliens § 1755, Alien Entrepreneurs; Commuter Aliens.

## § 1154. Procedure for granting immigrant status

[INA § 204]

### (a) Petitioning procedure

(1)(A)(i) Except as provided in clause (viii), any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 1153(a) of this title or to an immediate relative status under section 1151(b)(2)(A)(i) of this title may file a petition with the Attorney General for such classification.

(ii) An alien spouse described in the second sentence of section 1151(b)(2)(A)(i) of this title also may file a petition with the Attorney General under this subparagraph for classification of the alien (and the alien's children) under such section.

(iii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not

legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

(iv) An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title, and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

(v) An alien who—

(I) is the spouse, intended spouse, or child living abroad of a citizen who—

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of Title 10); or

(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (iii) or (iv), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii) or (iv), as applicable.

(vi) For the purposes of any petition filed under clause (iii) or (iv), the denaturalization, loss or renunciation of citizenship, death of the abuser, divorce, or changes to the abuser's citizenship status after filing

of the petition shall not adversely affect the approval of the petition, and for approved petitions shall not preclude the classification of the eligible self-petitioning spouse or child as an immediate relative or affect the alien's ability to adjust status under subsections (a) and (c) of section 1255 of this title or obtain status as a lawful permanent resident based on the approved self-petition under such clauses.

(vii) An alien may file a petition with the Secretary of Homeland Security under this subparagraph for classification of the alien under section 1151(b)(2)(A)(i) of this title if the alien—

(I) is the parent of a citizen of the United States or was a parent of a citizen of the United States who, within the past 2 years, lost or renounced citizenship status related to an incident of domestic violence or died;

(II) is a person of good moral character;

(III) is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title;

(IV) resides, or has resided, with the citizen daughter or son; and

(V) demonstrates that the alien has been battered or subject to extreme cruelty by the citizen daughter or son.

(viii)(I) Clause (i) shall not apply to a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.

(II) For purposes of subclause (I), the term "specified offense against a minor" is defined as in section 16911 of Title 42.

(B)(i)(D) Except as provided in subclause (II), any alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section 1153(a)(2) of this title may file a petition with the Attorney General for such classification.

(I)<sup>1</sup> Subclause (I) shall not apply in the case of an alien lawfully admitted for permanent residence who has been convicted of a specified offense against a minor (as defined in subparagraph (A)(viii)(II)), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that such person poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.

(ii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if such a child has not been classified

under clause (iii) of section 1153(a)(2)(A) of this title and if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien—

(aa)(AA) who is the spouse of a lawful permanent resident of the United States; or

(BB) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States; or

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and—

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 1153(a)(2)(A) of this title or who would have been so classified but for the bigamy of the lawful permanent resident of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

(iii) An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 1153(a)(2)(A) of this title, and who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been bat-

tered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

(iv) An alien who—

(I) is the spouse, intended spouse, or child living abroad of a lawful permanent resident who—

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of Title 10); or

(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (ii) or (iii), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (ii) or (iii), as applicable.

(v)(I) For the purposes of any petition filed or approved under clause (ii) or (iii), divorce, or the loss of lawful permanent resident status by a spouse or parent after the filing of a petition under that clause shall not adversely affect approval of the petition, and, for an approved petition, shall not affect the alien's ability to adjust status under subsections (a) and (c) of section 1255 of this title or obtain status as a lawful permanent resident based on an approved self-petition under clause (ii) or (iii).

(II) Upon the lawful permanent resident spouse or parent becoming or establishing the existence of United States citizenship through naturalization, acquisition of citizenship, or other means, any petition filed with the Immigration and Naturalization Service and pending or approved under clause (ii) or (iii) on behalf of an alien who has been battered or subjected to extreme cruelty shall be deemed reclassified as a petition filed under subparagraph (A) even if the acquisition of citizenship occurs after divorce or termination of parental rights.

(C) Notwithstanding section 1101(f) of this title, an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 1182(a) of this title or deportability under section 1227(a) of this title shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

(D)(i)(I) Any child who attains 21 years of age who has filed a petition under clause (iv) of subsection (a)(1)(A) of this section or subsection (a)(1)(B)(iii) of this section that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for

preference status under paragraph (1), (2), or (3) of section 1153(a) of this title, whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under clause (iv) of subsection (a)(1)(A) of this section or subsection (a)(1)(B)(iii) of this section. No new petition shall be required to be filed.

(II) Any individual described in subclause (I) is eligible for deferred action and work authorization.

(III) Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.

(IV) Any individual described in subclause (III) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization.

(ii) The petition referred to in clause (i)(III) is a petition filed by an alien under subparagraph (A)(iii), (A)(iv), (B)(ii) or (B)(iii) in which the child is included as a derivative beneficiary.

(iii) Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this subparagraph.

(iv) Any alien who benefits from this subparagraph may adjust status in accordance with subsections (a) and (c) of section 1255 of this title as an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii).

(v) For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. Clauses (i) through (iv) of this subparagraph shall apply to an individual described in this clause in the same manner as an individual filing a petition under subparagraph (A)(iv) or (B)(iii).

(E) Any alien desiring to be classified under section 1153(b)(1)(A) of this title, or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(F) An individual who is within the time period under section 1153(b)(2) of this title, with the exception of—

(G)(i) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(ii) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(H) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(I)(i) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(ii)(I) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(II) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(III) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(iii) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(J) An individual who is under section 1153(b)(2) of this title, shall be classified under section 1153(b)(2) of this title, with the exception of—

(F) Any employer desiring and intending to employ within the United States an alien entitled to classification under section 1153(b)(1)(B), 1153(b)(1)(C), 1153(b)(2), or 1153(b)(3) of this title may file a petition with the Attorney General for such classification.

(G)(i) Any alien (other than a special immigrant under section 1101(a)(27)(D) of this title) desiring to be classified under section 1153(b)(4) of this title, or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 1101(a)(27)(D) of this title may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

(H) Any alien desiring to be classified under section 1153(b)(5) of this title may file a petition with the Attorney General for such classification.

(D)(i) Any alien desiring to be provided an immigrant visa under section 1153(c) of this title may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(D) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 1153(c) of this title for the fiscal year beginning after the end of the period.

(II) Aliens who qualify, through random selection, for a visa under section 1153(c) of this title shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

(iii) A petition under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(J) In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(K) Upon the approval of a petition as a VAWA self-petitioner, the alien—

(i) is eligible for work authorization; and

(ii) may be provided an "employment authorized" endorsement or appropriate work permit incidental to such approval.

(L) Notwithstanding the previous provisions of this paragraph, an individual who was a VAWA petitioner or who had the status of a nonimmigrant under subparagraph (T) or (U) of section 1101(a)(15) of this title may not file a petition for classification under this section or section 1184 of this title to classify any person who committed the battery or extreme cruelty or trafficking against the individual (or the individual's child<sup>2</sup>) which established the individual's (or individual's child) eligibility as a VAWA petitioner or for such nonimmigrant status.

(2)(A) The Attorney General may not approve a spousal second preference petition for the classification of the spouse of an alien if the alien, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term "spousal second preference petition" refers to a petition, seeking preference status under section 1153(a)(2) of this title, for an alien as a spouse of an alien lawfully admitted for permanent residence.

(B) Subparagraph (A) shall not apply to a petition filed for the classification of the spouse of an alien if the prior marriage of the alien was terminated by the death of his or her spouse.

**(b) Investigation; consultation; approval; authorization to grant preference status**

After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 1153(b)(2) or 1153(b)(3) of this title, the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 1151(b) of this title or is eligible



for preference under subsection (a) or (b) of section 1153 of this title, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

**(c) Limitation on orphan petitions approved for a single petitioner; prohibition against approval in cases of marriages entered into in order to evade immigration laws; restriction on future entry of aliens involved with marriage fraud**

Notwithstanding the provisions of subsection (b) of this section no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

**(d) Recommendation of valid home-study**

Notwithstanding the provisions of subsections (a) and (b) of this section no petition may be approved on behalf of a child defined in section 1101(b)(1)(F) of this title unless a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States.

**(e) Subsequent finding of non-entitlement to preference classification**

Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to be admitted<sup>3</sup> the United States as an immigrant under subsection (a), (b), or (c) of section 1153 of this title or as an immediate relative under section 1151(b) of this title if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

**(f) Preferential treatment for children fathered by United States citizens and born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before October 22, 1982**

(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 1151(b), 1153(a)(1), or 1153(a)(3) of this title, as appropriate. After an investigation of the facts of each case

the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

(2) The Attorney General may approve a petition for an alien under paragraph (1) if—

(A) he has reason to believe that the alien (i) was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before October 22, 1982, and (ii) was fathered by a United States citizen;

(B) he has received an acceptable guarantee of legal custody and financial responsibility described in paragraph (4); and

(C) in the case of an alien under eighteen years of age, (i) the alien's placement with a sponsor in the United States has been arranged by an appropriate public, private, or State child welfare agency licensed in the United States and actively involved in the intercountry placement of children and (ii) the alien's mother or guardian has in writing irrevocably released the alien for emigration.

(3) In considering petitions filed under paragraph (1), the Attorney General shall—

(A) consult with appropriate governmental officials and officials of private voluntary organizations in the country of the alien's birth in order to make the determinations described in subparagraphs (A) and (C)(ii) of paragraph (2); and

(B) consider the physical appearance of the alien and any evidence provided by the petitioner, including birth and baptismal certificates, local civil records, photographs of, and letters or proof of financial support from, a putative father who is a citizen of the United States, and the testimony of witnesses, to the extent it is relevant or probative.

(4)(A) A guarantee of legal custody and financial responsibility for an alien described in paragraph (2) must—

(i) be signed in the presence of an immigration officer or consular officer by an individual (hereinafter in this paragraph referred to as the "sponsor") who is twenty-one years of age or older, is of good moral character, and is a citizen of the United States or alien lawfully admitted for permanent residence, and

(ii) provide that the sponsor agrees (I) in the case of an alien under eighteen years of age, to assume legal custody for the alien after the alien's departure to the United States and until the alien becomes eighteen years of age, in accordance with the laws of the State where the alien and the sponsor will reside, and (II) to furnish, during the five-year period beginning on the date of the alien's acquiring the status of an alien lawfully admitted for permanent residence, or during the period beginning on the date of the alien's acquiring the

status of an alien lawfully admitted for permanent residence and ending on the date on which the alien becomes twenty-one years of age, whichever period is longer, such financial support as is necessary to maintain the family in the United States of which the alien is a member at a level equal to at least 125 per centum of the current official poverty line (as established by the Director of the Office of Management and Budget, under section 9902(2) of Title 42 and as revised by the Secretary of Health and Human Services under the second and third sentences of such section) for a family of the same size as the size of the alien's family.

(B) A guarantee of legal custody and financial responsibility described in subparagraph (A) may be enforced with respect to an alien against his sponsor in a civil suit brought by the Attorney General in the United States district court for the district in which the sponsor resides, except that a sponsor or his estate shall not be liable under such a guarantee if the sponsor dies or is adjudicated a bankrupt under Title 11.

**(g) Restriction on petitions based on marriages entered while in exclusion or deportation proceedings**

Notwithstanding subsection (a) of this section, except as provided in section 1255(e)(3) of this title, a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 1255(e)(2) of this title, until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

**(h) Survival of rights to petition**

The legal termination of a marriage may not be the sole basis for revocation under section 1155 of this title of a petition filed under subsection (a)(1)(A)(iii) of this section or a petition filed under subsection (a)(1)(B)(ii) of this section pursuant to conditions described in subsection (a)(1)(A)(iii)(I) of this section. Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) of this section or marriage of an alien described in clause (iv) or (vi) of subsection (a)(1)(A) of this section or in subsection (a)(1)(B)(iii) of this section shall not be the basis for revocation of a petition approval under section 1155 of this title.

**(i) Professional athletes**

**(1) In general**

A petition under subsection (a)(4)(D)<sup>1</sup> of this section for classification of a professional athlete shall remain valid for the athlete after the athlete changes employers, if the new employer is a team in

the same sport as the team which was the employer who filed the petition.

**(2) "Professional athlete" defined**

For purposes of paragraph (1), the term "professional athlete" means an individual who is employed as an athlete by—

(A) 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

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

**(j) Job flexibility for long delayed applicants for adjustment of status to permanent residence**

A petition under subsection (a)(1)(D) of this section for an individual whose application for adjustment of status pursuant to section 1255 of this title has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if 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 petition was filed.

**(k) Procedures for unmarried sons and daughters of citizens**

**(1) In general**

Except as provided in paragraph (2), in the case of a petition under this section initially filed for an alien unmarried son or daughter's classification as a family-sponsored immigrant under section 1153(a)(2)(B) of this title, based on a parent of the son or daughter being an alien lawfully admitted for permanent residence, if such parent subsequently becomes a naturalized citizen of the United States, such petition shall be converted to a petition to classify the unmarried son or daughter as a family-sponsored immigrant under section 1153(a)(1) of this title.

**(2) Exception**

Paragraph (1) does not apply if the son or daughter files with the Attorney General a written statement that he or she elects not to have such conversion occur (or if it has occurred, to have such conversion revoked). Where such an election has been made, any determination with respect to the son or daughter's eligibility for admission as a family-sponsored immigrant shall be made as if such naturalization had not taken place.



## 8 § 1154

INA § 204

## IMMIGRATION AND NATIONALITY

### (3) Priority date

Regardless of whether a petition is converted under this subsection or not, if an unmarried son or daughter described in this subsection was assigned a priority date with respect to such petition before such naturalization, he or she may maintain that priority date.

### (4) Clarification

This subsection shall apply to a petition if it is properly filed, regardless of whether it was approved or not before such naturalization.

### (I) Surviving relative consideration for certain petitions and applications

#### (1) In general

An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

#### (2) Alien described

An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was—

(A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 1151(b)(2)(A)(i) of this title);

(B) the beneficiary of a pending or approved petition for classification under section 1153(a) or (d) of this title;

(C) a derivative beneficiary of a pending or approved petition for classification under section 1153(b) of this title (as described in section 1153(d) of this title);

(D) the beneficiary of a pending or approved refugee/asylee relative petition under section 1157 or 1158 of this title;

(E) an alien admitted in "T" nonimmigrant status as described in section 1101(a)(15)(T)(ii) of this title or in "U" nonimmigrant status as described in section 1101(a)(15)(U)(ii) of this title; or

(F) an asylee (as described in section 1158(b)(3) of this title).

(June 27, 1952, c. 477, Title II, ch. 1, § 204, 66 Stat. 179; Oct. 24, 1962, Pub.L. 87-885, § 3, 76 Stat. 1247; Oct. 3, 1965, Pub.L. 89-236, § 4, 79 Stat. 915; Oct. 20, 1976, Pub.L.

94-571, § 7(b), 90 Stat. 2706; Oct. 5, 1978, Pub.L. 95-417, §§ 2, 3, 92 Stat. 917; Oct. 19, 1980, Pub.L. 96-470, Title II, § 207, 94 Stat. 2245; Dec. 29, 1981, Pub.L. 97-116, §§ 3, 18(d), 95 Stat. 1611, 1620; Oct. 22, 1982, Pub.L. 97-359, 96 Stat. 1716; Nov. 10, 1986, Pub.L. 99-639, §§ 2(c), 4(a), 5(b), 100 Stat. 3541, 3543; Oct. 24, 1988, Pub. L. 100-525, § 9(g), 102 Stat. 2620; Nov. 29, 1990, Pub.L. 101-649, Title I, § 162(b), Title VII, § 702(b), 104 Stat. 5010, 5086; Dec. 12, 1991, Pub.L. 102-232, Title III, §§ 302(e)(4),(5), 308(b), 309(b)(5), 105 Stat. 1745, 1746, 1757, 1758; Sept. 13, 1994, Pub.L. 103-322, Title IV, § 40701(a), (b)(1), (c), 108 Stat. 1953, 1954; Oct. 25, 1994, Pub.L. 103-416, Title II, § 219(b)(2), 108 Stat. 4316; Sept. 30, 1996, Pub.L. 104-208, Div. C, Title III, § 308(e)(1)(A), (f)(2)(A), Title VI, § 624(b), 110 Stat. 3009-619, 3009-621, 3009-699; Oct. 17, 2000, Pub.L. 106-313, Title I, § 106(e)(1), 114 Stat. 1254; Oct. 28, 2000, Pub.L. 106-386, Div. B, Title V, §§ 1503(b), (c), (d), 1507(a)(1), (2), (b), 114 Stat. 1518, 1520, 1521, 1529, 1530; Aug. 6, 2002, Pub.L. 107-208, §§ 6, 7, 116 Stat. 929; Jan. 5, 2006, Pub.L. 109-162, Title VIII, §§ 805(a), (c), 814(b), (e), 816, 119 Stat. 3056, 3059, 3060; July 27, 2006, Pub.L. 109-248, Title IV, § 402(a), 120 Stat. 622; Aug. 12, 2006, Pub.L. 109-271, § 6(a), 120 Stat. 762; Oct. 28, 2009, Pub.L. 111-83, Title V, § 568(d)(1), 123 Stat. 2187.)

<sup>1</sup> So in original. Probably should be designated "II".

<sup>2</sup> So in original. Probably should be "child's".

<sup>3</sup> So in original. Probably should be followed by "to".

<sup>4</sup> So in original. Probably should be "(a)(1)(D)".

#### Amendment of Subsec. (d)

*Pub.L. 106-279, Title III, § 302(b), Title V, § 505(a)(2), (b), Oct. 6, 2000, 114 Stat. 839, 844, provided that, effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, subsection (d) is amended by striking out "(d)" and inserting "(d)(1)", by striking out "section 1101(b)(1)(F)" and inserting "subparagraph (F) or (G) of section 1101(b)(1)", and by adding a new paragraph (2), as follows:*

*(2) Notwithstanding the provisions of subsections (a) and (b), no petition may be approved on behalf of a child defined in section 1101(b)(1)(G) of this title unless the Secretary of State has certified that the central authority of the child's country of origin has notified the United States central authority under the convention referred to in such section 1101(b)(1)(G) of this title that a United States citizen habitually resident in the United States has effected final adoption of the child, or has been granted custody of the child for the purpose of emigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000.*

#### HISTORICAL AND STATUTORY NOTES

##### References in Text

The Child Status Protection Act, referred to in subsec. (a)(1)(D)(iii), is Pub.L. 107-208, Aug. 6, 2002, 116 Stat. 927, which amended this section and 8 U.S.C.A. §§ 1151, 1153.

under the age of eighteen years as a citizen of the United States (and not merely as a noncitizen national);

(iv) A statement executed by a United States consular officer certifying the petitioner to be a United States citizen and the bearer of a currently valid United States passport;

(v) The petitioner's Certificate of Naturalization or Certificate of Citizenship;

(vi) Department of State Form FS-240, Report of Birth Abroad of a Citizen of the United States, relating to the petitioner;

(vii) The petitioner's Form I-551, Permanent Resident Card, or other proof given by the Service as evidence of lawful permanent residence. Photocopies of Form I-551 or of a Certificate of Naturalization or Certificate of Citizenship may be submitted as evidence of status as a lawfully permanent resident or United States citizen, respectively.

(2) Secondary evidence. If primary evidence is unavailable, the petitioner must present secondary evidence. Any evidence submitted as secondary evidence will be evaluated for authenticity and credibility. Secondary evidence may include, but is not limited to, one or more of the following documents:

(i) A baptismal certificate with the seal of the church, showing the date and place of birth in the United States and the date of baptism;

(ii) Affidavits sworn to by persons who were living at the time and who have personal knowledge of the event to which they attest. The affidavits must contain the affiant's full name and address, date and place of birth, relationship to the parties, if any, and complete details concerning how the affiant acquired knowledge of the event;

(iii) Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s);

(iv) Census records showing the name, place of birth, and date of birth or age of the petitioner; or

(v) If it is determined that it would cause unusual delay or hardship to obtain documentary proof of birth in the United States, a United States citizen petitioner who is a member of the Armed Forces of the United States and who is serving outside the United States may submit a statement from the appropriate authority of the Armed Forces. The statement should attest to the fact that the personnel records of the Armed Forces show that the petitioner was born in the United States on a certain date.

(3) Evidence submitted with a self-petition. If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, the Service will at-

tempt to electronically verify the abuser's citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

(h) [Reserved]

[41 FR 11171, March 17, 1976, as amended at 41 FR 55847, Dec. 23, 1976; 43 FR 33677, Aug. 1, 1978; 43 FR 36238, Aug. 16, 1978; 45 FR 19545, March 26, 1980; 45 FR 75167, Nov. 14, 1980; 45 FR 76652, Nov. 20, 1980; 46 FR 46563, Sept. 21, 1981; 48 FR 4452, Feb. 1, 1983; 48 FR 19154, April 28, 1983; 48 FR 30350, July 1, 1983; 49 FR 23828, June 8, 1984; 49 FR 33433, Aug. 23, 1984; 50 FR 3315, Jan. 24, 1985; 51 FR 18571, May 21, 1986; 51 FR 20794, June 9, 1986; 52 FR 30900, Aug. 18, 1987; 52 FR 44593, Nov. 20, 1987; 53 FR 30016, Aug. 10, 1988; 54 FR 34142, Aug. 18, 1989; 56 FR 28312, June 20, 1991; 57 FR 41056, Sept. 9, 1992; 58 FR 48778, Sept. 20, 1993; 59 FR 47063, Sept. 14, 1994; 60 FR 14353, March 17, 1995; 61 FR 13072, 13073, March 26, 1996; 63 FR 70315, Dec. 21, 1998; 72 FR 19106, April 17, 2007; 72 FR 56853, Oct. 4, 2007; 74 FR 26936, June 5, 2009]

### § 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

(a) Petition for a spouse—

(1) Eligibility. A United States citizen or alien admitted for lawful permanent residence may file a petition on behalf of a spouse.

(i) Marriage within five years of petitioner's obtaining lawful permanent resident status.

(A) A visa petition filed on behalf of an alien by a lawful permanent resident spouse may not be approved if the marriage occurred within five years of the petitioner being accorded the status of lawful permanent resident based upon a prior marriage to a United States citizen or alien lawfully admitted for permanent residence, unless:

(1) The petitioner establishes by clear and convincing evidence that the marriage through which the petitioner gained permanent residence was not entered into for the purposes of evading the immigration laws; or

(2) The marriage through which the petitioner obtained permanent residence was terminated through death.

(B) Documentation. The petitioner should submit documents which cover the period of the prior marriage. The types of documents which may establish that the prior marriage was not entered into for the purpose of evading the immigration laws include, but are not limited to:

(1) Documentation showing joint ownership of property;

(2) A lease showing joint tenancy of a common residence;

(3) Documentation showing commingling of financial resources;

(4) Birth certificate(s) of child(ren) born to the petitioner and prior spouse;

(5) Affidavits sworn to or affirmed by third parties having personal knowledge of the bona fides of the prior marital relationship. (Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit; his or her relationship, if any, to the petitioner, beneficiary or prior spouse; and complete information and details explaining how the person acquired his or her knowledge of the prior marriage. The affiant may be required to testify before an immigration officer about the information contained in the affidavit. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph.); or

(6) Any other documentation which is relevant to establish that the prior marriage was not entered into in order to evade the immigration laws of the United States.

(C) The petitioner must establish by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading the immigration laws. Failure to meet the "clear and convincing evidence" standard will result in the denial of the petition. Such a denial shall be without prejudice to the filing of a new petition once the petitioner has acquired five years of lawful permanent residence. The director may choose to initiate deportation proceedings based upon information gained through the adjudication of the petition; however, failure to initiate such proceedings shall not establish that the petitioner's prior marriage was not entered into for the purpose of evading the immigration laws. Unless the petition is approved, the beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal second preference petition.

(ii) Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

(iii) Marriage during proceedings—general prohibition against approval of visa petition. A visa petition filed on behalf of an alien by a United States citizen or a lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)(9) of this chapter, except that the burden in visa petition proceedings to establish eligibility for the exemption in § 245.1(c)(9)(iii)(F) of this chapter shall rest with the petitioner.

(A) Request for exemption. No application or fee is required to request an exemption. The request must be made in writing and submitted with the Form I-130. The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(B) Evidence to establish eligibility for the bona fide marriage exemption. The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

(1) Documentation showing joint ownership of property;

(2) Lease showing joint tenancy of a common residence;

(3) Documentation showing commingling of financial resources;

(4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary;

(5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or

(6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

(C) Decision. Any petition filed during the prohibited period shall be denied, unless the petitioner es-

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establishes eligibility for an exemption from the general prohibition. The petitioner shall be notified in writing of the decision of the director.

(D) Denials. The denial of a petition because the marriage took place during the prohibited period shall be without prejudice to the filing of a new petition after the beneficiary has resided outside the United States for the required period of two years following the marriage. The denial shall also be without prejudice to the consideration of a new petition or a motion to reopen the visa petition proceedings if deportation or exclusion proceedings are terminated after the denial other than by the beneficiary's departure from the United States. Furthermore, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the visa petition proceedings, if the petitioner establishes eligibility for the bona fide marriage exemption contained in this part: Provided, That no motion to reopen visa petition proceedings may be accepted if the approval of the motion would result in the beneficiary being accorded a priority date within the meaning of section 203(c) of the Act earlier than November 29, 1990.

(E) Appeals. The decision of the Board of Immigration Appeals concerning the denial of a relative visa petition because the petitioner failed to establish eligibility for the bona fide marriage exemption contained in this part will constitute the single level of appellate review established by statute.

(F) Priority date. A preference beneficiary shall not be accorded a priority date within the meaning of section 203(c) of the Act based upon any relative petition filed during the prohibited period, unless an exemption contained in this part has been granted. Furthermore, a preference beneficiary shall not be accorded a priority date prior to November 29, 1990, based upon the approval of a request for consideration for the bona fide marriage exemption contained in this part.

(2) Evidence for petition for a spouse. In addition to evidence of United States citizenship or lawful permanent residence, the petitioner must also provide evidence of the claimed relationship. A petition submitted on behalf of a spouse must be accompanied by a recent ADIT-style photograph of the petitioner, a recent ADIT-style photograph of the beneficiary, a certificate of marriage issued by civil authorities, and proof of the legal termination of all previous marriages of both the petitioner and the beneficiary. However, non-ADIT-style photographs may be accepted by the district director when the petitioner or beneficiary reside(s) in a country where such photographs are unavailable or cost prohibitive.

(3) Decision on and disposition of petition. The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment

of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) Derivative beneficiaries. No alien may be classified as an immediate relative as defined in section 201(b) of the Act unless he or she is the direct beneficiary of an approved petition for that classification. Therefore, a child of an alien approved for classification as an immediate relative spouse is not eligible for derivative classification and must have a separate petition filed on his or her behalf. A child accompanying or following to join a principal alien under section 203(a)(2) of the Act may be included in the principal alien's second preference visa petition. The child will be accorded second preference classification and the same priority date as the principal alien. However, if the child reaches the age of twenty-one prior to the issuance of a visa to the principal alien parent, a separate petition will be required. In such a case, the original priority date will be retained if the subsequent petition is filed by the same petitioner. Such retention of priority date will be accorded only to a son or daughter previously eligible as a derivative beneficiary under a second preference spousal petition.

(b) Petition by widow or widower of a United States citizen—

(1) Eligibility. A widow or widower of a United States citizen may file a petition and be classified as an immediate relative under section 201(b) of the Act if:

(i) He or she had been married for at least two years to a United States citizen.

(Note: The United States citizen is not required to have had the status of United States citizen for the entire two year period, but must have been a United States citizen at the time of death.)

(ii) The petition is filed within two years of the death of the citizen spouse or before November 29, 1992, if the citizen spouse died before November 29, 1990;

(iii) The alien petitioner and the citizen spouse were not legally separated at the time of the citizen's death; and

(iv) The alien spouse has not remarried.

(2) Evidence for petition of widow or widower. If a petition is submitted by the widow or widower of a deceased United States citizen, it must be accompanied by evidence of citizenship of the United States citizen and primary evidence, if available, of the relationship in the form of a marriage certificate issued by civil authorities, proof of the termination of all prior marriages of both husband and wife, and the United States citizen's death certificate issued by civil authorities. To determine the availability of primary docu-

ments, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will be required before the Service will accept secondary evidence. Secondary evidence will be evaluated for its authenticity and credibility. Secondary evidence may include:

(i) Such evidence of the marriage and termination of prior marriages as religious documents, tribal records, census records, or affidavits; and

(ii) Such evidence of the United States citizen's death as religious documents, funeral service records, obituaries, or affidavits. Affidavits submitted as secondary evidence pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section must be sworn to or affirmed by people who have personal knowledge of the event to which they attest. Each affidavit should contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship, if any, to the widow or widower. Any such affidavit must contain complete information and details explaining how knowledge of the event was acquired.

(3) Decision on and disposition of petition. The approved petition will be forwarded to the Department of State's Processing Center. If the widow or widower is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the widow or widower will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) Derivative beneficiaries. A child of an alien widow or widower classified as an immediate relative is eligible for derivative classification as an immediate relative. Such a child may be included in the principal alien's immediate relative visa petition, and may accompany or follow to join the principal alien to the United States. Derivative benefits do not extend to an unmarried or married son or daughter of an alien widow or widower.

(c) Self-petition by spouse of abusive citizen or lawful permanent resident—

(1) Eligibility—

(i) Basic eligibility requirements. A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is that parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

(ii) Legal status of the marriage. The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

(iii) Citizenship or immigration status of the abuser. The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Changes in the abuser's citizenship or lawful permanent resident status after the approval will have no effect on the self-petition. A self-petition approved on the basis of a relationship to an abusive lawful permanent resident spouse will not be automatically upgraded to immediate relative status. The self-petitioner would not be precluded, however, from filing a new self-petition for immediate relative classification after the abuser's naturalization, provided the self-petitioner continues to meet the self-petitioning requirements.

(iv) Eligibility for immigrant classification. A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(v) Residence. A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.



(vi) Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(vii) Good moral character. A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

(viii) Extreme hardship. The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse.

The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation would cause extreme hardship.

(ix) Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

(2) Evidence for a spousal self-petition—

(i) General. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) Relationship. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. If the self-petition is based on a claim that the self-petitioner's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, the self-petition should also be accompanied by the child's birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.

(iii) Residence. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained

an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) Good moral character. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

(vi) Extreme hardship. Evidence of extreme hardship may include affidavits, birth certificates of children, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

(vii) Good faith marriage. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

(3) Decision on and disposition of the petition—

(i) Petition approved. If the self-petitioning spouse will apply for adjustment of status under section 245

of the Act, the approved petition will be retained by the Service. If the self-petitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center.

(ii) Petition denied. If the self-petition is denied, the self-petitioner will be notified in writing of the reasons for the denial and of the right to appeal the decision.

(4) Derivative beneficiaries. A child accompanying or following-to-join the self-petitioning spouse may be accorded the same preference and priority date as the self-petitioner without the necessity of a separate petition, if the child has not been classified as an immigrant based on his or her own self-petition. A derivative child who had been included in a parent's self-petition may later file a self-petition, provided the child meets the self-petitioning requirements. A child who has been classified as an immigrant based on a petition filed by the abuser or another relative may also be derivatively included in a parent's self-petition. The derivative child must be unmarried, less than 21 years old, and otherwise qualify as the self-petitioner's child under section 101(b)(1)(F) of the Act until he or she becomes a lawful permanent resident based on the derivative classification.

(5) Name change. If the self-petitioner's current name is different than the name shown on the documents, evidence of the name change (such as the petitioner's marriage certificate, legal document showing name change, or other similar evidence) must accompany the self-petition.

(6) Prima facie determination.

(i) Upon receipt of a self-petition under paragraph (c)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a "prima facie case" for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104-208.

(ii) For purposes of paragraph (c)(6)(i) of this section, a prima facie case is established only if the petitioner submits a completed Form I-360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (c)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.

(iii) If the Service determines that a petitioner has made a "prima facie case," the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.

(iv) For purposes of adjudicating the petition submitted under paragraph (c)(1) of this section, a prima facie determination—

(A) Shall not be considered evidence in support of the petition;

(B) Shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and,

(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (c)(2) of this section.

(d) Petition for a child or son or daughter.—

(1) Eligibility. A United States citizen may file a petition on behalf of an unmarried child under twenty-one years of age for immediate relative classification under section 201(b) of the Act. A United States citizen may file a petition on behalf of an unmarried son or daughter over twenty-one years of age under section 203(a)(1) or for a married son or daughter for preference classification under section 203(a)(3) of the Act. An alien lawfully admitted for permanent residence may file a petition on behalf of a child or an unmarried son or daughter for preference classification under section 203(a)(2) of the Act.

(2) Evidence to support petition for child or son or daughter. In addition to evidence of United States citizenship or lawful permanent resident, the petitioner must also provide evidence of the claimed relationship.

(i) Primary evidence for a legitimate child or son or daughter. If a petition is submitted by the mother, the birth certificate of the child showing the mother's name must accompany the petition. If the mother's name on the birth certificate is different from her name on the petition, evidence of the name change must also be submitted. If a petition is submitted by the father, the birth certificate of the child, a marriage certificate of the parents, and proof of legal termination of the parents' prior marriages, if any, issued by civil authorities must accompany the petition. If the father's name has been legally changed, evidence of the name change must also accompany the petition.

(ii) Primary evidence for a legitimated child or son or daughter. A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the beneficiary's birth

certificate and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) Primary evidence for an illegitimate child or son or daughter. If a petition is submitted by the mother, the child's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted by the purported father of a child or son or daughter born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child relationship was established when the child or son or daughter was unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence to establish that the petitioner is the child's natural father is the beneficiary's birth certificate, issued by civil authorities and showing the father's name. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent-child relationship should establish more than merely a biological relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction, and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent-child relationship and financial responsibility by the father is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or cancelled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the beneficiary as a dependent; school records for the beneficiary; correspondence between the parties; or notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable about the relationship.

(iv) Primary evidence for a stepchild. If a petition is submitted by a stepparent on behalf of a stepchild or stepson or stepdaughter, the petition must be supported by the stepchild's or stepson's or stepdaughter's birth certificate, issued by civil authorities and showing the name of the beneficiary's parent to whom the petitioner is married, a marriage certificate issued by civil authorities which shows that the petitioner and the child's natural parent were married before the stepchild or stepson or stepdaughter

reached the age of eighteen; and evidence of the termination of any prior marriages of the petitioner and the natural parent of the stepchild or stepson or stepdaughter.

(v) Secondary evidence. When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will be required before the Service will accept secondary evidence. Secondary evidence will be evaluated for its authenticity and credibility. Secondary evidence may take the form of historical evidence; such evidence must have been issued contemporaneously with the event which it documents any may include, but is not limited to, medical records, school records, and religious documents. Affidavits may also be accepted. When affidavits are submitted, they must be sworn to by persons who were born at the time of and who have personal knowledge of the event to which they attest. Any affidavit must contain the affiant's full name and address, date and place of birth, relationship to the party, if any, and complete details concerning how the affiant acquired knowledge of the event.

(vi) Blood tests. The director may require that a specific Blood Group Antigen Test be conducted of the beneficiary and the beneficiary's father and mother. In general, blood tests will be required only after other forms of evidence have proven inconclusive. If the specific Blood Group Antigen Test is also found not to be conclusive and the director determines that additional evidence is needed, a Human Leucocyte Antigen (HLA) test may be requested. Tests will be conducted, at the expense of the petitioner or beneficiary, by the United States Public Health Service physician who is authorized overseas or by a qualified medical specialist designated by the district director. The results of the test should be reported on Form G-620. Refusal to submit to a Specific Blood Group Antigen or HLA test when requested may constitute a basis for denial of the petition, unless a legitimate religious objection has been established. When a legitimate religious objection is established, alternate forms of evidence may be considered based upon documentation already submitted.

(vii) Primary evidence for an adopted child or son or daughter. A petition may be submitted on behalf of an adopted child or son or daughter by a United States citizen or lawful permanent resident if the adoption took place before the beneficiary's sixteenth birthday, and if the child has been in the legal custody of the adopting parent or parents and has resided with the adopting parent or parents for at least two years.

A copy of the adoption decree, issued by the civil authorities, must accompany the petition.

(A) Legal custody means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

(B) Evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a familial relationship. Evidence of parental control may include, but is not limited to, evidence that the adoptive parent owns or maintains the property where the child resides and provides financial support and day-to-day supervision. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement. When the adopted child continued to reside in the same household as a natural parent(s) during the period in which the adoptive parent petitioner seeks to establish his or her compliance with this requirement, the petitioner has the burden of establishing that he or she exercised primary parental control during that period of residence.

(C) Legal custody and residence occurring prior to or after the adoption will satisfy both requirements. Legal custody, like residence, is accounted for in the aggregate. Therefore, a break in legal custody or residence will not affect the time already fulfilled. To meet the definition of child contained in sections 101(b)(1)(E) and 101(b)(2) of the Act, the child must have been under 16 years of age when the adoption is finalized.

(D) On or after the Convention effective date, as defined in 8 CFR part 204.301, a United States citizen who is habitually resident in the United States, as determined under 8 CFR 204.303, may not file a Form I-130 under this section on behalf of child who was habitually resident in a Convention country, as determined under 8 CFR 204.303, unless the adoption was completed before the Convention effective date. In the case of any adoption occurring on or after the Convention effective date, a Form I-130 may be filed

and approved only if the United States citizen petitioner was not habitually resident in the United States at the time of the adoption.

(E) For purposes of paragraph (d)(2)(vii)(D) of this section, USCIS will deem a United States citizen, 8 CFR 204.303 notwithstanding, to have been habitually resident outside the United States, if the citizen satisfies the 2-year joint residence and custody requirements by residing with the child outside the United States.

(F) For purposes of paragraph (d)(2)(vii)(D) of this section, USCIS will not approve a Form I-130 under section 101(b)(1)(E) of the Act on behalf of an alien child who is present in the United States based on an adoption that is entered on or after the Convention effective date, but whose habitual residence immediately before the child's arrival in the United States was in a Convention country. However, the U.S. citizen seeking the child's adoption may file a Form I-800A and Form I-800 under 8 CFR part 204, subpart C.

(3) Decision on and disposition of petition. The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) Derivative beneficiaries. A spouse or child accompanying or following to join a principal alien as used in this section may be accorded the same preference and priority date as the principal alien without the necessity of a separate petition. However, a child of an alien who is approved for classification as an immediate relative is not eligible for derivative classification and must have a separate petition approved on his or her behalf.

(5) Name change. When the petitioner's name does not appear on the child's birth certificate, evidence of the name change (such as the petitioner's marriage certificate, legal document showing name change, or other similar evidence) must accompany the petition. If the beneficiary's name has been legally changed, evidence of the name change must also accompany the petition.

(e) Self-petition by child of abusive citizen or lawful permanent resident—

(1) Eligibility.

(i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

(A) Is the child of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;

(F) Is a person of good moral character; and

(G) Is a person whose deportation would result in extreme hardship to himself or herself.

(ii) Parent-child relationship to the abuser. The self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act when the petition is filed and when it is approved. Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship provided the child meets the requirements of section 101(b)(1) of the Act.

(iii) Citizenship or immigration status of the abuser. The abusive parent must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Changes in the abuser's citizenship or lawful permanent resident status after the approval will have no effect on the self-petition. A self-petition approved on the basis of a relationship to an abusive lawful permanent resident will not be automatically upgraded to immediate relative status. The self-petitioning child would not be precluded, however, from filing a new self-petition for immediate relative classification after the abuser's naturalization, provided the self-petitioning child continues to meet the self-petitioning requirements.

(iv) Eligibility for immigrant classification. A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(v) Residence. A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

(vi) Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation,



including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

(vii) Good moral character. A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

(viii) Extreme hardship. The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner cannot be considered in determining whether a

self-petitioning child's deportation would cause extreme hardship.

(2) Evidence for a child's self-petition—

(i) General. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) Relationship. A self-petition filed by a child must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of the relationship between:

(A) The self-petitioning child and an abusive biological mother is the self-petitioner's birth certificate issued by civil authorities;

(B) A self-petitioning child who was born in wedlock and an abusive biological father is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parents, and evidence of legal termination of all prior marriages, if any;

(C) A legitimated self-petitioning child and an abusive biological father is the child's birth certificate issued by civil authorities, and evidence of the child's legitimation;

(D) A self-petitioning child who was born out of wedlock and an abusive biological father is the child's birth certificate issued by civil authorities showing the father's name, and evidence that a bona fide parent-child relationship has been established between the child and the parent;

(E) A self-petitioning stepchild and an abusive step-parent is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parent and the stepparent showing marriage before the stepchild reached 18 years of age, and evidence of legal termination of all prior marriages of either parent, if any; and

(F) An adopted self-petitioning child and an abusive adoptive parent is an adoption decree showing that the adoption took place before the child reached 16 years of age, and evidence that the child has been residing with and in the legal custody of the abusive adoptive parent for at least 2 years.

(iii) Residence. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

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(iv) Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other types of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) Good moral character. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in the foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character. A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit affidavits of good moral character, police clearances, criminal background checks, or other evidence of good moral character.

(vi) Extreme hardship. Evidence of extreme hardship may include affidavits, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

(3) Decision on and disposition of the petition—

(i) Petition approved. If the self-petitioning child will apply for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the self-petitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center.

(ii) Petition denied. If the self-petition is denied, the self-petitioner will be notified in writing of the reasons for the denial and of the right to appeal the decision.

(4) Derivative beneficiaries. A child of a self-petitioning child is not eligible for derivative classification and must have a petition filed on his or her behalf if seeking immigrant classification.

(5) Name change. If the self-petitioner's current name is different than the name shown on the documents, evidence of the name change (such as the petitioner's marriage certificate, legal document showing the name change, or other similar evidence) must accompany the self-petition.

(6) Prima facie determination.

(i) Upon receipt of a self-petition under paragraph (e)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a "prima facie case" for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104-208.

(ii) For purposes of paragraph (e)(6)(i) of this section, a prima facie case is established only if the petitioner submits a completed Form I-360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (e)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.

(iii) If the Service determines that a petitioner has made a "prima facie case" the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.

(iv) For purposes of adjudicating the petition submitted under paragraph (e)(1) of this section, a prima facie determination:

(A) Shall not be considered evidence in support of the petition;

(B) Shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and,

(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (e)(2) of this section.

(f) Petition for a parent—

(1) Eligibility. Only a United States citizen who is twenty-one years of age or older may file a petition on behalf of a parent for classification under section 201(b) of the Act.

(2) Evidence to support a petition for a parent. In addition to evidence of United States citizenship as listed in § 204.1(g) of this part, the petitioner must also provide evidence of the claimed relationship.

(i) Primary evidence if petitioner is a legitimate son or daughter. If a petition is submitted on behalf of the mother, the birth certificate of the petitioner showing the mother's name must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If a petition is submitted on behalf of the father, the birth certificate of the petitioner, a marriage certificate of the parents, and proof of legal termination of the parents' prior marriages, if any, issued by civil authorities must accompany the petition. If the father's name on the birth certificate has been legally changed, evidence of the name change must also accompany the petition.

(ii) Primary evidence if petitioner is a legitimated son or daughter. A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parent's marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of petitioner's birth certificate and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) Primary evidence if the petitioner is an illegitimate son or daughter. If a petition is submitted on behalf of the mother, the petitioner's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted on behalf of the purported father of the petitioner, the petitioner must show that the beneficiary is his or her natural father and that a bona fide parent-child relationship was established when the petitioner was unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence to establish that the beneficiary is the petitioner's natural father is the petitioner's birth certificate, issued by civil authorities and showing the father's name. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent-child relationship

should establish more than merely a biological relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction, and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent-child relationship is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or cancelled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the petitioner as a dependent; school records for the petitioner; correspondence between the parties; or notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable as to the relationship.

(iv) Primary evidence if petitioner is an adopted son or daughter. A petition may be submitted for an adoptive parent by a United States citizen who is twenty-one years of age or older if the adoption took place before the petitioner's sixteenth birthday and if the two year legal custody and residence requirements have been met. A copy of the adoption decree, issued by the civil authorities, must accompany the petition.

(A) Legal custody means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

(B) Evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a parental relationship. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement.

(C) Legal custody and residence occurring prior to or after the adoption will satisfy both requirements. Legal custody, like residence, is accounted for in the

aggregate. Therefore, a break in legal custody or residence will not affect the time already fulfilled. To meet the definition of child contained in sections 101(b)(1)(E) and 101(b)(2) of the Act, the child must have been under 16 years of age when the adoption is finalized.

(v) Name change. When the petition is filed by a child for the child's parent, and the parent's name is not on the child's birth certificate, evidence of the name change (such as the parent's marriage certificate, a legal document showing the parent's name change, or other similar evidence) must accompany the petition. If the petitioner's name has been legally changed, evidence of the name change must also accompany the petition.

(3) Decision on and disposition of petition. The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) Derivative beneficiaries. A child or a spouse of a principal alien who is approved for classification as an immediate relative is not eligible for derivative classification and must have a separate petition approved on his or her behalf.

(g) Petition for a brother or sister—

(1) Eligibility. Only a United States citizen who is twenty-one years of age or older may file a petition of a brother or sister for classification under section 203(a)(4) of the Act.

(2) Evidence to support a petition for brother or sister. In addition to evidence of United States citizenship, the petitioner must also provide evidence of the claimed relationship.

(i) Primary evidence if the siblings share a common mother or are both legitimate children of a common father. If a sibling relationship is claimed through a common mother, the petition must be supported by a birth certificate of the petitioner and a birth certificate of the beneficiary showing a common mother. If the mother's name on one birth certificate is different from her name as reflected on the other birth certificate or in the petition, evidence of the name change must also be submitted. If a sibling relationship is claimed through a common father, the birth certificates of the beneficiary and petitioner, a marriage certificate of the parents' and proof of legal termination of the parents, prior marriage(s), if any, issued by civil authorities must accompany the petition. If the father's name has been legally changed, evidence of the name change must also accompany the petition.

(ii) Primary evidence if either or both siblings are legitimated. A child can be legitimated through the

marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the petitioner's birth certificate, the beneficiary's birth certificate, and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) Primary evidence if either sibling is illegitimate. If one or both of the siblings is (are) the illegitimate child(ren) of a common father, the petitioner must show that they are the natural children of the father and that a bona fide parent-child relationship was established when the illegitimate child(ren) was (were) unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence is the petitioner's and beneficiary's birth certificates, issued by civil authorities and showing the father's name, and evidence that the siblings have or had a bona fide parent-child relationship with the natural father. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent-child relationship should establish more than merely a biological relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction, and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent-child relationship is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or canceled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the beneficiary as a dependent; school records for the beneficiary; correspondence between the parties; or notarized affidavits of friends, neighbors, school offi-

cials, or other associates knowledgeable about the relationship.

(iv) Primary evidence for stepsiblings. If the petition is submitted on behalf of a brother or sister having a common father, the relationship of both the petitioner and the beneficiary to the father must be established as required in paragraphs (g)(2)(ii) and (g)(2)(iii) of this section. If the petitioner and beneficiary are stepsiblings through the marriages of their common father to different mothers, the marriage certificates of the parents and evidence of the termination of any prior marriages of the parents must be submitted.

(3) Decision on and disposition of petition. The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) Derivative beneficiaries. A spouse or a child accompanying or following to join a principal alien beneficiary under this section may be accorded the same preference and priority date as the principal alien without the necessity of a separate petition.

(5) Name change. If the name of the petitioner, the beneficiary, or both has been legally changed, evidence showing the name change (such as a marriage certificate, a legal document showing the name change, or other similar evidence) must accompany the petition.

(h) Validity of approved petitions—

(1) General. Unless terminated pursuant to section 203(g) of the Act or revoked pursuant to part 205 of this chapter, the approval of a petition to classify an alien as a preference immigrant under paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of section 203 of the Act, or as an immediate relative under section 201(b) of the Act, shall remain valid for the duration of the relationship to the petitioner and of the petitioner's status as established in the petition.

(2) Subsequent petition by same petitioner for same beneficiary. When a visa petition has been approved, and subsequently a new petition by the same petitioner is approved for the same preference classification on behalf of the same beneficiary, the latter approval shall be regarded as a reaffirmation or reinstatement of the validity of the original petition, except when the original petition has been terminated pursuant to section 203(g) of the Act or revoked pursuant to Part 205 of this chapter, or when an immigrant visa has been issued to the beneficiary as a result of the petition approval. A self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), 204(a)(1)(B)(iii) of the Act based on the relationship to

an abusive citizen or lawful permanent resident of the United States will not be regarded as a reaffirmation or reinstatement of a petition previously filed by the abuser. A self-petitioner who has been the beneficiary of a visa petition filed by the abuser to accord the self-petitioner immigrant classification as his or her spouse or child, however, will be allowed to transfer the visa petition's priority date to the self-petition. The visa petition's priority date may be assigned to the self-petition without regard to the current validity of the visa petition. The burden of proof to establish the existence of and the filing date of the visa petition lies with the self-petitioner, although the Service will attempt to verify a claimed filing through a search of the Service's computerized records or other records deemed appropriate by the adjudicating officer. A new self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act will not be regarded as a reaffirmation or reinstatement of the original self-petition unless the prior and the subsequent self-petitions are based on the relationship to the same abusive citizen or lawful permanent resident of the United States.

(i) Automatic conversion of preference classification—

(1) By change in beneficiary's marital status.

(i) A currently valid petition previously approved to classify the beneficiary as the unmarried son or daughter of a United States citizen under section 203(a)(1) of the Act shall be regarded as having been approved for preference status under section 203(a)(3) of the Act as of the date the beneficiary marries. The beneficiary's priority date is the same as the date the petition for classification under section 203(a)(1) of the Act was properly filed.

(ii) A currently valid petition previously approved to classify a child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as having been approved for preference status under section 203(a)(3) of the Act as of the date the beneficiary marries. The beneficiary's priority date is the same as the date the petition for 201(b) classification was properly filed.

(iii) A currently valid petition classifying the married son or married daughter of a United States citizen for preference status under section 203(a)(3) of the Act shall, upon legal termination of the beneficiary's marriage, be regarded as having been approved under section 203(a)(1) of the Act if the beneficiary is over twenty-one years of age. The beneficiary's priority date is the same as the date the petition for classification under section 203(a)(3) of the Act was properly filed. If the beneficiary is under twenty-one years of age, the petition shall be regarded as having been approved for classification as an immediate relative under section 201(b) of the Act as of the date the

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petition for classification under section 203(a)(3) of the Act was properly filed.

(iv) A currently valid visa petition previously approved to classify the beneficiary as an immediate relative as the spouse of a United States citizen must be regarded, upon the death of the petitioner, as having been approved as a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant for classification under paragraph (b) of this section, if, on the date of the petitioner's death, the beneficiary satisfies the requirements of paragraph (b)(1) of this section. If the petitioner dies before the petition is approved, but, on the date of the petitioner's death, the beneficiary satisfies the requirements of paragraph (b)(1) of this section, then the petition shall be adjudicated as if it had been filed as a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant under paragraph (b) of this section.

(2) By the beneficiary's attainment of the age of twenty-one years. A currently valid petition classifying the child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as having been approved for preference status under section 203(a)(1) of the Act as of the beneficiary's twenty-first birthday. The beneficiary's priority date is the same as the date the petition for section 201(b) classification was filed.

(3) By the petitioner's naturalization. Effective upon the date of naturalization of a petitioner who had been lawfully admitted for permanent residence, a currently valid petition according preference status under section 203(a)(2) of the Act to the petitioner's spouse and unmarried children under twenty-one years of age shall be regarded as having been approved for immediate relative status under section 201(b) of the Act. Similarly, a currently valid petition according preference status under section 203(a)(2) of the Act for the unmarried son or daughter over twenty-one years of age shall be regarded as having been approved under section 203(a)(1) of the Act. In any case of conversion to classification under section 203(a)(1) of the Act, the beneficiary's priority date is the same as the date the petition for classification under section 203(a)(2) of the Act was properly filed. A self-petition filed under section 204(a)(1)(B)(ii) or 204(a)(1)(B)(iii) of the Act based on the relationship to an abusive lawful permanent resident of the United States for classification under section 203(a)(2) of the Act will not be affected by the abuser's naturalization and will not be automatically converted to a petition for immediate relative classification.

[30 FR 14773, Nov. 30, 1965; 48 FR 4453, Feb. 1, 1983; 48 FR 19155, April 28, 1983; 48 FR 52689, Nov. 22, 1983; 49 FR 8422, March 7, 1984; 50 FR 38969, Sept. 26, 1985; 52 FR 16233, May 4, 1987; 54 FR 11161, March 17, 1989; 54 FR 36754, Sept. 5, 1989; 54 FR 40239, Sept. 29, 1989; 57 FR 41057, Sept. 9, 1992; 60 FR 34090, June 30, 1995; 60 FR 38948, July 31, 1995; 61 FR 7207, Feb. 27, 1996; 61 FR 13073, 13075, 13077, March 26, 1996; 62 FR 10336, March 6,

1997; 62 FR 60771, Nov. 13, 1997; 71 FR 35749, June 21, 2006; 72 FR 19107, April 17, 2007; 72 FR 56853, Oct. 4, 2007]

### § 204.3 Orphan cases under section 101(b)(1)(F) of the Act (non-Convention cases).

(a) This section addresses the immigration classification of alien orphans as provided for in section 101(b)(1)(F) of the Act.

(1) Except as provided in paragraph (a)(2) of this section, a child who meets the definition of orphan contained in section 101(b)(1)(F) of the Act is eligible for classification as the immediate relative of a U.S. citizen if:

(i) The U.S. citizen seeking the child's immigration can document that the citizen (and his or her spouse, if any) are capable of providing, and will provide, proper care for an alien orphan; and

(ii) The child is an orphan under section 101(b)(1)(F) of the Act.

A U.S. citizen may submit the documentation necessary for each of these determinations separately or at one time, depending on when the orphan is identified.

(2) Form I-600A or Form I-600 may not be filed under this section on or after the Convention effective date, as defined in 8 CFR 204.301, on behalf of a child who is habitually resident in a Convention country, as defined in 8 CFR 204.301. On or after the Convention effective date, USCIS may approve a Form I-600 on behalf of a child who is habitually resident in a Convention country only if the Form I-600A or Form I-600 was filed before the Convention effective date.

(b) Definitions. As used in this section, the term:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be



U.S. Department of Justice  
Immigration and Naturalization Service

HQADN/70/9

Office of the Executive Associate Commissioner

425 I Street NW  
Washington, DC 20536

AUG 5 2002

MEMORANDUM FOR REGIONAL DIRECTORS  
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,  
IMMIGRATION SERVICES DIVISION

FROM: *for* Johnny N. Williams  
Executive Associate Commissioner  
Office of Field Operations

SUBJECT: Revocation of VAWA-Based Self-Petitions (I-360s)

It has come to the attention of this office that certain district offices have been issuing notices of intent to revoke I-360 immigrant visa petitions that were approved at the Vermont Service Center (VSC) pursuant to the self-petitioning provisions contained in the Violence Against Women Act (VAWA). This practice has led to allegations that the Immigration and Naturalization Service's (Service/INS) adjudication of VAWA-based self-petitions is inconsistent. Consequently, effective the date of this memorandum, the VSC shall have sole authority to revoke an approved VAWA-based self-petition.

New Policy

In 1997, to ensure appropriate and expeditious handling of all self-petitions filed by battered spouses and children, the Service implemented a centralized filing procedure in which all VAWA-based petitions are adjudicated at the VSC. The VSC adjudications officers assigned to the VAWA unit have received specialized domestic violence training and have developed expertise in adjudicating these petitions. Therefore, in order to ensure consistency in the adjudication of VAWA cases, self-petitions that field offices believe should be reviewed for possible revocation are to be returned to the VSC accompanied by a memorandum of explanation.

Memorandum for Regional Directors, et al  
Subject: Revocation of VAWA-Based Self-Petitions (I-360s)

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If an officer in the field receives new information that was not available to the VSC at the time of the approval of a self-petition, and that new information leads the officer to reasonably believe that a self-petition should be revoked, the officer must write a memorandum to his or her Supervisory District Adjudications Officer (SDAO) explaining why the self-petition should be reviewed for possible revocation. The memorandum must state what the new information is and how it was obtained.

#### Supervisory Review and Return to VSC

If, upon review of an officer's memorandum of explanation, the SDAO concurs in the officer's assessment, the SDAO must sign and forward it and the file in question to the VSC to the attention of the VAWA unit. A VSC VAWA unit supervisor will review the memorandum of explanation and the file to which it refers, and make a recommendation to initiate revocation proceedings or to reaffirm the self-petition. If the recommendation is to reaffirm the self-petition, the VSC supervisor must write a memorandum explaining the reasons for which the self-petition was not revoked. This memorandum will be returned to the field with the file. In all such situations, the VSC is expected to complete its review process on an expedited basis. Self-petitions being returned to the VSC from a field office, or from the VSC to a field office, must in all cases be accompanied by a memorandum signed by the appropriate supervisor prior to such action being taken.

#### Reminder of Special Provisions Relating to VAWA Cases

Officers should keep in mind that section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)<sup>1</sup> prohibits Department of Justice employees from making an adverse determination of admissibility or deportability of an alien using information provided solely by:

- 1) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty;
- 2) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty;
- 3) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty); and

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<sup>1</sup> Codified at 8 U.S.C. § 1367.

Memorandum for Regional Directors, et al.  
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- 4) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty.<sup>2</sup>

Any adverse information received by the INS from a self-petitioner's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, must be independently corroborated by an unrelated source before the INS may take adverse action based on such information.<sup>3</sup>

Section 384 of IIRIRA also prohibits Department of Justice employees from permitting the use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information that relates to an alien who is the beneficiary of a VAWA-based self-petition.<sup>4</sup> Anyone who willfully uses, publishes, or permits such information to be disclosed in violation of IIRIRA § 384 will face disciplinary action and be subject to a civil money penalty of up to \$5,000 for each such violation.<sup>5</sup>

If you have questions regarding this memorandum or other VAWA-related issues, please contact Laura Dawkins, Office of Adjudications at (202) 514-4754.

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<sup>2</sup> For limited exceptions to this prohibition, see IIRIRA § 384(b).

<sup>3</sup> See Virtuc, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384", Mem. 96act.036 (May 5, 1997).

<sup>4</sup> See IIRIRA § 384(a)(2).

<sup>5</sup> See IIRIRA § 384(c).



December 15, 2010

PM-602-0022

## Policy Memorandum

SUBJECT: Revocation of VAWA-Based Self-Petitions (Forms I-360); *AFM* Update AD10-49

### Purpose

This Policy Memorandum (PM) restates the Violence Against Women Act (VAWA) revocation policy.

### Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

### Authority

8 CFR 205.2; 62 FR 16607.

### Background

A memorandum addressing the revocation of VAWA-based self-petitions was originally issued August 5, 2002. At that time, certain district offices were issuing notices of intent to revoke Form I-360, Petitions for Amerasian, Widow(er), or Special Immigrant, that were approved at the Vermont Service Center (VSC) pursuant to the self-petitioning provisions contained in VAWA. The 2002 memorandum was intended to ensure consistency in the adjudication of VAWA self-petitions, including consistency in revocations of VAWA self-petitions. Accordingly, the VSC was designated as the USCIS office with the sole authority to revoke an approved VAWA self-petition. However, district offices have not been following the 2002 memorandum instructions.

### Policy

In 1997, to ensure appropriate and expeditious handling of all self-petitions filed by battered spouses and children, the former Immigration and Naturalization Service implemented a centralized filing procedure by which all VAWA self-petitions are adjudicated at the VSC. The VSC adjudications officers assigned to the VAWA unit have received specialized domestic violence training and have developed expertise in adjudicating these petitions, including expertise in identifying fraudulent filings. Therefore, in order to ensure consistency in the adjudication of VAWA cases, self-petitions that field offices believe should be reviewed for possible revocation are to be returned to the VSC for review.

This PM therefore reiterates the policy in order to remind officers that a request for review must be based on new evidence not available at the time the Form I-360 was approved by the VSC.



All requests must be accompanied by a memorandum explaining the new evidence and its impact on the adjudication of the self-petition, and the memorandum must be signed by a supervisor. As of the date of this PM, the VSC will not accept any requests for review that do not follow the instructions outlined below.

### **Implementation**

Accordingly, the *AFM* is revised as follows:

- ☞ 1. Add new paragraph (z) to *AFM* Chapter 21.14 to read:

### **Chapter 21: Family-based Petitions and Applications**

\* \* \*

#### **21.14 Self-petitions by Abused Spouses and Children**

\* \* \*

##### **(z) Revocation of VAWA-based Forms I-360.**

(1) Field Request for Review of an Approved VAWA-based Form I-360. If an officer in the field receives new information that was not available to the VSC at the time of the approval of a VAWA self-petition, and that new information leads the officer to reasonably believe that a VAWA self-petition should be revoked, the officer must write a memorandum to his or her Supervisory Immigration Service Officer (SISO) explaining why the VAWA self-petition should be reviewed for possible revocation. The memorandum must state what the new information is and how USCIS obtained it.

(2) Supervisory Review and Return to VSC. If, upon review of an officer's memorandum of explanation, the SISO concurs in the officer's assessment, the SISO must sign the memorandum and forward it, with the file in question, to the VSC to the attention of the VAWA unit. A VSC VAWA unit supervisor will review the memorandum of explanation and the relating file and make a recommendation either to initiate revocation proceedings or to reaffirm the self-petition. If the VSC supervisor concurs with a recommendation to reaffirm the self-petition, he or she must write a memorandum explaining why the self-petition was not revoked. This memorandum will be returned to the field with the file. In all such situations, the VSC is expected to complete its review process on an expedited basis. Self-petitions being returned to the VSC from a field office, or from the VSC to a field office, must in all cases be accompanied by a memorandum signed by the appropriate supervisor.

(3) Reminder of Special Provisions Relating to VAWA Cases. Officers should keep in mind that section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (8 U.S.C. § 1367) prohibits DHS employees from making an adverse determination of admissibility or deportability of an alien using information provided solely by:

- A spouse or parent who has battered the alien or subjected the alien to extreme cruelty;
- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty;
- A spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty); or
- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty. (See IIRIRA § 384(a)(1). For limited exceptions to this prohibition, see IIRIRA § 384(b).)

Any adverse information received by USCIS from a self-petitioner's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, must be independently corroborated by an unrelated source before USCIS may take adverse action based on that information. (See Virtue, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384," (May 5, 1997).)

Section 384 of IIRIRA also prohibits DHS employees from permitting the use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information that relates to an alien who is the beneficiary of a VAWA-based self-petition. (See IIRIRA § 384(a)(2).) Anyone who willfully uses, publishes, or permits such information to be disclosed in violation of IIRIRA § 384 will face disciplinary action and be subject to a civil money penalty of up to \$5,000 for each such violation. (See IIRIRA § 384(c).)

- ☞ 2. Add new paragraph (z) to *AFM* Chapter 21.15 to read:

### **21.15 Self-petitions by Abused Parents of U.S. Citizens**

\* \* \*

#### **(z) Revocation of VAWA-based Forms I-360.**

(1) Field Request for Review of an Approved VAWA-based Form I-360. If an officer in the field receives new information that was not available to the VSC at the time of the approval of a VAWA self-petition, and that new information leads the officer to reasonably believe that a VAWA self-petition should be revoked, the officer must write a memorandum to his or her Supervisory Immigration Service Officer (SISO) explaining why the VAWA self-petition should be reviewed for possible revocation. The memorandum must state what the new information is and how USCIS obtained it.

(2) Supervisory Review and Return to VSC. If, upon review of an officer's memorandum of explanation, the SISO concurs in the officer's assessment, the SISO must sign the memorandum and forward it, with the file in question, to the VSC to the attention of the VAWA unit. A VSC VAWA unit supervisor will review the memorandum of explanation and the relating file and make a recommendation either to initiate revocation proceedings or to reaffirm the self-petition. If the VSC supervisor concurs with a recommendation to reaffirm the self-petition, he or she must write a memorandum explaining why the self-petition was not revoked. This memorandum will be returned to the field with the file. In all such situations, the VSC is expected to complete its review process on an expedited basis. Self-petitions being returned to the VSC from a field office, or from the VSC to a field office, must in all cases be accompanied by a memorandum signed by the appropriate supervisor.

(3) Reminder of Special Provisions Relating to VAWA Cases. Officers should keep in mind that section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (8 U.S.C. § 1367) prohibits DHS employees from making an adverse determination of admissibility or deportability of an alien using information provided solely by:

- A spouse or parent who has battered the alien or subjected the alien to extreme cruelty;
- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty;

- A spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty); or
- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty. (See IIRIRA § 384(a)(1). For limited exceptions to this prohibition, see IIRIRA § 384(b).)

Any adverse information received by USCIS from a self-petitioner's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, must be independently corroborated by an unrelated source before USCIS may take adverse action based on that information. (See Virtue, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384," (May 5, 1997).)

Section 384 of IIRIRA also prohibits DHS employees from permitting the use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information that relates to an alien who is the beneficiary of a VAWA-based self-petition. (See IIRIRA § 384(a)(2).) Anyone who willfully uses, publishes, or permits such information to be disclosed in violation of IIRIRA § 384 will face disciplinary action and be subject to a civil money penalty of up to \$5,000 for each such violation. (See IIRIRA § 384(c).)

- ☞ 3. The *AFM Transmittal Memoranda* button is revised by adding a new entry, in numerical order, to read:

AD10-49 12/15/2010	<b>Chapter 21.14(z)</b> <b>Chapter 21.15(z)</b>	This memorandum provides guidance on revocations of VAWA-based I-360s.
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### Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

### Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy & Strategy or to the Service Center Operations Directorate.

## Appendix III

## Memorandum



96act.036

<b>Subject</b> Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA, §384	<b>Date</b> MAY - 5 1997
<b>To</b> All INS Employees	<b>From</b> Office of Programs

This memorandum is designed to inform all INS employees of their obligations under Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the potential liability for violation of these obligations. As discussed in more detail below, section 384 (copy attached) prohibits the release of any information relating to aliens who are seeking or have been approved for immigrant status under the provisions for battered spouses and children in the Violence Against Women Act ("the VAWA"). Moreover, section 384 prohibits any Department of Justice employee — including both INS officers and immigration judges — from making an adverse determination of admissibility or deportability using information provided solely by the abusive spouse or parent or other member of the household. Violation of either of these prohibitions can result in disciplinary action or in civil penalties of up to \$5,000 for each violation.

#### Prohibition on Disclosure of Information

Section 384(a)(2) provides that in no case may any INS employee "permit use by or disclosure to anyone . . . of any information which relates to an alien who is the beneficiary of an application for relief" under the VAWA provisions, which relate to battered spouses and children who:

self-petition for immigrant status under §204(a)(1)(A)(iii)-(iv) or §204(a)(1)(B)(ii)-(iii) of the Immigration and Nationality Act ("INA"); or

petition for removal of conditions upon residency pursuant to INA §216(c)(4)(C); or

seek suspension of deportation under INA §244(a)(3).

[Note: there is no parallel cite to the new cancellation of removal provisions, but Congress may include this in future technical correction legislation.]



Memorandum for Regional Directors, et al.  
Subject: Revocation of VAWA-Based Self-Petitions (I-360s)

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- 4) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty.<sup>2</sup>

Any adverse information received by the INS from a self-petitioner's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, must be independently corroborated by an unrelated source before the INS may take adverse action based on such information.<sup>3</sup>

Section 384 of IIRIRA also prohibits Department of Justice employees from permitting the use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information that relates to an alien who is the beneficiary of a VAWA-based self-petition.<sup>4</sup> Anyone who willfully uses, publishes, or permits such information to be disclosed in violation of IIRIRA § 384 will face disciplinary action and be subject to a civil money penalty of up to \$5,000 for each such violation.<sup>5</sup>

If you have questions regarding this memorandum or other VAWA-related issues, please contact Laura Dawkins, Office of Adjudications at (202) 514-4754.

<sup>2</sup> For limited exceptions to this prohibition, see IIRIRA § 384(b).

<sup>3</sup> See Virtuc, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384", Mem. 96act.036 (May 5, 1997).

<sup>4</sup> See IIRIRA § 384(a)(2).

<sup>5</sup> See IIRIRA § 384(c).

Appendix III, continued

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Prohibitions Relating to Battered Aliens

Page 2

It is important to emphasize that the prohibition extends to any information relating to the battered spouse or child, which could include verification of status or any other routine information. Exceptions to the prohibition are provided for:

disclosure to another Department of Justice employee for legitimate Department of Justice purposes;

disclosure to law enforcement officials for legitimate law enforcement purposes, at the discretion of the Service;

disclosure for purposes of judicial review in a manner that protects the confidentiality of the information; and

disclosure in such manner as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. § 8.

The statute provides that an adult can execute a waiver to allow disclosure of information pertaining to him/herself, but does not provide for any waiver allowing disclosure of information pertaining to a child. Benefit granting agencies seeking verification for benefit eligibility purposes will be obtaining such waivers and submitting them with their verification requests. Additional guidance on this issue will be provided to immigration status verifiers.

Although the legislative history is scant, this provision appears to have been enacted in response to concerns from the advocacy community that INS officers have provided information on the whereabouts of self-petitioners or on their pending applications for relief to the allegedly abusive spouse or parent. The VAWA provisions enumerated above were created by Congress so that the battered alien can seek status independent of the abuser. Thus, disclosure of information to the alleged abuser or any other family member was inappropriate even prior to the new law. With enactment of section 384, however, such inappropriate conduct is now also grounds for disciplinary action or fine, or both.

Limitations on Use of Information Provided by Abusive Family Members

Section 384(a)(1) is a complex provision which prohibits any employee of the Department of Justice from making "an adverse determination of admissibility or deportability of an alien ... using information furnished solely by" any person falling within one of four categories:

a spouse or parent who has battered the alien or subjected the alien to extreme cruelty;

## Appendix III, continued

Prohibitions Relating to Battered Aliens  
Page 3

a member of the spouse's or parent's family, residing in the same household as the alien, who has battered the alien or subjected the alien to extreme cruelty, with the spouse's or parent's acquiescence;

a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (and the alien has not participated in the abuse); or

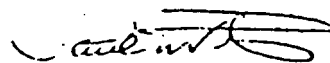
a member of the spouse's or parent's family, residing in the same household as the alien, who has battered the alien's child or subjected the alien's child to extreme cruelty, with the acquiescence of the alien's spouse or parent (and the alien has not participated in the abuse).

In the interests of full compliance in what could be difficult fact situations, the following guideline is to be followed:

**If an INS employee receives information adverse to an alien from the alien's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, the INS employee must obtain independent corroborative information from an unrelated person before taking any action based on that information.**

While the first category of potential abusers enumerated above -- spouse or parent -- parallels the category which can give rise to a claim of immigration status under the VAWA provisions, the other three categories reflect an expansion of protection to battered aliens who are not eligible for status under VAWA. Such expansion to include those who have suffered abuse at the hands of another family member in the same household is similar to IIRIRA section 501, which makes individuals abused by other members of the spouse or parent's family "qualified aliens" for purposes of public benefits.

These provisions, and the Congressional and public scrutiny which accompany them, warrant particular care whenever an INS officer or employee suspects that an alien with whom they are dealing might have been subject to domestic violence. It is important to note, however, that nothing in IIRIRA changes the eligibility standards of the basic VAWA provisions identified at p. 1, above, nor does IIRIRA alter the effectiveness of the interim VAWA self-petitioning rule published in the Federal Register on March 28, 1996.



Paul W. Virtue  
Acting Executive Associate Commissioner



U.S. Citizenship  
and Immigration  
Services

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

tion, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term "person" means an individual or an organization.

(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in subchapter III of this chapter—

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 and 1432 of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1) of this section), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(d) Repealed. Pub.L. 100-525, § 9(a)(3), Oct. 24, 1988, 102 Stat. 2619.

(e) For the purposes of this chapter—

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) a habitual drunkard;

(2) Repealed. Pub.L. 97-116, § 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section<sup>5</sup> (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section); or

(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g) For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 1182(a)(2)(E) of this title, the term "serious criminal offense" means—

- (1) any felony;
- (2) any crime of violence, as defined in section 16 of Title 18; or
- (3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i) of this section—

(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

(June 27, 1952, c. 477, Title I, § 101, 66 Stat. 166; Sept. 11, 1957, Pub.L. 85-316, §§ 1, 2, 71 Stat. 639; July 7, 1958, Pub.L. 85-508, § 22, 72 Stat. 351; Mar. 18, 1959, Pub.L. 86-3, § 20(a), 73 Stat. 13; Sept. 21, 1961, Pub.L. 87-256, § 109(a), (b), 75 Stat. 534; Sept. 26, 1961, Pub.L. 87-301, §§ 1, 2, 7, 75 Stat. 650, 653; Oct. 3, 1965, Pub.L. 89-236, §§ 8, 24, 79 Stat. 916, 922; Nov. 2, 1966, Pub.L. 89-710, 80

Stat. 1104; Apr. 7, 1970, Pub.L. 91-225, § 1, 84 Stat. 116; Dec. 16, 1975, Pub.L. 94-155, 89 Stat. 824; Oct. 12, 1976, Pub.L. 94-484, Title VI, § 601(b), (e), 90 Stat. 2301, 2302; Oct. 20, 1976, Pub.L. 94-571, § 7(a), 90 Stat. 2706; Oct. 12, 1976, Pub.L. 94-484, Title VI, § 602(c), as added Aug. 1, 1977, Pub.L. 95-83, Title III, § 307(q)(3), 91 Stat. 395; Aug. 17, 1977, Pub.L. 95-105, Title I, § 109(b)(3), 91 Stat. 847; 1977 Reorg. Plan No. 2, § 7(a)(8), 42 F.R. 62461, 91 Stat. 1637; Sept. 27, 1979, Pub.L. 96-70, Title III, § 3201(a), 93 Stat. 496; Mar. 17, 1980, Pub.L. 96-212, Title II, § 201(a), 94 Stat. 102; Dec. 29, 1981, Pub.L. 97-116, §§ 2, 5(d)(1), 18(a), 95 Stat. 1611, 1614, 1619; Oct. 30, 1984, Pub.L. 98-47, § 3, 98 Stat. 3435; Oct. 21, 1986, Pub.L. 99-505, § 1, 100 Stat. 1806; Oct. 22, 1986, Pub.L. 99-514, § 2, 100 Stat. 2095; Nov. 6, 1986, Pub.L. 99-603, Title III, §§ 301(a), 312, 315(a), 100 Stat. 3411, 3434, 3439; Nov. 14, 1986, Pub.L. 99-653, §§ 2, 3, 100 Stat. 3655; Oct. 1, 1988, Pub.L. 100-459, Title II, § 210(a), 102 Stat. 2203; Oct. 24, 1988, Pub.L. 100-525, §§ 200(1), 8(b), 9(a), 102 Stat. 2613, 2617, 2619; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7342, 102 Stat. 4469; Nov. 21, 1989, Pub.L. 101-162, Title VI, § 611(a), 103 Stat. 1038; Dec. 18, 1989, Pub.L. 101-238, § 3(a), 103 Stat. 2100; Feb. 16, 1990, Pub.L. 101-246, Title I, § 131(b), 104 Stat. 31; Nov. 29, 1990, Pub.L. 101-649, Title I, §§ 123, 151(a), 153(a), 162(f)(2)(A), Title II, §§ 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209(a), Title IV, § 407(a)(2), Title V, §§ 501(a), 509(a), Title VI, § 603(a)(1), 104 Stat. 4995, 5004, 5005, 5012, 5018, 5019, 5020, 5022, 5023, 5024, 5026, 5027, 5040, 5048, 5051, 5082; Oct. 1, 1991, Pub.L. 102-110, § 2(a), 105 Stat. 555; Dec. 12, 1991, Pub.L. 102-232, Title II, §§ 203(a), 205(a) to (c), 206(b), (c)(1), (d), 207(b), Title III, §§ 302(e)(8)(A), 303(a)(5)(A), (7)(A), (14), 305(m)(1), 306(a)(1), 309(b)(1), (4), 105 Stat. 1737, 1740, 1741, 1746 to 1748, 1750, 1751, 1758; Apr. 30, 1994, Pub.L. 103-236, Title I, § 162(h)(1), 108 Stat. 407; Sept. 13, 1994, Pub.L. 103-322, Title XIII, § 130003(a), 108 Stat. 2024; Oct. 5, 1994, Pub.L. 103-337, Div. C, Title XXXVI, § 3605, 108 Stat. 3113; Oct. 25, 1994, Pub.L. 103-416, Title II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4310, 4311, 4314, 4316, 4320; Nov. 15, 1995, Pub.L. 104-51, § 1, 109 Stat. 467; Apr. 24, 1996, Pub.L. 104-132, Title IV, § 440(b), (e), 110 Stat. 1277; Sept. 30, 1996, Pub.L. 104-208, Div. C, Title I, § 104(a), Title III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a), (b), 322(a)(1), (2)(A), 361(a), 371(a), Title VI, § 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009-555, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627, 3009-628, 3009-629, 3009-644, 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723; Oct. 6, 1997, Pub.L. 105-54, § 1(a), 111 Stat. 1175; Nov. 26, 1997, Pub.L. 105-119, Title I, § 113, 111 Stat. 2460; Oct. 21, 1998, Pub.L. 105-277, Div. C, Title IV, § 421, Div. G, Title XXII, § 2222(e), 112 Stat. 2681-657, 2681-819; Oct. 30, 1998, Pub.L. 105-319, § 2(b)(1), (e)(2), 112 Stat. 3014, 3015, and amended Nov. 12, 1999, Pub.L. 106-95, § 2(a), (c), 113 Stat. 1312; Dec. 7, 1999, Pub.L. 106-139, § (1)(a), (b)(1), 113 Stat. 1696; Oct. 28, 2000, Pub.L. 106-386, Div. A, § 107(e)(1), (4), Div. B, Title V, §§ 1503(a), 1513(b), 114 Stat. 1477, 1479, 1518, 1534; Oct. 30, 2000, Pub.L. 106-395, Title II, § 201(a)(1), 114 Stat. 1633; Nov. 1, 2000, Pub.L. 106-409, § 2(a), 114 Stat. 1787; Nov. 22, 2000, Pub.L. 106-536, § 1(a), 114 Stat. 2560; Dec. 21, 2000, Pub.L. 106-553, § 1(a)(2) [Title XI, § 1102(a), 1103(a)], 114 Stat. 2762, 2762A-142, 2762A-143; Jan. 16, 2002, Pub.L. 107-125, § 2(b), 115 Stat. 2403; Oct. 30, 1998, Pub.L. 107-234, § 1(4), 116 Stat. 1481; Nov. 2, 2002, Pub.L. 107-274, § 2(a), (b), 116 Stat. 1923;

**GOOD MORAL CHARACTER FOR VAWA SELF-PETITIONERS AND  
APPLICANTS FOR CANCELLATION OF REMOVAL<sup>1</sup>**

<b>INA §101(f)</b>	<b>Waiver available?</b>
Habitual drunkard	Possibly INA §212(g)(3) may waive §212(a)(1)(A)(iii)
Engaged in prostitution within last ten years	Yes – INA §212(h) waives §212(a)(2)(D)
Is or was involved in alien smuggling of persons under INA §212(a)(6)(E)	Yes – INA §212(d)(11) – if spouse, parent, son or daughter
Polygamist	No
Crimes of moral turpitude	Yes - INA §212(h) waives §212(a)(2)(A)(i)(I)
Multiple crimes with aggregate sentence of five or more years	Yes – INA §212(h) waives §212(a)(2)(B)
Controlled substance violates (except for single offense of 30 grams or less of marijuana)	No
Earns income from illegal gambling or has been convicted of two or more gambling offenses	Possibly – INA §212(h) waives §212(a)(2)(D) and §212(a)(2)(A)(i)(I) and (B) [crimes involving moral turpitude and 2 or more offenses with aggregate sentence of 5 years]
Has given false testimony for purposes of obtaining immigration benefits	Possibly – INA §212(i) [fraud and willful misrepresentations of material fact] and INA §237(a)(1)(H) [deportability because of inadmissibility under INA §212(i)], except for false claims to US citizenship. Small waiver exists for innocent false claims to citizenship also exists, at INA §212(a)(6)(C)(ii)(II)
Has been incarcerated for 180 days or more as a result of a conviction	Possibly – INA §212(h) waives and §212(a)(2)(A)(i)(I) and (B) [crimes involving moral turpitude and multiple crimes with aggregate sentence of 5 years]

<sup>1</sup> Chart prepared by Lauren Gilbert, Attorney, Catholic Legal Immigration Network, Inc.

**LIBRARY REFERENCES**

**American Digest System**

Aliens ⇨53.10(3).

Key Number System Topic No. 24.

**§ 1254b. Collection of fees for fingerprinting, biometric, and other necessary services under temporary protected status program**

(a) In addition to collection of registration fees described in section 1254a(c)(1)(B) of this title, fees for fingerprinting services, biometric services, and other necessary services may be collected when administering the program described in section 1254a of this title.

(b) Subsection (a) shall be construed to apply for fiscal year 1998 and each fiscal year thereafter.  
(Pub.L. 111-83, Title V, § 549, Oct. 28, 2009, 123 Stat. 2177.)

**HISTORICAL AND STATUTORY NOTES**

**Codifications**

Section is from the Department of Homeland Security Appropriations Act, 2010, and not from the Immigration and Nationality Act, which otherwise comprises this chapter.

**§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence**

[INA § 245]

**(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa**

The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

**(b) Record of lawful admission for permanent residence; reduction of preference visas**

Upon the approval of an application for adjustment made under subsection (a) of this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 1152

and 1153 of this title within the class to which the alien is chargeable for the fiscal year then current.

**(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa**

Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) of this section shall not be applicable to (1) an alien crewman; (2) subject to subsection (k) of this section, an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H), (I), (J), or (K) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; (4) an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(l) or section 1187 of this title; (5) an alien who was admitted as a nonimmigrant described in section 1101(a)(15)(S) of this title;<sup>1</sup> (6) an alien who is deportable under section 1227(a)(4)(B) of this title; (7) any alien who seeks adjustment of status to that of an immigrant under section 1153(b) of this title and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 1324a(h)(3) of this title, or who has otherwise violated the terms of a nonimmigrant visa.

**(d) Alien admitted for permanent residence on conditional basis; fiancée or fiancé of citizen**

The Attorney General may not adjust, under subsection (a) of this section, the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186a of this title. The Attorney General may not adjust, under subsection (a) of this section, the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 1101(a)(15)(K) of this title.

**(e) Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception**

**(c) Nonapplicability to aliens admitted as refugees**

The provisions of subsection (a) of this section shall not apply to an alien whom the Attorney General admits to the United States under section 1157 of this title.

(June 27, 1952, c. 477, Title II, ch. 2, § 211, 66 Stat. 181; Oct. 3, 1965, Pub.L. 89-236, § 9, 79 Stat. 917; Oct. 20, 1976, Pub.L. 94-571, § 7(c), 90 Stat. 2706; Mar. 17, 1980, Pub.L. 96-212, Title II, § 202, 94 Stat. 106; Nov. 29, 1990, Pub.L. 101-649, Title VI, § 603(a)(7), 104 Stat. 5083.)

**HISTORICAL AND STATUTORY NOTES****Effective and Applicability Provisions**

**1990 Acts.** Amendment by section 603(a)(7) of Pub.L. 101-649 applicable to individuals entering the United States on or after June 1, 1991, see section 601(e)(1) of Pub.L. 101-649, set out as a note under section 1101 of this title.

**1980 Acts.** Amendment by Pub.L. 96-212 effective on March 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204(a) of Pub.L. 96-212, set out as a note under section 1101 of this title.

**1976 Acts.** Amendment by Pub.L. 94-571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub.L. 94-571, set out as a note under section 1101 of this title.

**1965 Acts.** Amendment of section by Pub.L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub.L. 89-236, which was approved on Oct. 3, 1965, see § 20 of Pub.L. 89-236, set out as a note under § 1151 of this title.

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under 8 U.S.C.A. § 1551.

**CROSS REFERENCES**

Definition of the term—

- Alien, see 8 USCA § 1101(a)(1).
- Application for admission, see 8 USCA § 1101(a)(4).
- Attorney General, see 8 USCA § 1101(a)(5).
- Immigrant, see 8 USCA § 1101(a)(15).
- Immigrant visa, see 8 USCA § 1101(a)(16).
- Lawfully admitted for permanent residence, see 8 USCA § 1101(a)(20).
- National, see 8 USCA § 1101(a)(21).
- Parent, as used in subchapter III of this chapter, see 8 USCA § 1101(c)(2).
- Parent, as used in this subchapter and subchapter I of this chapter, see 8 USCA § 1101(b)(2).
- Passport, see 8 USCA § 1101(a)(30).
- United States, see 8 USCA § 1101(a)(38).
- Re-entry permit, see 8 USCA § 1203.

**CODE OF FEDERAL REGULATIONS**

Documentary requirements, see 8 CFR § 211.1 et seq., 22 CFR § 42.1 et seq.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Individual responsibility for assisting the Nazis in persecuting civilians. Stephen J. Massey, 71 Minn.L.Rev. 97 (1986).

Political asylum under the 1980 Refugee Act: An unfulfilled promise. Arthur C. Helton, 17 U.Mich.J.L.Ref. 243 (1984).

Treaty status: Immigration loss's over look benefit. Ralph Ehrenpreis (December 1980) 3 L.A.Law. 34.

**LIBRARY REFERENCES****American Digest System**

Aliens ⇨44, 54.

Attorney General ⇨6.

Key Number System Topic Nos. 24, 46.

**Corpus Juris Secundum**

CJS Aliens § 547, Introduction.

CJS Aliens § 556, Who Must Present Visa.

CJS Aliens § 564, Waiver of Documentation.

CJS Aliens § 594, Claim to Lawful Permanent Resident, Refugee, or Asylee Status, or U.S. Citizenship.

CJS Aliens § 611, Presentation and Surrender of Visa or Other Required Documents.

CJS Aliens § 724, Other Nonquota Immigrants.

CJS Aliens § 1221, Alien Smugglers.

CJS Aliens § 1222, Aliens Subject to Final Order for Document Fraud.

**§ 1182. Inadmissible aliens**

[INA § 212]

**(a) Classes of aliens ineligible for visas or admission**

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

**(1) Health-related grounds****(A) In general**

Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall in-



clude at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,  
is inadmissible.

**(B) Waiver authorized**

For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g) of this section.

**(C) Exception from immunization requirement for adopted children 10 years of age or younger**

Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,  
(ii) is described in section 1101(b)(1)(F) of this title, and

(iii) is seeking an immigrant visa as an immediate relative under section 1151(b) of this title,

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

**(2) Criminal and related grounds**

**(A) Conviction of certain crimes**

**(i) In general**

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21),

is inadmissible.

**(ii) Exception**

Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

**(B) Multiple criminal convictions**

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

**(C) Controlled substance traffickers**

Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of Title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

**(D) Prostitution and commercialized vice**

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

**(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution**

Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

**(F) Waiver authorized**

For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h) of this section.

**(G) Foreign government officials who have committed particularly severe violations of religious freedom**

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of Title 22, is inadmissible.

**(H) Significant traffickers in persons**

**(i) In general**

Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of Title 22, is inadmissible.

**(ii) Beneficiaries of trafficking**

Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

**(iii) Exception for certain sons and daughters**

Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

**(I) Money laundering**

Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of Title 18 (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

**(3) Security and related grounds**

**(A) In general**

Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

**(B) Terrorist activities**

**(i) In general**

Any alien who—

(I) has engaged in a terrorist activity;

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi) (III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse

terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of Title 18) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this chapter, to be engaged in a terrorist activity.

**(ii) Exception**

Subclause (IX) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

**(iii) "Terrorist activity" defined**

As used in this chapter, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of Title 18) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) "Engage in terrorist activity" defined

As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) "Representative" defined

As used in this paragraph, the term "representative" includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) "Terrorist organization" defined

As used in this section, the term "terrorist organization" means an organization—

(I) designated under section 1189 of this title;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(C) Foreign policy

(i) In general

An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

**(ii) Exception for officials**

An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

**(iii) Exception for other aliens**

An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.

**(iv) Notification of determinations**

If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

**(D) Immigrant membership in totalitarian party****(i) In general**

Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

**(ii) Exception for involuntary membership**

Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

**(iii) Exception for past membership**

Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

**(iv) Exception for close family members**

The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

**(E) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing****(i) Participation in Nazi persecutions**

Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

**(ii) Participation in genocide**

Any alien who ordered, incited, assisted, or otherwise participated in genocide, as defined in section 1091(a) of Title 18, is inadmissible.

**(iii) Commission of acts of torture or extrajudicial killings**

Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

(I) any act of torture, as defined in section 2340 of Title 18; or

(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.

**(F) Association with terrorist organizations**

Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

**(G) Recruitment or use of child soldiers**

Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of Title 18, is inadmissible.

**(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, or

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

(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.

**(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) of this section, 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.

**(6) Illegal entrants and immigration violators**

**(A) Aliens present without admission or parole**

**(i) In general**

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

**(ii) Exception for certain battered women and children**

Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien is a VAWA self-petitioner;

(II) (a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's 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, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

**(B) Failure to attend removal proceeding**

Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

**(C) Misrepresentation**

**(i) In general**

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

**(ii) Falsely claiming citizenship**

**(I) In general**

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

**(II) Exception**

In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

**(iii) Waiver authorized**

For provision authorizing waiver of clause (i), see subsection (i) of this section.

**(D) Stowaways**

Any alien who is a stowaway is inadmissible.

**(E) Smugglers**

**(i) In general**

Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

**(ii) Special rule in the case of family reunification**

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section

1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

**(iii) Waiver authorized**

For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

**(F) Subject of civil penalty**

**(i) In general**

An alien who is the subject of a final order for violation of section 1324c of this title is inadmissible.

**(ii) Waiver authorized**

For provision authorizing waiver of clause (i), see subsection (d)(12) of this section.

**(G) Student visa abusers**

An alien who obtains the status of a nonimmigrant under section 1101(a)(15)(F)(i) of this title and who violates a term or condition of such status under section 1184(l) of this title is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

**(7) Documentation requirements**

**(A) Immigrants**

**(i) In general**

Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title, or

(II) whose visa has been issued without compliance with the provisions of section 1153 of this title,

is inadmissible.

**(ii) Waiver authorized**

For provision authorizing waiver of clause (i), see subsection (k) of this section.

**(B) Nonimmigrants**

**(i) In general**

Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is inadmissible.

**(ii) General waiver authorized**

For provision authorizing waiver of clause (i), see subsection (d)(4) of this section.

**(iii) Guam and Northern Mariana Islands visa waiver**

For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l) of this section.

**(iv) Visa waiver program**

For authority to waive the requirement of clause (i) under a program, see section 1187 of this title.

**(8) Ineligible for citizenship**

**(A) In general**

Any immigrant who is permanently ineligible to citizenship is inadmissible.

**(B) Draft evaders**

Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

**(9) Aliens previously removed**

**(A) Certain aliens previously removed**

**(i) Arriving aliens**

Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

**(ii) Other aliens**

Any alien not described in clause (i) who—

(I) has been ordered removed under section 1229a of this title or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

**(iii) Exception**

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

**(B) Aliens unlawfully present**

**(i) In general**

Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e)<sup>1</sup> of this title) prior to the commencement of proceedings under section 1225(b)(1) of this title or section 1229a of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the

date of such alien's departure or removal from the United States,

is inadmissible.

**(ii) Construction of unlawful presence**

For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

**(iii) Exceptions**

**(I) Minors**

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

**(II) Asylees**

No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

**(III) Family unity**

No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

**(IV) Battered women and children**

Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if "violation of the terms of the alien's nonimmigrant visa" were substituted for "unlawful entry into the United States" in subclause (III) of that paragraph.

**(V) Victims of a severe form of trafficking in persons**

Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 7102 of Title 22) was at least one central reason for the alien's unlawful presence in the United States.

**(iv) Tolling for good cause**

In the case of an alien who—

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

**(v) Waiver**

The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

**(C) Aliens unlawfully present after previous immigration violations****(i) In general**

Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

**(ii) Exception**

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

**(iii) Waiver**

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

**(10) Miscellaneous****(A) Practicing polygamists**

Any immigrant who is coming to the United States to practice polygamy is inadmissible.

**(B) Guardian required to accompany helpless alien**

Any alien—

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 1222(c) of this title, and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (i),

is inadmissible.

**(C) International child abduction****(i) In general**

Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

**(ii) Aliens supporting abductors and relatives of abductors**

Any alien who—

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent,

sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

**(iii) Exceptions**

Clauses (i) and (ii) shall not apply—

(I) to a government official of the United States who is acting within the scope of his or her official duties;

(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

**(D) Unlawful voters**

**(i) In general**

Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

**(ii) Exception**

In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

**(E) Former citizens who renounced citizenship to avoid taxation**

Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

**(b) Notices of denials**

(1) Subject to paragraphs (2) and (3), if an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a) of this section, the officer shall provide the alien with a timely written notice that—

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is inadmissible or adjustment<sup>2</sup> of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a) of this section.

**(c) Repealed.** Pub.L. 104-208, Div. C, Title III, § 301(b), Sept. 30, 1996, 110 Stat. 3009-597

**(d) Temporary admission of nonimmigrants**

(1) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(S) of this title. The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) of this section (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(S) of this title, if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 1101(a)(15)(S) of this title for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 1101(a)(15)(S) of this title.

(2) Repealed. Pub.L. 101-649, Title VI, § 601(d)(2)(A), Nov. 29, 1990, 104 Stat. 5076

(3)(A) Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) of this section (other



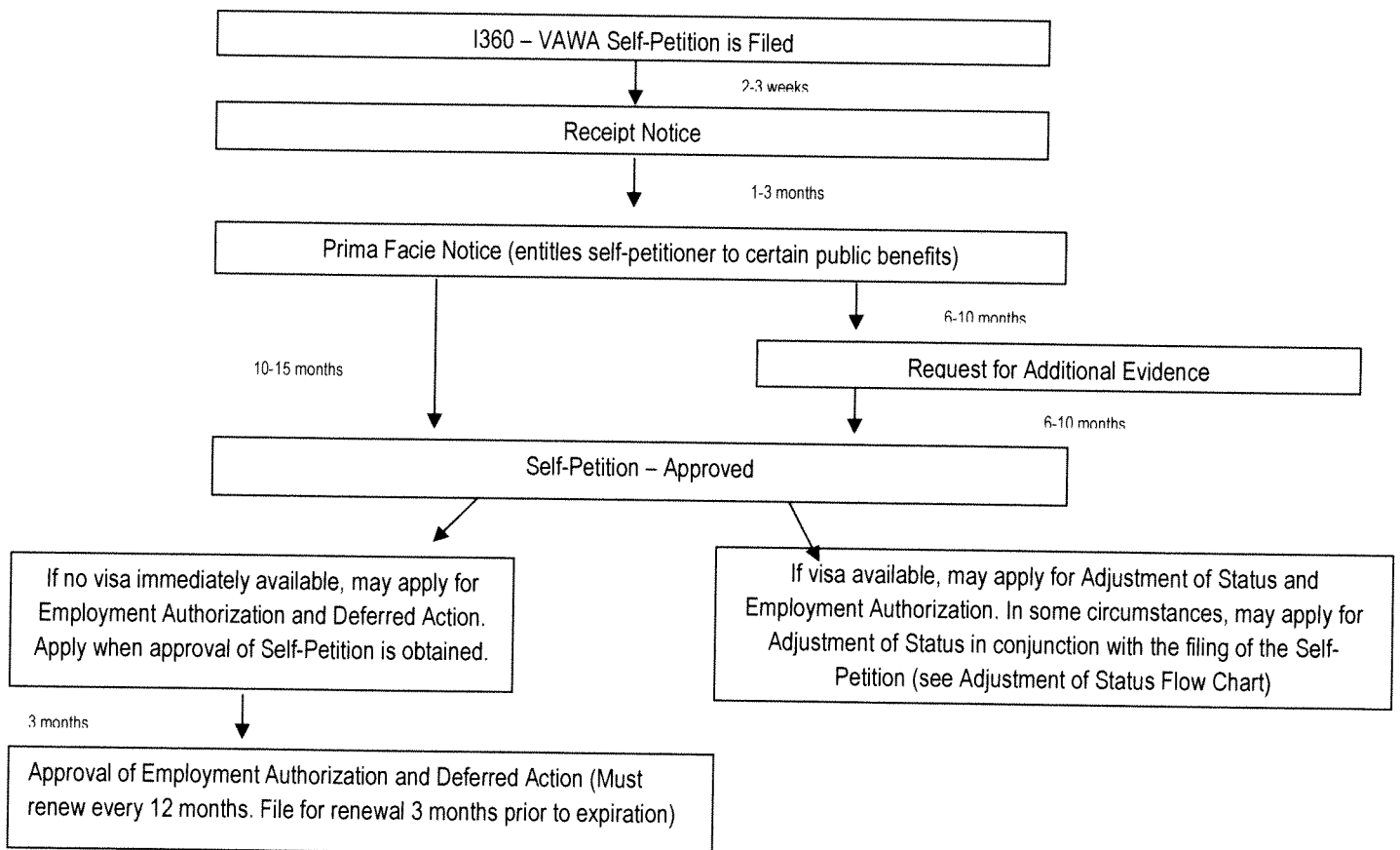
## Violence Against Women Act (VAWA) Self-Petition Flow Chart (I360)

The process through which a non-citizen who has been subjected to abuse or extreme cruelty by a U.S. citizen or lawful permanent resident (LPR) spouse, parent or child over 21 may self-petition. The abused victim may file for immigration protection without the assistance of the abusive family member.

The spouse, parents and minor children of abusive U.S. citizens are considered "immediate relatives" and have visas immediately available. Relatives who are not "immediate relatives" must wait for a visa to become available for them and are assigned a "priority date." When the "priority date" becomes current, the non-citizen relative's visa will become available.

Visa availability is determined by the U.S. State Department and announced through its visa bulletin. Visa availability is determined by the U.S. State Department and announced through its visa bulletin. You can check the current visa bulletin at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html) or by calling (202) 663-1541. When the priority date on your I-130 receipt notice is the same or earlier than the date in your visa category, you may be eligible to apply for LPR status. Please consult with an immigration attorney before filing any application for LPR status.

Please know that you are required to notify U.S. Citizenship & Immigration Services of any change of address. For additional assistance, please come to our office during consultation hours.



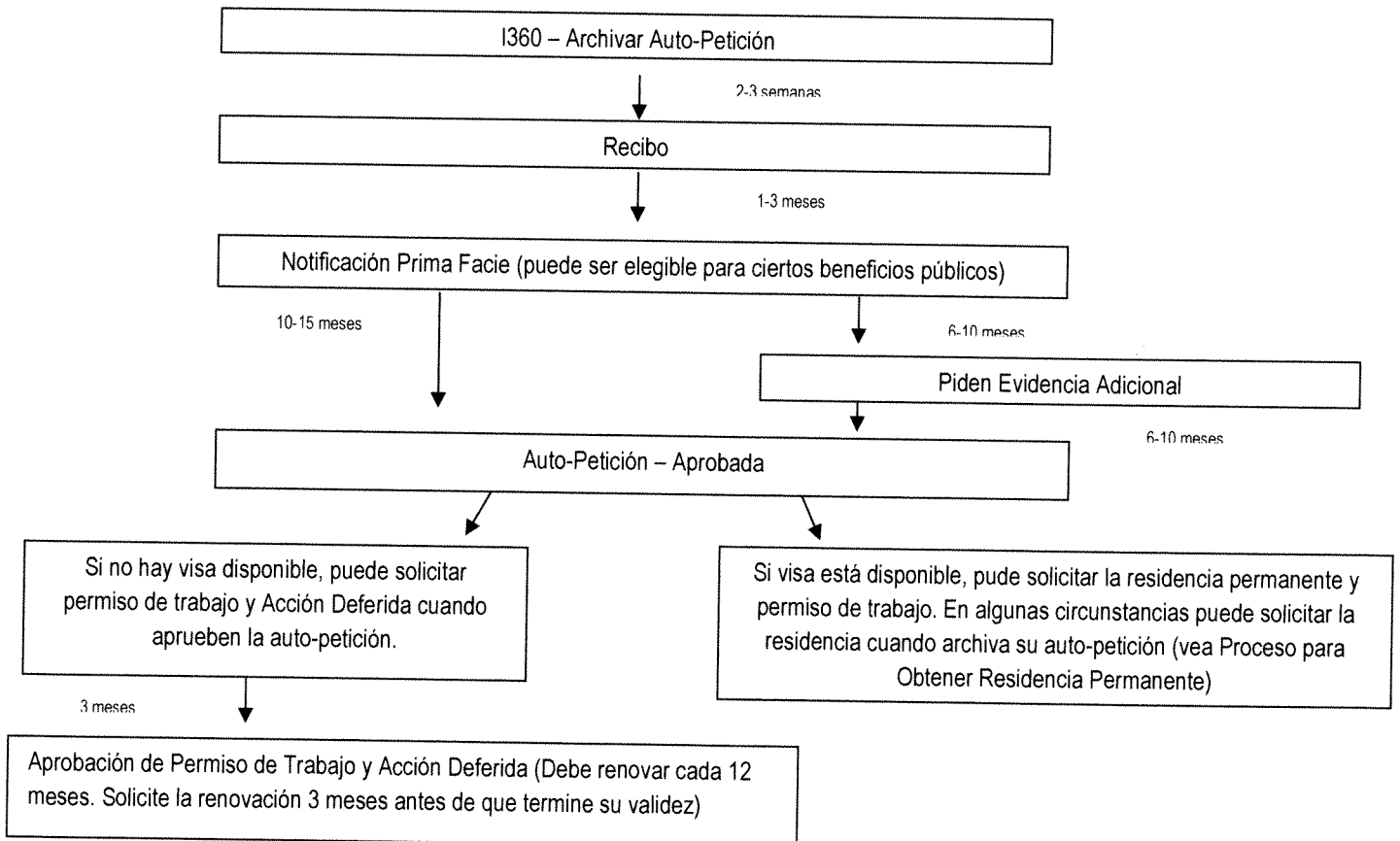
## Auto-Petición bajo la Ley En Contra de Violencia Domestica (VAWA) (I360)

El proceso por el cual un inmigrante que ha sido sujeto a abuso o crueldad extrema por un ciudadano americano o residente permanente que es su esposo(a), padre/madre, e hijo mayor de 21 años puede obtener protección sometiendo una auto-petición sin tener que depender de la asistencia del abusador.

La esposa(o), padres e hijos menores de un ciudadano(a) abusador son considerados "familiares inmediatos" y tienen visas inmediatamente disponibles. Familiares que no "inmediatos" deben esperar a que una visa este disponible y les asignaran una "fecha de prioridad." Cuando la "fecha de prioridad" este al corriente, la visa estará disponible.

La disponibilidad de las visas es de determinada por el Departamento de Estado y es anunciada por medio de su boletín de visas. Puede revisar el boletín de visas en [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html) o llamando al (202) 663-1541. Cuando la fecha de prioridad en el recibo de su auto-petición (I-360) sea igual o antes que la fecha en su categoría de visa, usted puede ser elegible para solicitar la residencia permanente. Por favor consulte con un abogado de inmigración antes de solicitar la residencia permanente.

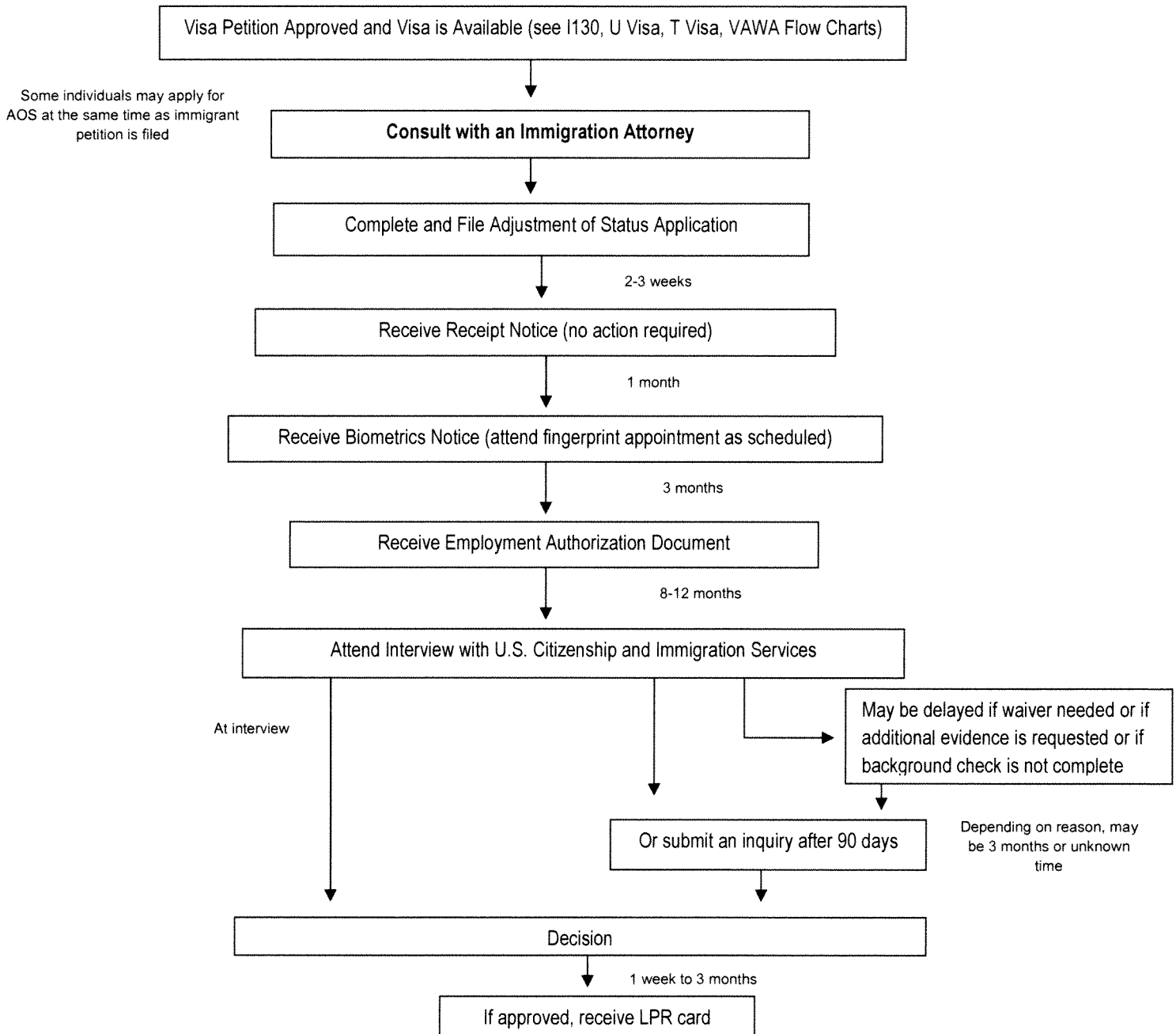
Es un requisito que de aviso de cualquier cambio de dirección al Servicio de Ciudadanía e Inmigración (U.S. Citizenship & Immigration Services) o al Centro Nacional de Visas, por favor visite nuestra oficina durante horas de consulta.



## Adjustment of Status Flow Chart (I485)

The process through which a person with an approved immigrant petition applies for lawful permanent resident (LPR) status in the United States. Please consult with an immigration attorney before filing an application for LPR status.

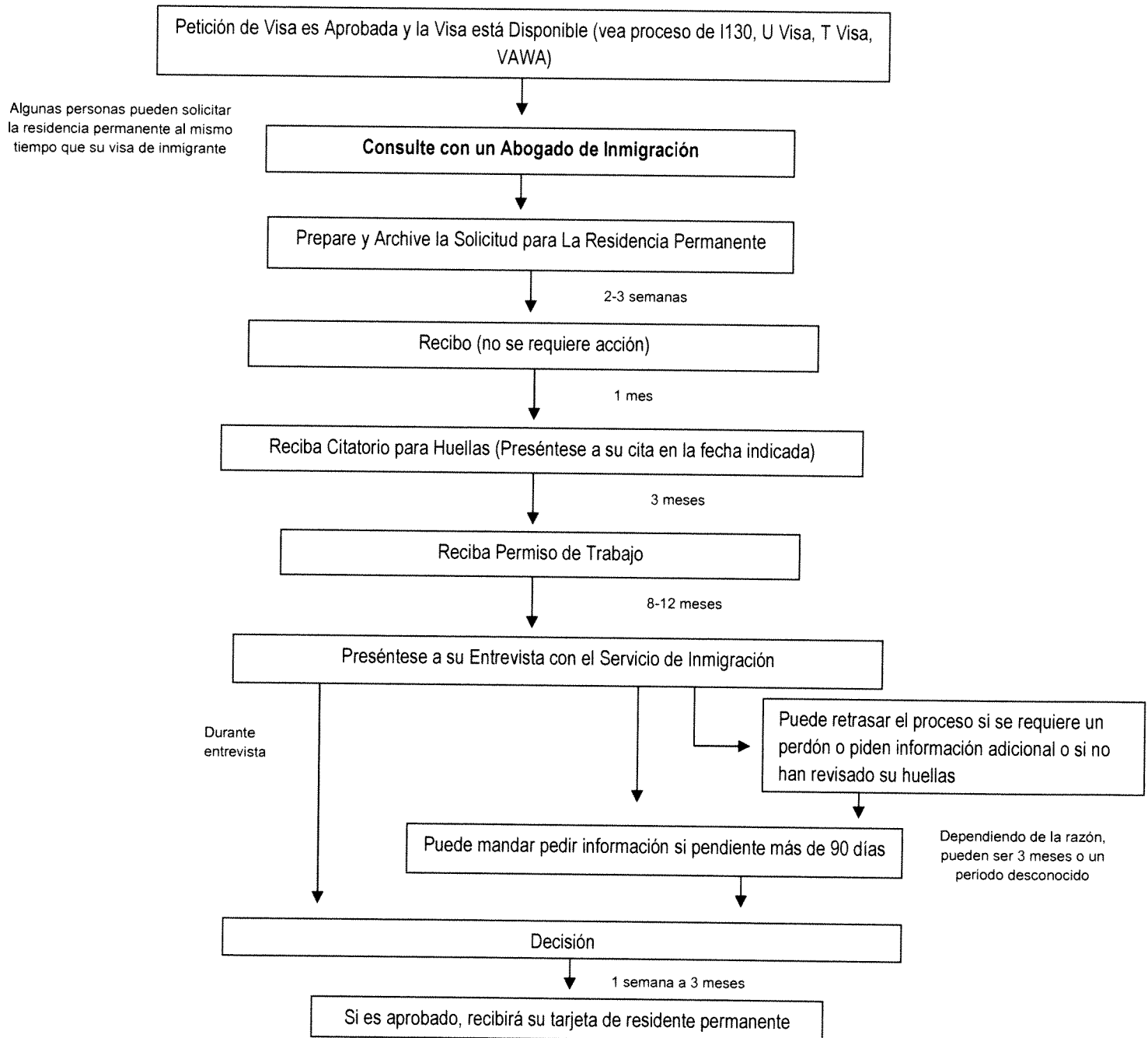
Please know that you are required to notify U.S. Citizenship & Immigration Services or the National Visa Center of any change of address. For additional assistance, please come to our office during consultation hours.



## Proceso para Obtener la Residencia Permanente (I485)

El proceso por el cual una persona con una petición aprobada solicita la residencia permanente en los Estados Unidos. Por favor consulte con un abogado de inmigración antes de solicitar la residencia permanente.

Es un requisito que de aviso de cualquier cambio de dirección al Servicio de Ciudadanía e Inmigración (U.S. Citizenship & Immigration Services). Para asistencia adicional, por favor visite nuestra oficina durante horas de consulta.



## **VAWA (I-360)**

### **APPLICANT**

- Copy of applicant's Birth Certificate (with certified translation, if needed)
- Passport
- State-issued I.D. or Driver's License

### **(EX) SPOUSE**

- ANY immigration documents pertaining to spouse
- Spouse's social security card
- Copy of spouse's Birth Certificate
- Spouse's immigration file # (A#)
- Copy of spouse's state-issued I.D. or Driver's License

### **SUPPORTING DOCUMENTS**

- Marriage certificate (with certified translation, if needed)
  - Date of Marriage: \_\_\_\_\_
- Proof of spouse's prior divorce (if applicable and with certified translation, if needed)
- Proof of applicant's prior divorce (if applicable and with certified translation, if needed)
- Birth Certificates of children (with certified translation, if needed)
- Wedding photographs or other photographs
- Letters between applicant and spouse (with certified translation, if needed)
- Joint lease
- Bills/credit cards showing parties residing at same address
- Joint bank statements
- Membership cards/documents
- Affidavits of witnesses with knowledge that applicant and spouse lived together, e.g., from landlord, neighbors, etc.
- Jointly filed taxes
- Proof of jointly owned property
- Joint correspondence
- Life insurance policy with applicant spouse named as beneficiary
- Children's school records listing parents
- Letter from employer/business showing spouse or marital status, i.e. spouse on medical benefits or as person to be notified in case of accident

**VAWA (I-360) (Cont'd)**

**ABUSE**

- Petitioner's declaration/statement (may include journal entries and with certified translation, if needed)
- Orders of protection (emergency/temporary and plenary/permanent)
  - Expiration Date: \_\_\_\_\_
- Police reports and narratives
- Criminal records of abuser
- Hospital and other medical records
- Photographs of injuries
- Detailed affidavits from domestic violence counselors
- Affidavits from persons who witnessed the abuse, including family, neighbors, friends or children (with certified translations, if needed)
- Photographs, tapes or other evidence of abuse including property damage

**GOOD MORAL CHARACTER**

- Police clearance letter showing no criminal record for last 3 years or with explanation of any arrests
- Applicant's criminal record (if applicable)



## **VAWA (I-360)**

### **SOLICITANTE:**

- o Copia de acta de nacimiento de solicitante (con traducción certificada, si es necesario)
- o Pasaporte
- o Identificación del estado o licencia de manejo

### **OTROS DOCUMENTOS**

- o Acta de matrimonio de solicitante (con traducción certificada si es necesario)
- o Fecha de matrimonio: \_\_\_\_\_
- o Prueba de divorcio anterior del esposo (si pertinente, y con traducción certificada si es necesario)
- o Prueba de divorcio anterior de solicitante (si pertinente, y con traducción certificada si es necesario)
- o Acta de nacimiento de hijos (con traducción certificada si es necesario)
- o Fotos del matrimonio o otros fotos
- o Cartas entre solicitante y esposo (con traducción certificada si es necesario)
- o Contrato de arrendamiento con esposo
- o Recibos de tarjeta de crédito que

### **ABUSO**

- o Declaraciones de peticionario (se puede incluir diarios y con traducción certificada)
- o Ordenes de protección (emergencia/temporero y plenario/permanente)
- o Fecha de vencimiento: \_\_\_\_\_
- o Record policíacos y relatos
- o Documentos criminales del esposo
- o Archivos médicos o del hospital
- o Fotos de heridas
- o Declaraciones juradas detalladas de los consejeros domésticos
- o Declaraciones juradas desde personas que son testigos al abuso, que incluya

### **(EX) ESPOSO**

- o CUALQUIERA de los documentos de inmigración del esposo
- o Tarjeta de seguro del esposo
- o Copia de acta de nacimiento de esposo
- o El número de inmigración de esposo (A#)
- o Copia de identificación del estado o licencia de manejo

- o indican que vivían juntos
- o Declaraciones bancarias con esposo
- o Tarjetas/Documentos de membresía
- o Declaraciones juradas de testigos con conocimiento de que el solicitante y esposo vivían juntos.
- o Impuestos presentados juntos
- o Prueba de propiedad que tienen juntos
- o Correspondencia compartida
- o Política de seguro de vida con el nombre de esposo como beneficiario
- o Archivos de escuela de hijos que enumeran los padres
- o Cartas de empleador que muestran la situación matrimonial

- o familia, vecinos, amigos, o hijos (con traducciones certificadas, si se necesita)
- o Fotos, cintas, o otra evidencia del abuso que incluye daño de propiedad

**VAWA (I-360) (Cont'd)**

**BUEN CARÁCTER MORAL**

- o Carta de antecedentes penales que muestran que no haya record criminal en los últimos 3 años o con una explicación de arrestos
- o Criminal record del solicitante (si es aplicable)

**EMPLOYMENT AUTHORIZATION APPLICATION OR RENEWAL (I-765)**

- 2 passport style photographs
- Current or expired EAD
- Copy of receipt notice of pending immigration application:
  - Copy of receipt notice of pending adjustment of status application
  - Copy of receipt of deferred action notice
  - Copy of receipt of approved VAWA self-petition
  - Copy of receipt of cancellation of removal application
  - Copy of Immigration Judge order granting withholding or CAT

**FEES**

- \$380 Money Order for the U.S. Department of Homeland Security

**SOLICITUD PARA AUTORIZACIÓN DE EMPLEO Y RENOVACIÓN (I-765)**

- o 2 fotos tamaño pasaporte
- o Permiso de Trabajo (EAD) actual o vencido
- o Copia de aviso de recibo de la aplicación pendiente de inmigración:
  - o Copia del aviso de recibo de aplicación de ajuste de estatus
  - o Copia del recibo de aviso de acción a plazos
  - o Copia del recibo de auto-petición VAWA que es aprobada
  - o Copia de recibo de aplicación de cancelación de deportación
  - o Copia de la orden de juez de inmigración otorgándole retención o CAT

**CUOTAS**

- \$380 Giro Postal (Money Order) para U.S. Department of Homeland Security

**LIST OF DOCUMENTS FOR VAWA ADJUSTMENT (I-485)**

- 2 passport style photos
- Birth Certificate
- Passport or travel document
- I-360 Approval Notice
- Marriage certificate
- Divorce certificate(s)
- Birth Certificates for children
- List of addresses for last 5 years
- List of employment for last 5 Years
- Name, date of birth, and city of birth of parents
- If currently employed, paycheck statements for past 2-3 months
- If currently employed, recent U.S. Income Tax Return with W-2
- Medical examination by authorized doctor (and 1 copy of medical exam)

**FEES**

- \$1070 Money Order for the U.S. Department of Homeland Security
- \$635 money order for the U.S. Department of Homeland Security (if under 14 years of age and filing with at least one parent)
- \$985 money order for the U.S. Department of Homeland Security (if under 14 years of age and not filing with at least one parent)

### **LISTA DE DOCUMENTOS PARA AJUSTE DE VAWA (I-485)**

- o 2 fotos tamaño pasaporte
- o Acta de nacimiento
- o Pasaporte o documento de viaje
- o Noticia de Aprobacion de VAWA
- o Acta de matrimonio
- o Acta(s) de divorcio
- o Acta(s) de nacimiento de los hijos
- o Lista de direcciones en los últimos 5 años
- o Lista de empleo en los últimos 5 años
- o Nombre, fecha, y ciudad de nacimiento de los padres
- o Si trabaja, talones de cheque de los últimos 2-3 meses
- o Si trabaja, Impuestos federales y W-2s
- o Examen médico por un médico autorizado (y una copia del examen médico)

### **CUOTAS**

- \$1010 Giro Postal (Money Order) para U.S. Department of Homeland Security
- \$635 Giro Postal (Money Order) para U.S. Department of Homeland Security (si menor de 14 años y solicitando con uno de los padres)
- \$985 Giro Postal (Money Order) para U.S. Department of Homeland Security (si menor de 14 años y solicitando sin los padres)



**LIST OF DOCUMENTS FOR  
VAWA ADJUSTMENT OF STATUS INTERVIEW**

The following individuals **MUST** attend the interview: \_\_\_\_\_.

**Please bring the following original documents to your scheduled adjustment of status interview. Failure to bring the listed documents may result in denial or delay of your application.**

- Original Interview Notice
- Original Photo Identification
- Original Birth Certificate
- Original Birth Certificate for all children
- Original Marriage Certificate
- Original Divorce Decree or Death Certificate for all previous marriages
- Original Proof of entry (I-94/Visa/Passport)
- Original Employment letter: place of employment, hours per week, and wages
- Original Paycheck statements for past 2-3 months
- Original Certified Disposition for all arrests

ADDITIONAL DOCUMENTS:

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**LISTA DE DOCUMENTOS PARA LA ENTREVISTA:  
VAWA AJUSTE DE ESTATUS**

Las siguientes personas tienen que atender la entrevista: \_\_\_\_\_.

**Favor de traer los siguientes documentos originales a su entrevista de ajuste de estatus. Si no traiga los documentos, su aplicación puede ser demorado o negado.**

- o Original de la noticia de entrevista
- o Original de identificación con foto
- o Original de la acta de nacimiento
- o Original de las actas de nacimiento de sus hijos
- o Original de la acta de matrimonio
- o Original de la(s) acta(s) de divorcio o defunción para matrimonios anteriores
- o Original de la Forma I-94, visa, o pasaporte
- o Original de la carta de empleo que afirma donde trabaja, horas por semana, y salarios
- o Originales de los talones de cheque de los últimos 2-3 meses
- o Original de las disposiciones certificadas de cada arresto

DOCUMENTOS ADICIONALES:

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## Obtaining Certified Dispositions

A **certified disposition** is an official document describing the arrest, the charge, and what happened during your court trial. You will need to obtain certified dispositions for all arrests before applying for immigration relief.

Please refer to the chart below to learn how and where to obtain a certified disposition.

If you were arrested in:	Obtain a certified disposition at:	Information:
Chicago (misdemeanors)	Cook County Circuit Court Richard J. Daley Center 50 W Washington Room 1001 (312) 603-5031	Hours: Monday through Friday 8:30 am – 4:30 pm Certified Dispositions \$9 Records can be requested by mail
Chicago (felonies)	2650 S. California, 5 <sup>th</sup> Floor (773) 674-3152	Certified Dispositions \$9
Dupage County	DuPage County Court 505 County Farm Road Wheaton, IL 60187 (630) 407-8700	Hours: Monday through Friday 8:30 am – 4:30 pm Files prior to 1990 must be requested 24 hours in advance of visit
Kane County	Kane County Court 540 S Randall Road St. Charles, IL 60174 (630) 232-3413	Hours: Monday through Friday 8:30 am – 4:30 pm Wednesdays 8:30 am – 7:00 pm Files can be viewed in person
Lake County	Lake County Court 18 N. County Court Waukegan, IL 60085 (847) 377-3380 (847) 377-3291	Hours: Monday through Friday 8:30 am – 5:00 pm \$5 charge per name per year search Records can be requested by mail or in person. Call in advance if in person
McHenry County	McHenry County Court 2200 N. Seminary Ave. Woodstock, IL 60098 (815) 334-4302	Hours: Monday through Friday 8:00 am – 4:30 pm Files can be viewed in person
Will County	Will County Court House 14 W. Jefferson Street, 2 <sup>nd</sup> Floor Joliet, IL 60432 (815) 727-8592	Hours: Monday through Friday 8:30 am – 4:30 pm Certification of documents available and files can be viewed in person. Call in advance if file older than 5 years.
Outside the Chicago metropolitan area	The county courthouse of that area	

Immigration officials may also request a police record, known as an **Access and Review**. If you need an Access and Review from the Chicago Police Department, you can request one at:

Chicago Police Headquarters  
3510 South Michigan  
Chicago, IL 60653  
8:30am-3:30pm

For the Access and Review, the police officials will take your fingerprints and then issue the records later in the day. You will need to arrive between 8:30am -12:00pm, Monday through Friday for fingerprinting. Please bring your photo identification and the fee of \$16 either in cash or check/money order payable to the “Department of Revenue.” You will then need to return later in the day between 1:00pm-3:00pm to pick up the record.

Heartland Alliance for Human Needs & Human Rights | National Immigrant Justice Center  
208 S. LaSalle Street, Suite 1300, Chicago, Illinois 60604 | ph: 312-660-1370 | fax: 312-660-1506 | [www.immigrantjustice.org](http://www.immigrantjustice.org)

# NATIONAL IMMIGRANT JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

## Como obtener una disposición certificada

Una **disposición certificada** (en inglés, “**certified disposition**”) es un documento oficial describiendo el arresto, el cargo y lo que pasó durante la corte. Tiene que pedir sus disposiciones certificadas antes de aplicar para un beneficio de inmigración.

Usted puede obtener su disposición certificada usando la tabla siguiente:

Si fue arrestado en:	Obtenga su disposición certificada en:	Más información:
Chicago (delitos menores/ misdemeanors)	Cook County Circuit Court Richard J. Daley Center 50 W Washington Room 1001 (312) 603-5031	Horas: lunes – viernes, 8:30 am – 4:30 pm Costo: Disposiciones certificadas \$9 Se puede pedir disposiciones por correo
Chicago (delitos graves/ felonies)	2650 S. California 5 <sup>th</sup> Floor (773) 674-3152	Costo: Disposiciones Certificadas \$9
Dupage County	DuPage County Court 505 County Farm Road Wheaton, IL 60187 (630) 407-8700	Horas: lunes – viernes, 8:30 am – 4:30 pm Para disposiciones con fecha antes del año 1990, necesita pedirlos con 24 horas de anticipación.
Kane County	Kane County Court 540 S Randall Road St. Charles, IL 60174 (630) 232-3413	Horas: lunes – viernes, 8:30 am – 4:30 pm Miércoles, 8:30 am – 7:00 pm Se puede pedir las disposiciones en persona.
Lake County	Lake County Court 18 N. County Court Waukegan, IL 60085 (847) 377-3380 (847) 377-3291	Horas: lunes – viernes, 8:30 am – 5:00 pm Costo: \$5 por nombre y por año buscado Se puede pedir disposiciones por correo o en persona. Llame de antemano si va a llegar en persona.
McHenry County	McHenry County Court 2200 N. Seminary Ave. Woodstock, IL 60098 (815) 334-4302	Horas: lunes – viernes, 8:00 am – 4:30 pm Se puede pedir disposiciones en persona.
Will County	Will County Court House 14 W. Jefferson Street, 2 <sup>nd</sup> Floor Joliet, IL 60432 (815) 727-8592	Horas: lunes – viernes, 8:30 am – 4:30 pm Se puede pedir disposiciones en persona. Llame antes de ir si las disposiciones son de hace más de 5 años.
Fuera del área metropolitana de Chicago	La corte del condado en esa localidad	

Los oficiales de inmigración también puede pedir un Access & Review (su historial criminal de la ciudad de Chicago). Un **Access & Review** se puede conseguir en la sede principal de la policía de Chicago en el:

Chicago Police Headquarters  
3510 South Michigan  
Chicago, IL 60653  
8:30am-3:30pm

Para el Access & Review, la policía le toma las huellas por la mañana y le da su historial criminal el mismo día por la tarde. Tiene que llegar entre las 8:30a.m. y las 12:00p.m., lunes a viernes. Debe traer su identificación con foto y la cuota de \$16 en efectivo o en cheque/orden de moneda pagado al “Department of Revenue.” Luego, tiene que regresar más tarde ese mismo día entre la 1:00p.m. y las 3:00p.m. para recoger su historial criminal.

# NATIONAL IMMIGRANT JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

## **GUIDELINES FOR DOMESTIC VIOLENCE EXPERTS AND COUNSELORS WHO PROVIDE AFFIDAVITS IN SUPPORT OF IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE**

If you have received this instruction letter you have probably come in contact with a battered immigrant who is seeking relief under the Violence Against Women Act (VAWA). VAWA allows a battered immigrant and her or his children to file for legal permanent residence status in the United States without the help of his/her abuser. However, in order to petition successfully she/he needs to gather evidentiary documentation of the physical and psychological abuse she/he suffered at the hands of her/his spouse.

The following is a guide for individuals who have provided counseling and/or support services, and are willing to write a letter in support of our client. It is very important to provide as much information as possible about the applicant and her/his situation.

All affidavits in support of VAWA petitioners should be signed and on letterhead of the organization or individual writing the affidavit, and should include the following:

- 1) Credentials of the individual(s) who write the affidavit(s), including:
  - a) educational degrees;
  - b) licenses;
  - c) length of experience working with domestic violence survivors;
  - d) number of clients expert has served; and
  - e) any other information relating to qualifications.
- 2) A detailed description of what the client told the expert about the domestic violence, including:
  - a) Emotional abuse;
  - b) Psychological abuse; and/or
  - c) Physical abuse
- 3) Any effects the client may still suffer from (i.e. cannot sleep or eat, depression, difficulty with daily tasks, etc.) due to the abuse he or she was subjected to.
- 4) An explanation as to why the individual's abuse fits within the legally recognized definition of domestic violence.
- 5) Any information about how abuse involved threats about immigration status and/or deportation or other immigration-related matters.
- 6) An explanation as to why you find the individual's story to be credible given your experience with domestic violence survivors.

The letter should be **addressed** as follows:

U.S. Citizenship and Immigration Services  
Vermont Service Center  
Attn: VAWA Unit  
75 Lower Weldon Street  
St. Albans, VT 05479-001

Thank you for your assistance. Please mail the letter to our offices at the address listed below. Your letter will contribute to helping a survivor of family violence leave an abusive situation and gain independence – your assistance is greatly appreciated.

**GUIDELINES FOR INDIVIDUALS (FAMILY, FRIENDS, EMPLOYERS) WHO PROVIDE A LETTER IN SUPPORT OF IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE \***

If you have received this instruction letter you have probably come in contact with a battered immigrant who is seeking relief under the Violence Against Women Act (VAWA). VAWA allows a battered immigrant and her or his children to file for legal permanent residence status without the help of his/her abuser. However, in order to petition successfully she/he needs to gather evidentiary documentation of the physical and psychological abuse she/he suffered at the hands of her/his spouse.

The following is a guide for individuals who are aware of the abuse and are willing to write a letter in support of our client. It is very important to provide as much information as possible about the applicant and her/his situation. If possible, please include a description of specific incidents you witnessed or that the individual informed you of. ***This is not a letter of recommendation for immigration status. Therefore, please refrain from “recommending” that immigration grant this individual permanent residence.***

**All statements in support of VAWA petitioners should be signed and dated and should include the following:**

- 1) Information as to how you know the individual and how long you have known the individual
- 2) Information about whether you have knowledge that the individual and her/his spouse live together or previously lived together, and how you obtained this information
- 3) A detailed description about your personal knowledge of domestic violence between the individual and her/his spouse (ex-spouse), including how you obtained the information, i.e., from the individual or through observation. Please include details as to whether the abuse involved:
  - a) Emotional abuse
  - b) Psychological abuse
  - c) Physical abuse
- 4) Any information about whether the abuse involved threats about immigration status and/or deportation or other immigration related matters
- 5) Provide information regarding the individual’s good moral character and why you think she or he is of good moral character.

The letter should be **addressed** as follows:

U.S. Citizenship & Immigration Services  
Vermont Service Center  
Attn: VAWA Unit  
75 Lower Welden Street  
St. Albans, VT 05479-001

Please **give** the letter to the applicant. Thank you for your assistance.

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\* *Your letter will contribute to helping a battered immigrant leave an abusive situation and gain independence – your assistance is greatly appreciated.*

**GUIA PARA PERSONAS (FAMILIARES, AMIGOS, CONOCIDOS) QUIENES PUEDEN  
ESCRIBIR UNA DECLARACION EN APOYO A UN SOBREVIVIENTES DE VIOLENCIA  
INTRAFAMILIAR**

Si usted ha recibido esta guía probablemente ha estado en contacto con una inmigrante maltratada que está solicitando ayuda bajo la Ley en Contra de la Violencia hacia las Mujeres, (Violence Against Women Act -VAWA). VAWA le permite a un inmigrante maltratado (y sus hijos) solicitar la residencia permanente sin la ayuda de el abusador(a). Para solicitar este remedio de inmigración se requiere extensa documentación a cerca del abuso físico y/o psicológico que ha sufrido el individuo por parte del su esposo/a.

Lo siguiente es una guía para personas quienes tiene información a cerca del abuso y que están dispuestos a escribir una carta de apoyo para nuestra cliente. Es muy importante que usted ofrezca toda la información que puede sobre el solicitante y su situación. Si es posible, incluya una descripción de los incidentes específicos donde fue testigo o la información que le dio la solicitante.

Todas las declaraciones de apoyo para las peticiones de VAWA deben ser firmadas con la fecha y deben incluir lo siguiente:

- 1) Información acerca de como conoce a la persona y cuanto tiempo la has conocido
- 2) Información si tiene algún conocimiento si la persona y su esposo/a viven o vivieron juntos y como obtuvo esa información
- 3) Una descripción detallada a cerca de su conocimiento personal de violencia domestica entre el individuo y su esposo, incluyendo como obtuvo esa información, por ejemplo, por medio del solicitante o por observación. Por favor incluya detalles a cerca del abuso
  - a) Abuso emocional;
  - b) Abuso psicológico; y/o
  - c) Abuso físico
- 4) Cualquier información acerca si el abuso incluyendo cualquier amenaza del estatus migratorio de la solicitante o amenazas de deportación
- 5) Proporcionar información sobre el buen carácter moral de la persona y por qué cree que él o ella es de buen carácter moral.

Por favor **dirija** su carta a:

U.S. Citizenship & Immigration Services  
Vermont Service Center  
Attn: VAWA Unit  
75 Lower Welden Street  
St. Albans, VT 05479-001

Favor de **entregar** la carta a el/la solicitante. Gracias por su ayuda y atención.



Chicago, IL

**Translation of a "Birth Certificate"**  
(print or type)

(Form JJG-4)

1. NAME: \_\_\_\_\_  
(First) (Middle) (Last)

2. Birth: -Place: \_\_\_\_\_  
(City/Town) (State/Province) (Country)

-Date: \_\_\_\_\_  
(Month) (Day) (Year)

3. Father's Name: \_\_\_\_\_  
(First) (Middle) (Last)

4. Mother's Name: \_\_\_\_\_  
(First) (Middle) (Last)

5. Certificate Issued:  
Date: \_\_\_\_\_  
(Month) (Day) (Year)

Place: \_\_\_\_\_  
(City/Town) (State/Province) (Country)

Magistrate: \_\_\_\_\_  
(Full name)

6. Certificate Found: Archive or Register: \_\_\_\_\_  
Page \_\_\_\_\_ No. \_\_\_\_\_

7. Notations of Importance:

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**Certificate of Translation**

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I, (\*) \_\_\_\_\_, hereby certify that the above is an accurate translation of the original "birth certificate" in (\*\*) \_\_\_\_\_; and that I am competent in both English and (\*\*) \_\_\_\_\_ to render such translation.

\_\_\_\_\_  
(Signature of Translator)

\_\_\_\_\_  
(Date)

(\*) Printed or typed, name of the translator in full

(\*\*) Language of the original certificate- Spanish, French, Chinese, German, etc...

\*\*\*\*Note: A copy of the original document should be attached to this summary translation form and certification.

## Translation of a Marriage Certificate

1. Mr. \_\_\_\_\_  
&            (First)                            (Middle)                            (Last)

Ms./Mrs. \_\_\_\_\_  
                  (First)                            (Middle)                            (Last)

2. Were married on: \_\_\_\_\_  
    (Month)                            (Day)                            (Year)

3. In: \_\_\_\_\_  
    (City/Town)                            (State/Province)                            (Country)

4. By \_\_\_\_\_  
    (Judge or Minister's full name)

5. Witnesses: 1) \_\_\_\_\_  
    (First)                            (Middle)                            (Last)

2) \_\_\_\_\_  
    (First)                            (Middle)                            (Last)

6. Certificate Issued:  
Date: \_\_\_\_\_  
    (Month)                            (Day)                            (Year)

Place: \_\_\_\_\_  
    (City/Town)                            (State/Province)                            (Country)

Magistrate: \_\_\_\_\_  
    (Full name)

7. Certificate Found: Archive or Register: \_\_\_\_\_  
Page \_\_\_\_\_ No. \_\_\_\_\_

8. Important Notations:

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### Certificate of Translation

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I, \_\_\_\_\_, hereby certify that the above is an accurate translation of the original "marriage certificate" in \_\_\_\_\_; and that I am competent in both English and \_\_\_\_\_ to render such translation.

\_\_\_\_\_  
(Signature of Translator)

\_\_\_\_\_  
(Date)

**TRANSLATION OF A "DECREE OF DIVORCE"**  
(print or type)

1. Mr. \_\_\_\_\_  
& (first name) (middle) (last)  
Mrs. \_\_\_\_\_  
(first name) (middle) (last)
2. WERE DIVORCED: on \_\_\_\_\_  
(month) (day) (year)
3. in \_\_\_\_\_  
(city/town) (state/province) (country)
4. before \_\_\_\_\_  
(name of Judge or Magistrate)
5. MAIN REASONS FOR THE DIVORCE (stated briefly):
6. PARTY SEEKING VISA: \_\_\_\_\_  
(last name) (middle) (first)
7. is now: Single \_\_\_\_\_ Married \_\_\_\_\_ Widow(er) \_\_\_\_\_
8. (If married) name of new SPOUSE: \_\_\_\_\_  
(first) (middle) (last)
9. IMPORTANT NOTATIONS: (Statement that the "Decree of Divorce"  
is final and absolute, and other pertinent information):

CERTIFICATION OF TRANSLATOR'S COMPETENCE

I, \_\_\_\_\_, hereby certify that the above is  
an accurate translation of the original "decree of divorce" in  
\_\_\_\_\_, and that I am competent in both English and  
\_\_\_\_\_ to render such translation.

\_\_\_\_\_  
(Signature of translator)

\_\_\_\_\_  
Date

**CONFIDENTIALITY AGREEMENT**

- I. **Purpose.** The purpose of this Confidentiality Agreement is to protect the identity and privacy of our clients. Volunteers at the National Immigrant Justice Center (NIJC) encounter personal and sensitive information about clients. This is particularly true when assisting immigrant survivors of domestic violence, human trafficking, torture and persecution, and unaccompanied immigrant children. Therefore, it is very important to refrain from disclosing any information to third parties about our clients to avoid causing them harm.
- II. **Confidential Information.** Confidential client information should never be discussed in the presence of third parties, except under the Terms outlined below. Any files and/or documents containing confidential information should never be shared or released to third parties, except under the Terms outlined below. Confidential information includes, but is not limited to, the following:
1. Identifying information about the client, including name, address or phone number;
  2. Information relating to the client's family;
  3. Information regarding the client's immigration status;
  4. Information about the abuse, trauma, and/or persecution experienced by the client; or
  5. Any other information that would identify the client or potentially place the client and/or family members at risk.
- III. **Terms.** By signing this Confidentiality Agreement, you agree to the highest ethical standards and to abide by the following provisions:
1. All communications between NIJC staff, volunteers, and clients are confidential.
  2. The volunteer shall not disclose confidential information to a third party without the client's express consent to release such information.
  3. The volunteer shall not disclose confidential information to a third party without NIJC's knowledge and consent.
  4. I understand that as a volunteer, I have a duty to keep client information confidential throughout my term as a volunteer as well as after my volunteer status ends.
  5. I understand that my failure to abide by the terms of this Confidentiality Agreement may result in the termination of my participation as a volunteer at NIJC.

Name of client: \_\_\_\_\_

I, \_\_\_\_\_ (print name), have read the above NIJC Confidentiality Agreement and understand its terms and my responsibilities as a volunteer.

\_\_\_\_\_  
Signature of Volunteer

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

**AUTHORIZATION FOR RELEASE OF INFORMATION**

I, \_\_\_\_\_, born on \_\_\_\_\_,  
(Client's Name) (Date of Birth)

hereby authorize the National Immigrant Justice Center (NIJC) to disclose to and/or receive from third parties any relevant a verbal and/or a written information regarding the following immigration matter:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I authorize this release for the duration of my legal proceedings before the Department of Homeland Security (DHS) or the Executive Office of Immigration Review (EOIR), with NIJC as my designated attorneys and representatives.

I understand that NIJC will notify me prior to providing or obtaining any information relating to my case to or from any individual or entity.

I further understand that I may revoke this authorization at any time.

Client (or parent/guardian if client is a minor): \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Minor: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

NIJC Staff: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)



a HEARTLAND ALLIANCE partner

December 12, 2005

***VIA OVERNIGHT DELIVERY***

U.S. Citizenship and Immigration Services  
Vermont Service Center  
Attn: VAWA Unit  
75 Lower Welden Street  
St. Albans, VT 05479-001

RE: CLIENT (A12 345 678)  
Submission of I-360 VAWA Self-Petition

Dear Officer:

CLIENT is applying for relief pursuant to the Violence Against Women Act (VAWA). Please find attached Forms G-28 and I-360 signed and dated by CLIENT with supporting documents. CLIENT is self-petitioning as the abused spouse of a United States citizen, ABUSIVE SPOUSE.

Although self-petitioners are encouraged to submit primary evidence when possible, the U.S. Citizenship and Immigration Services (hereinafter "USCIS") will consider any credible evidence relevant to the petition. 8 C.F.R. § 204.2(c)(2)(i).

CLIENT's supplemental documentation supports all requirements that VAWA self-petitioners must prove under the Immigration & Nationality Act ("INA") § 204 (a)(1)(A). Specifically, CLIENT is able to prove: (1) a qualifying abuser, (2) qualifying relationship, (3) a good faith marriage, (4) battery or extreme cruelty, (5) residency with the abuser, (6) current residence in the United States, and (7) good moral character.

1) Qualifying Abuser:

CLIENT's spouse is a U.S. citizen and a qualifying spouse. INA § 204(a)(1)(A)(i). Proof that ABUSIVE SPOUSE is a qualifying abuser is supported by his birth certificate showing that he was born in New York City.

2) Qualifying Relationship:

To qualify as a self-petitioner, CLIENT must show that she was legally married to her U.S. citizen spouse. A copy of a Certificate of Marriage is included in this application to show that a legal marriage took place between CLIENT and ABUSIVE SPOUSE on June 6, 2005 in Michigan, and previously on September 20, 1997.

3) Good Faith Marriage:

To qualify as a self-petitioner, CLIENT must show that she married a qualifying spouse in good faith. INA § 204 (a)(1)(A)(iii)(I)(aa). The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. 61 Fed. Reg. at 13068 (March 26, 1996) [preamble to Immigration & Naturalization Service (“INS”) regulations]. A self-petition will not be denied solely because the spouses are no longer living together and the marriage is no longer viable. 8 C.F.R. § 204.2(c)(ix).

CLIENT’s affidavit and supporting documents prove that she entered into a marriage with ABUSIVE SPOUSE in good faith. CLIENT has included photographs with she and ABUSIVE SPOUSE and proof of shared residence. In addition, CLIENT and ABUSIVE SPOUSE have a U.S. citizen child together, CHILD.

4) Battery or Extreme Cruelty:

CLIENT must prove that she is the victim of battery or extreme cruelty. INA § 204(a)(1)(A)(iii)(I)(bb). Battery or extreme cruelty is broadly defined to include, “being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury.” 8 C.F.R. § 204.2(c)(2)(vi). Moreover, abusive actions which in and of themselves do not initially appear violent, but that are a part of an overall pattern of violence, may also be acts of violence under certain circumstances. *Id.*

The regulations provide a non-exhaustive list of evidence that may prove battery or extreme cruelty. *Id.* This list includes, but is not limited to, reports and affidavits from law enforcement personnel, medical personnel, school officials, clergy, social workers, and other social service agency personnel, protection orders, shelter records, and photographs supported by affidavits. 8 C.F.R. § 204.2(c)(2)(iv).

CLIENT’s affidavit provides an account of the abuse she has suffered from her spouse, ABUSIVE SPOUSE. CLIENT also has a plenary order of protection for two years with a description of the abuse attached. She also has a police report and the last domestic violence episode is currently being prosecuted by the State’s attorney’s office.



5) Residency With The Abuser:

The self-petitioner must have resided with the abuser at some point. INA § 204(a)(1)(iii)(II)(dd). Relevant credible evidence of residency may include utility receipts, school records, hospital or medical records, birth certificates of children born in the U.S., deeds, mortgages, rental records, insurance policies, and affidavits. Evidence that CLIENT and ABUSIVE SPOUSE resided together is found in CLIENT' Affidavit as well as bills and other correspondence sent to both individuals at the same address during most of 2005. In addition, they own property together and they police report and plenary order show that they were living together.

6) Current Residence in The United States:

The self-petitioner must reside in the United States at the time the self-petition is filed. 8 C.F.R. § 204.2(c)(1)(i)(H)(v). Included in CLIENT's application is proof that she is currently physically present in the United States. CLIENT is submitting her Affidavit and her order of protection. In addition, CLIENT is currently in removal proceedings.

7) Self-Petitioner's Good Moral Character:

To qualify as a self-petitioner, CLIENT must show that she is a person of good moral character. INA § 204(a)(1)(A)(iii)(II)(bb). The self-petitioner's sworn statement provides primary evidence of good moral character. 8 C.F.R. §204.2(c)(2)(v). In addition to the self-petitioner's sworn statement, the regulations suggest including in the application a local police clearance from each locality or State where the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition as proof of good moral character. *Id.*

CLIENT's police clearance letter is forthcoming.

On the basis of this application, CLIENT asks that you approve her self-petition and grant her deferred action. Thank you for your attention to this application. If you need additional information, please contact me at (312) 660-1306.

Very truly yours,

Mony Ruiz-Velasco  
Attorney at Law

Enclosures



**Notice of Entry of Appearance  
as Attorney or Accredited Representative**  
Department of Homeland Security

**DHS  
Form G-28**  
OMB No. 1615-0105  
Expires 02/29/2016

**Part 1. Information About Attorney or Accredited Representative**

Name and Address of Attorney or Accredited Representative

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. Name of Law Firm or Recognized Organization

3. Name of Law Student or Law Graduate

4. State Bar Number

5.a. Street Number

5.b. Street Name

5.c. Apt.  Ste.  Flr.

5.d. City or Town

5.e. State  5.f. Zip Code

5.g. Postal Code

5.h. Province

5.i. Country

6. Daytime Phone Number (  )  -

7. E-Mail Address of Attorney or Accredited Representative

**Part 2. Eligibility Information For Attorney or Accredited Representative**

(Check applicable item(s) below)

1.  I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest court(s) of the following State(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia.

1.a.

1.b. I (choose one)  am not  am subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. (If you are subject to any order(s), explain fully in the space below.)

1.b.1.

2.  I am an accredited representative of the following qualified nonprofit religious, charitable, social service, or similar organization established in the United States, so recognized by the Department of Justice, Board of Immigration Appeals pursuant to 8 CFR 292.2. Provide the name of the organization and the expiration date of accreditation.

2.a. Name of Recognized Organization

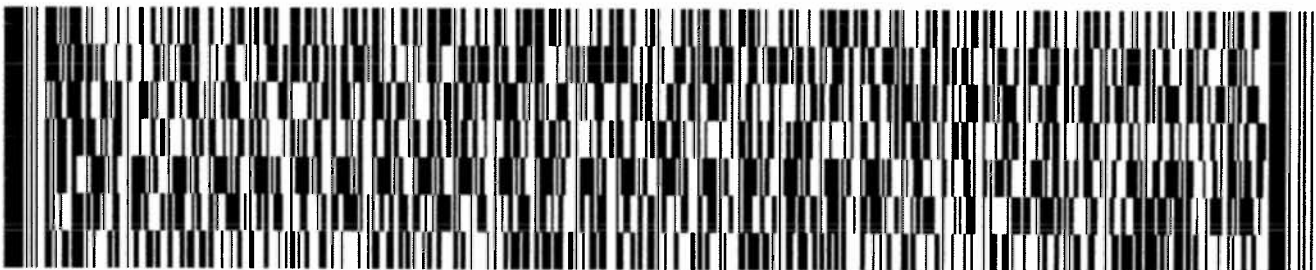
2.b. Date Accreditation expires  
(mm/dd/yyyy) ▶

3.  I am associated with

3.a.

the attorney or accredited representative of record who previously filed Form G-28 in this case, and my appearance as an attorney or accredited representative is at his or her request. If you check this item, also complete **number 1 (1.a. - 1.b.1.) or number 2 (2.a. - 2.b.) in Part 2 (whichever is appropriate).**

4.  I am a law student or law graduate working under the direct supervision of the attorney or accredited representative of record on this form in accordance with the requirements in 8 CFR 292.1(a)(2)(iv).





Department of Homeland Security  
U.S. Citizenship and Immigration Services

**I-360, Petition for Amerasian,  
Widow(er), or Special Immigrant**

**START HERE - Type or print in black ink**

For USCIS Use Only

**Part 1. Information About Person or Organization Filing This**

**Petition** (Individuals use the top name line; organizations use the second line.) If you are a self-petitioning spouse or child and do not want USCIS to send notices about this petition to your home, you may show an alternate mailing address here. If you are filing for yourself and do not want to use an alternate mailing address, skip to Part 2.

<b>1a. Family Name</b> SMITH	<b>1b. Given Name</b> Susan	<b>1c. Middle Name</b>
---------------------------------	--------------------------------	------------------------

**2. Company or Organization Name**  
WE DO NOT GENERALLY RECOMMEND USING THE FIRM'S ADDRESS

**3. Address - C/O**  
Brenda Smith

<b>4. Street Number and Name</b> 123 W. Main Street	<b>5. Apt. Number</b>
--	-----------------------

<b>6. City</b> Chicago	<b>7. State or Province</b> IL
---------------------------	-----------------------------------

<b>8. Country</b> USA	<b>9. Zip/Postal Code</b> 60604
--------------------------	------------------------------------

<b>10. U.S. Social Security Number</b> None	<b>11. A-Number</b> None	<b>12. IRS Tax No. (if any)</b> 123-45-6789
--	-----------------------------	--

**Part 2. Classification Requested (Check one):**

- a. Amerasian
- b. Widow(er) of a U.S. citizen
- c. Special Immigrant Juvenile
- d. Special Immigrant Religious Worker  
Will the alien be working as a minister?  Yes  No
- e. Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government, or U.S. Government in the Canal Zone
- f. Special Immigrant Physician
- g. Special Immigrant International Organization Employee or family member
- h. Special Immigrant Armed Forces Member
- i. Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident
- j. Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident
- k. Special Immigrant Afghanistan or Iraq National who worked with the U.S. Armed Forces as a translator
- l. Special Immigrant Iraq National who was employed by or on behalf of the U.S. Government
- m. Other, explain: \_\_\_\_\_

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
<input type="checkbox"/> Petitioner/ Applicant	
<input type="checkbox"/> Interviewed Beneficiary Interviewed	
<input type="checkbox"/> I-485 Filed Concurrently	
<input type="checkbox"/> Bene "A" File Reviewed	
Classification	
Consulate	
Priority Date	
Remarks:	
Action Block	
<p><b>To Be Completed By</b></p> <input checked="" type="checkbox"/> <b>Attorney or Representative, if any</b> Fill in box if Form G-28 is attached to represent the applicant	
VOLAG Number	
ATTY State License Number 1234567 IL	



**Part 3. Information About the Person for Whom This Petition Is Being Filed**

<b>1a. Family Name (Last Name)</b> SMITH	<b>1b. Given Name (First Name)</b> Susan	<b>1c. Middle Name</b>
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2. Address - C/O  
[MUST BE A SAFE MAILING ADDRESS]

<b>3a. Street Number and Name</b> 3000 W. Fullerton	<b>3b. Apt. Number</b> 1A
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<b>4. City</b> Chicago	<b>5. State or Province</b> IL
---------------------------	-----------------------------------

<b>6. Country</b> USA	<b>7. Zip/Postal Code</b> 60604
--------------------------	------------------------------------

<b>8. Date of Birth (mm/dd/yyyy)</b> 01/02/1980	<b>9. Country of Birth</b> Mexico	<b>10. U.S. Social Security Number</b> None	<b>11. A-Number (if any)</b> None
--	--------------------------------------	--	--------------------------------------

12. Marital Status:  Single  Married  Divorced  Widowed

13. Complete the items below if this person is in the United States. If an item is not applicable or the answer is "none," leave the space blank. Provide data below for the passport or other document used at the time of last arrival to the United States.

<b>a. Date of Arrival (mm/dd/yyyy)</b> 07/2001	<b>b. I-94 Number</b>
<b>c. Passport Number</b> 123456789	<b>d. Travel Document Number</b> None
<b>e. Country of Issuance for Passport or Travel Document</b> Mexico	<b>f. Expiration Date for Passport or Travel Document</b> 02/15/2017
<b>g. Current Nonimmigrant Status</b> None	<b>h. Current Status Expires on (mm/dd/yyyy)</b>

**Part 4. Processing Information**

1. Provide information on which U.S. consulate you want notified if this petition is approved, and if any requested adjustment of status cannot be granted.

<b>a. U.S. Consulate: City</b> [COMPLETE ONLY IF NOT ELIGIBLE FOR AOS]	<b>b. Country</b> [COMPLETE ONLY IF NOT ELIGIBLE FOR AOS]
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2. If you gave a U.S. address in Part 3, print the person's foreign address below. If his or her native alphabet does not use Roman letters, print his or her name and foreign address in the native alphabet.

<b>a. Name</b>	<b>b. Address</b>
----------------	-------------------

- c. Gender of the person for whom this petition is being filed:  Male  Female
- d. Are you filing any other petitions or applications with this one?  No  Yes (How many? <sup>2</sup> \_\_\_\_\_ )
- e. Is the person this petition is for in deportation or removal proceedings?  No  Yes (Explain on a separate sheet of paper)
- f. Has the person for whom this petition is being filed ever worked in the U.S. without permission?  No  Yes (Explain on a separate sheet of paper)
- g. Is an application for adjustment of status attached to this petition?  No  Yes (Attach a full explanation)



**Part 5. Complete Only If Filing for an Amerasian**

**Section A. Information about the mother of the Amerasian**

<b>1a. Family Name</b> N/A	<b>1b. Given Name</b> N/A	<b>1c. Middle Name</b> N/A
<b>2. Living?</b> <input type="checkbox"/> No (Give date of death _____ N/A ) <input type="checkbox"/> Yes (Complete address line below) <input type="checkbox"/> Unknown		
<b>3. Address</b> N/A		

**Section B. Information about the father of the Amerasian:**

If possible, attach a notarized statement from the father regarding parentage. Explain on a separate paper any question you cannot fully answer in the space provided on this form. (Attach a full explanation.)

<b>1a. Family Name</b> N/A	<b>1b. Given Name</b> N/A	<b>1c. Middle Name</b> N/A
<b>2. Date of Birth (mm/dd/yyyy)</b> N/A	<b>3. Country of Birth</b> N/A	
<b>4. Living?</b> <input type="checkbox"/> No (Give date of death _____ N/A ) <input type="checkbox"/> Yes (Complete address line below) <input type="checkbox"/> Unknown		
<b>5. Home Address</b> N/A		
<b>6. Home Phone Number</b> N/A	<b>7. Work Phone Number</b> N/A	

**8. At the time the Amerasian was conceived:**

**a. The father was in the military (indicate branch of service below and give service number here):** N/A

Army     Air Force     Navy     Marine Corps     Coast Guard

**b.**  The father was a civilian employed abroad. Attach a list of names and addresses of organizations which employed him at that time.

**c.**  The father was not in the military and was not a civilian employed abroad. Attach a full explanation of the circumstances.

**Part 6. Complete Only If Filing for a Special Immigrant Juvenile Court Dependent**

**Section A. Information about the juvenile**

List any other names used  
N/A

Answer the following questions regarding the person for whom the petition is being filed. If you answer "No," explain on a separate sheet of paper.

**a.** Have you been declared dependent upon a juvenile court in the United States, or have you been legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court?  No     Yes

**b.** Has a juvenile court declared that reunification with one or both of your parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law?  No     Yes

**c.** Have you been the subject of proceedings in which it was determined that it would not be in your best interest to be returned to your or your parent's country of nationality or last habitual residence?  No     Yes



**Part 7. Complete Only if Filing as a Widow/Widower, a Self-petitioning Spouse of an Abuser, or as a Self-petitioning Child of an Abuser**

**Section A. Information about the U.S. citizen husband or wife who died or about the U.S. citizen or lawful permanent resident abuser**

1a. Family Name SMITH		1b. Given Name Robert	1c. Middle Name
2. Date of Birth (mm/dd/yyyy) 04/01/1976	3. Country of Birth USA	4. Date of Death (mm/dd/yyyy) N/A	

5. He or she is now, or was, at time of death a (check one):

- a. U.S. citizen born in the United States
- b. U.S. citizen born abroad to U.S. citizen parents
- c. U.S. lawful permanent resident (Provide A#) \_\_\_\_\_
- d. U.S. citizen through naturalization (Provide A#) \_\_\_\_\_
- e. Other, explain \_\_\_\_\_

**Section B. Additional information about you**

1. How many times have you been married?  1	2. How many times was the person in Section A married?  1	3. Give the date and place where you and the person in Section A were married. (If you are a self-petitioning child, write "N/A")  08/03/2004; Chicago, IL
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4. When did you live with the person named in Section A? From (Month/Year) 08/2003 until (Month/Year) 06/2009

5. If you are filing as a widow/widower, were you legally separated at the time of the U.S. citizen's death?  No  Yes (Attach explanation)

6. Give the last address at which you lived together with the person named in Section A, and show the last date that you lived together with that person at that address:

3095 W. Belmonte Rd., Chicago, IL 60647 Last date lived together: 06/2009
--

7. If you are filing as a self-petitioning spouse, have any of your children filed separate self-petitions?  No  Yes (Show child(ren)'s full names):

--





**Part 8. Complete Only If Filing a Special Immigrant Religious Worker Petition**

**Employer Attestation**

1. Provide the following information about the prospective employer:

- a. Number of members of the prospective employer's organization:
- b. Number of employees working at the same location where the beneficiary will be employed:
- c. Number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past 5 years:
- d. Number of Special Immigrant Religious Worker I-360 and Nonimmigrant Religious Worker I-129 Petitions submitted by the prospective employer within the past 5 years:

2. Has the alien or any of the alien's dependent family members previously been admitted to the United States for a period of stay in the R classification for the last 5 years?  No  Yes

If "Yes," complete the table below. List the alien and any dependent family member's prior periods of stay in the R classification in the United States for the last 5 years. Be sure to list only those periods in which the alien and/or family members were actually in the United States in the R classification.

**NOTE:** Submit photocopies of Form I-94 (Arrival-Departure Record), Form I-797 (Notice of Action), and/or other USCIS documents identifying these periods of stay in the R classification. If more space is needed, provide the information on additional sheets of paper.

Alien or Dependent Family Member's Name	Period of Stay (mm/dd/yyyy)	
	From:	To:



3. Provide a summary of the type of responsibilities of those employees who work at the same location where the beneficiary will be employed. If additional space is needed, provide the information on additional sheets of paper.

Position	Summary of the Type of Responsibilities for That Position

4. Describe the relationship, if any, between the religious organization in the United States and the organization abroad of which the alien is a member.

5. Provide the following information about the prospective employment:

a. Title of position offered.

b. Detailed description of the alien's proposed daily duties.



c. Description of the alien's qualifications for the position offered.

d. Description of the proposed salaried and/or non-salaried compensation.

e. List of the specific address(es) or location(s) where the alien will be working.

Does the prospective employer attest to all of the requirements described in statements 6 through 12 below?

6. The prospective employer is a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination and is tax exempt as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment, or equivalent sections of prior enactments of the Internal Revenue Code. If the prospective employer is affiliated with the religious denomination, complete the Religious Denomination Certification included in this form.

Yes  No (If "No," attach explanation(s))

7. The prospective employer is willing and able to provide salaried and/or non-salaried compensation at a level that the alien and any dependents will not become a public charge.

Yes  No (If "No," attach explanation(s))

8. The funds to pay the prospective employee's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

Yes  No (If "No," attach explanation(s))

9. If the position is not a religious vocation, the prospective employee will not engage in secular employment, and the prospective employer will provide salaried and/or non-salaried compensation.

Yes  No (If "No," attach explanation(s))



10. The offered position is full time, requiring at least an average of 35 hours of work per week.

Yes  No (If "No," attach explanation(s))

11. The alien has been a religious worker for at least 2 years immediately before Form I-360 was filed and is otherwise qualified for the position offered.

Yes  No (If "No," attach explanation(s))

12. The alien has been a member of the prospective employer's denomination for at least 2 years immediately before Form I-360 was filed.

Yes  No (If "No," attach explanation(s))

**I certify or attest under penalty of perjury under the laws of the United States of America that the contents of this attestation, and the evidence submitted, are true and correct.**

Signature

Date (mm/dd/yyyy)

Printed Name

Title

Employer/Organization Name

Employer/Organization Street Address (Do not use a post office or private mail box)

Suite Number

City

State

Zip Code

Daytime Phone Number  
(with area code)

Fax Number (if any)

E-Mail Address (if any)



**Religious Denomination Certification**

I certify under penalty of perjury under the laws of the United States of America that:

*Name of Petitioning Organization*

is affiliated with:

*Name of Religious Denomination*

and that the attesting *religious* organization within the religious denomination is tax-exempt as described in section 201(c)(3) of the Internal Revenue Code of 1986, or equivalent sections of prior enactments of the Internal Revenue Code. The contents of this certification are true and correct to the best of my knowledge.

Signature

Printed Name

Title

Date *(mm/dd/yyyy)*

Name of Attesting Religious Organization within the religious denomination

Street Address of the Attesting Religious Organization within the religious denomination  
*(do not use a post office or private mail box)*

Suite Number

City

State

Zip Code

Daytime Phone Number *(with area code)*

Fax Number *(if any)*

E-Mail Address *(if any)*



**Part 9. Information About the Spouse and Children of the Person for Whom This Petition Is Being Filed**

A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser. This includes biological and adopted children and stepchildren.

<b>1a. Family Name</b> SMITH		<b>1b. Given Name</b> Robert		<b>1c. Middle Name</b>	
<b>1d. Date of Birth</b> (mm/dd/yyyy) 04/01/1976	<b>1e. Country of Birth</b> USA		<b>1f. Relationship</b> <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child		<b>1g. A-Number</b> N/A

<b>2a. Family Name</b> FLORES		<b>2b. Given Name</b> David		<b>2c. Middle Name</b>	
<b>2d. Date of Birth</b> (mm/dd/yyyy) 05/18/1999	<b>2e. Country of Birth</b> Mexico		<b>2f. Relationship</b> <input checked="" type="checkbox"/> Child		<b>2g. A-Number</b> N/A

<b>3a. Family Name</b> SMITH		<b>3b. Given Name</b> Laura		<b>3c. Middle Name</b>	
<b>3d. Date of Birth</b> (mm/dd/yyyy) 05/07/2005	<b>3e. Country of Birth</b> USA		<b>3f. Relationship</b> <input checked="" type="checkbox"/> Child		<b>3g. A-Number</b> N/A

<b>4a. Family Name</b>		<b>4b. Given Name</b>		<b>4c. Middle Name</b>	
<b>4d. Date of Birth</b> (mm/dd/yyyy)	<b>4e. Country of Birth</b>		<b>4f. Relationship</b> <input type="checkbox"/> Child		<b>4g. A-Number</b>

<b>5a. Family Name</b>		<b>5b. Given Name</b>		<b>5c. Middle Name</b>	
<b>5d. Date of Birth</b> (mm/dd/yyyy)	<b>5e. Country of Birth</b>		<b>5f. Relationship</b> <input type="checkbox"/> Child		<b>5g. A-Number</b>

<b>6a. Family Name</b>		<b>6b. Given Name</b>		<b>6c. Middle Name</b>	
<b>6d. Date of Birth</b> (mm/dd/yyyy)	<b>6e. Country of Birth</b>		<b>6f. Relationship</b> <input type="checkbox"/> Child		<b>6g. A-Number</b>



**Part 9. Information About the Spouse and Children of the Person for Whom This Petition Is Being Filed (Continued)**

A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser. This includes biological and adopted children and stepchildren.

7a. Family Name		7b. Given Name		7c. Middle Name	
7d. Date of Birth (mm/dd/yyyy)	7e. Country of Birth		7f. Relationship <input type="checkbox"/> Child	7g. A-Number	

8a. Family Name		8b. Given Name		8c. Middle Name	
8d. Date of Birth (mm/dd/yyyy)	8e. Country of Birth		8f. Relationship <input type="checkbox"/> Child	8g. A-Number	

9a. Family Name		9b. Given Name		9c. Middle Name	
9d. Date of Birth (mm/dd/yyyy)	9e. Country of Birth		9f. Relationship <input type="checkbox"/> Child	9g. A-Number	

**Part 10. Signature**

Read the information on penalties in the instructions before completing this part. If you will be filing this petition at a USCIS office in the United States, sign below. If you will be filing it at a U.S. consulate or USCIS office overseas, sign in front of a USCIS or consular official.

I certify, or if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. I authorize the release of any information from my records, or from the petitioning organization's records, that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit being sought.

Signature		Date	Daytime Phone Number ( ) -	Extension
E-Mail Address			Mobile Phone Number ( ) -	
Signature of USCIS or Consular Official		Print Name		Date

**NOTE:** If you do not completely fill out this petition or fail to submit required documents listed in the instructions, the person(s) filed for may not be found eligible for a requested benefit, and the petition may be denied.





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**Part 11. Signature of Person Preparing Form, If Other Than Above (Sign below)**

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I declare that I prepared this petition at the request of the above person, and it is based on all information of which I have knowledge.

**Attorney or Representative:** In the event of a Request for Evidence (RFE), may USCIS contact you by fax or e-mail?

Yes  No

Signature		Date
Print Your Name	E-Mail Address	
Firm Name and Address		
Daytime Phone Number (Area/Country Codes)	<input type="text"/>	Fax Number (if any) <input type="text"/>



**INDEX OF DOCUMENTS IN SUPPORT OF CLIENT'S  
SELF PETITION PURSUANT TO THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

**IDENTITY DOCUMENTS**

- A Honduran Passport for CLIENT
- B Birth Certificate for CLIENT, with translation

**QUALIFYING ABUSER**

- C Birth Certificate of ABUSIVE SPOUSE and Copy of State Identification from Michigan

**GOOD FAITH MARRIAGE**

- D Sworn Affidavit of CLIENT
- E Certificate of Birth for CHILD, child of ABUSIVE SPOUSE and CLIENT
- F Marriage License, June 6, 2005 from the State of Michigan for ABUSIVE SPOUSE and CLIENT
- G Divorce Decree from Honduras dated September 20, 2001 for CLIENT and ABUSIVE SPOUSE, with translation
- H I-797C Receipt Notice for I-130 filed on behalf of CLIENT by her U.S. citizen husband, ABUSIVE SPOUSE, December 1, 1997
- I I130 receipt for I130 filed by ABUSIVE SPOUSE on behalf of CLIENT in December 1997
- J I130 filed by ABUSIVE SPOUSE on behalf of his wife, CLIENT, filed in August 2005
- K Consent dated December 4, 2000 signed by ABUSIVE SPOUSE allowing his wife, CLIENT to travel with their son, CHILD outside the U.S.
- L Ameren CIPS bill for ABUSIVE SPOUSE and CLIENT dated August 2005
- M Acord Insurance dated July 2005 for ABUSIVE SPOUSE and CLIENT July 2005
- N Atlantida Bank record for CLIENT and ABUSIVE SPOUSE (Jul 6, 2001)
- O Bond Worksheet for CLIENT showing that she is married to CHILD and has a U.S citizen child

- P Memorandum of Contract for Deed in Arcola, Illinois for CLIENT and ABUSIVE SPOUSE (August 9, 2005)
- Q Contract for Deed for property in Arcola, Illinois acquired on August 9, 2005 by CLIENT and ABUSIVE SPOUSE
- R Homeowner's Insurance Record for ABUSIVE SPOUSE and CLIENT (8/1/2005 – 8/1/2006)
- S Family photos of CHILD, ABUSIVE SPOUSE and CLIENT

**BATTERY AND/OR EXTREME CRUELTY**

- T *See* Sworn Affidavit of CLIENT
- U Affidavit from Barb Utterback, Executive Director of Beth's Place, the domestic violence shelter where CLIENT is currently living
- V Plenary Order of Protection, expiring December 1, 2007 restraining ABUSIVE SPOUSE from physical harm and contact of CLIENT
- W Order of Protection entered on October 27, 2005 against ABUSIVE SPOUSE detailing recent abuse and abduction of her son by her husband and his parents
- X Notice to Parties to appear in court on November 14, 2005 on a hearing on the Order of Protection
- Y Summons to CLIENT regarding Dissolution of Marriage filed by her husband ABUSIVE SPOUSE dated October 28, 2005 and Petition for Dissolution of Marriage
- Z Answer to Petition for Dissolution of Marriage
- AA Petition for Temporary Relief filed with the Douglas County Court asking for custody of CHILD and for Child Support
- BB Counter Petition for Dissolution of Marriage filed by CLIENT alleging mental cruelty toward CLIENT and her child
- CC Motion to Dismiss Petition for Order of Protection filed by CLIENT wherein she argues that ABUSIVE SPOUSE filed for an order of protection against her in an attempt to "harass ... and obtain physical custody of the minor child"
- DD Financial Affidavit of CLIENT
- EE Order of Protection filed against CLIENT alleging that she was intending to take their child to Honduras

FF Subpoena for SS, witness to the abuse CLIENT suffered at the hands of her U.S. citizen husband, to appear in court on November 14, 2005

GG Letter from ABUSIVE SPOUSE to the Immigration Court, filed April 5, 2005 asking for CLIENT to be deported (April 2005)

HH Copy of Letter by ABUSIVE SPOUSE withdrawing the I-130 filed on behalf of his wife CLIENT (November 2005)

II Photo of bruises and photo of scratches on CLIENT's right arm caused by ABUSIVE SPOUSE

**CURRENT RESIDENCE IN THE U.S.**

JJ *See* Sworn Affidavit of CLIENT

KK *See* Affidavit from Barb Utterback, Executive Director of Beth's Place, the domestic violence shelter where CLIENT is currently living

LL *See* Court Documents for current domestic dispute case between CLIENT and her husband ABUSIVE SPOUSE (Tabs V-GG)

MM *See* Plenary Order of Protection entered to protect CLIENT from ABUSIVE SPOUSE on December 6, 2005

NN Hearing Notices for CLIENT for hearings before the Immigration Court

**GOOD MORAL CHARACTER**

OO *See* Sworn Affidavit of CLIENT

PP *See* Affidavit from Barb Utterback, Executive Director of Beth's Place, the domestic violence shelter where CLIENT is currently living

**Request By Self-Petitioner, CLIENT, To USCIS To Search Service Records  
To Determine That SPOUSE Is A United States Citizen  
And a Qualifying Spouse Under VAWA**

CLIENT believes that his wife is a United States citizen, because she told him that she was, and she successfully applied for a K-I fiance visa to bring CLIENT to the United States. CLIENT has not yet received the results of his request under the Freedom of Information Act (FOIA), and does not have any documents demonstrating that SPOUSE is, a U.S. citizen. CLIENT requests that you please search Service records to find that his wife is a United States citizen, and thus a qualifying spouse under VAWA. CLIENT believes that the following information about his spouse is accurate: Date of birth: DATE, A NUMBER.



# National Immigrant Justice Center

February 5, 2011

U.S. Citizenship & Immigration Services  
Vermont Service Center  
ATTN: VAWA  
75 Lower Welden Street  
St. Albans, VT 05479

**RE: FORM I-485, APPLICATION FOR ADJUSTMENT OF STATUS  
WITH FEE WAIVER REQUEST  
Jones, Patricia (A 222-333-444)**

Dear Immigration Officer:

Our office represents Patricia Jones in her self-petition pursuant to the Violence Against Women Act and her corresponding application for adjustment of status. Ms. Jones is the abused spouse of a U.S. citizen, therefore, she will be immediately eligible for adjustment of status pursuant to INA § 245(a) once her VAWA self-petition is approved.

Enclosed please find the following in support of Ms. Jones' application for adjustment of status:

- Form G-28, Notice of Entry of Appearance as Attorney
- Form I-912, Fee Waiver Request
- Form I-485, Application to Adjust Status
- Two Passport-Style Photographs
- Form G-325A, Biographic Information
- Form I-864W, Intending Immigrant's Affidavit of Support Exemption
- Medical Exam in Sealed Envelope
- Copy of Birth Certificate of Ms. Jones with English Translation
- Copy of Marriage Certificate
- Copy of Divorce Certificate for Ms. Jones' prior marriage
- Copy of Divorce Certificate for Ms. Jones' prior marriage
- Copy of Birth Certificates for Ms. Jones's four children

After adjudication of the VAWA self-petition, we respectfully request that the Vermont Service Center transfer the application for adjustment of status to the district office having jurisdiction over the self-petitioner.

Please do not hesitate to contact me at (312) 660-1611 if you have any further questions. Thank you for your time and attention to this matter.

Sincerely,

Karolyn Talbert  
Attorney

Heartland Alliance for Human Needs & Human Rights | National Immigrant Justice Center  
208 S. LaSalle Street, Suite 1818, Chicago, Illinois 60604 | ph: 312-660-1370 | fax: 312-660-1505  
1817 S. Loomis, 2<sup>nd</sup> Floor, Chicago, Illinois 60608 | ph: 312-660-1609 | fax: 312-421-0923  
33 N. County St., Ste. 520, Waukegan, Illinois 60085 | ph: 312-660-1391 | fax: 847-406-2144

Department of Homeland Security  
U.S. Citizenship and Immigration Services

**Form I-485, Application to Register  
Permanent Residence or Adjust Status**

**START HERE - Type or Print (Use black ink)**

**For USCIS Use Only**

**Part 1. Information About You**

Family Name (Last Name)	Given Name (First Name)	Middle Name
JONES	Patricia	
Address - Street Number and Name		Apt. No.
1818 W. 18th Street		2
C/O (in care of)		
City	State	ZIP Code
Chicago	IL	60608
Date of Birth (mm/dd/yyyy)	Country of Birth	
05/01/1980	Guatemala	
Country of Citizenship/Nationality	U.S. Social Security No. (if any)	A-Number (if any)
Guatemalan	000-00-0000	000-000-000
Date of Last Arrival (mm/dd/yyyy)	I-94 Number	
09/2005		
Current USCIS Status	Expires on (mm/dd/yyyy)	
Without inspection	N/A	

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Applicant Interviewed	

**Part 2. Application Type (Check one)**

**I am applying for an adjustment to permanent resident status because:**

- a.  An immigrant petition giving me an immediately available immigrant visa number that has been approved. (Attach a copy of the approval notice, or a relative, special immigrant juvenile, or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)
- b.  My spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.
- c.  I entered as a K-1 fiancé(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e). (Attach a copy of the fiancé(e) petition approval notice and the marriage certificate.)
- d.  I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.
- e.  I am a native or citizen of Cuba admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year.
- f.  I am the husband, wife, or minor unmarried child of a Cuban described above in (e), and I am residing with that person, and was admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year.
- g.  I have continuously resided in the United States since before January 1, 1972.
- h.  Other basis of eligibility. Explain (for example, I was admitted as a refugee, my status has not been terminated, and I have been physically present in the United States for 1 year after admission). If additional space is needed, see **Page 3** of the instructions.

**I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the United States as a nonimmigrant or parolee, or as of May 2, 1964, whichever date is later, and:**  
(Check one)

- i.  I am a native or citizen of Cuba and meet the description in (e) above.
- j.  I am the husband, wife, or minor unmarried child of a Cuban and meet the description in (f) above.

**Section of Law**

- Sec. 209(a), INA
- Sec. 209(b), INA
- Sec. 13, Act of 9/11/57
- Sec. 245, INA
- Sec. 249, INA
- Sec. 1 Act of 11/2/66
- Sec. 2 Act of 11/2/66
- Other \_\_\_\_\_

**Country Chargeable**

**Eligibility Under Sec. 245**

- Approved Visa Petition
- Dependent of Principal Alien
- Special Immigrant
- Other \_\_\_\_\_

**Preference**

**Action Block**

**To be Completed by  
Attorney or Representative, if any**  
 Fill in box if Form G-28 is attached to represent the applicant.

VOLAG No

ATTY State License No.  
**IL 123456**



**Part 3. Processing Information**

A. City/Town/Village of Birth  Current Occupation   
 Your Mother's First Name  Your Father's First Name   
 Give your name exactly as it appears on your Form I-94, Arrival-Departure Record   
 Place of Last Entry Into the United States (City/State)  In what status did you last enter? (Visitor, student, exchange visitor, crewman, temporary worker, without inspection, etc.)   
 Were you inspected by a U.S. Immigration Officer? Yes  No   
 Nonimmigrant Visa Number  Consulate Where Visa Was Issued   
 Date Visa Issued (mm/dd/yyyy)  Gender  Male  Female Marital Status  Married  Single  Divorced  Widowed  
 Have you ever applied for permanent resident status in the U.S.?  Yes (If "Yes" give date and place of filing and final disposition.)  No

B. List your present spouse and all of your children (include adult sons and daughters). (If you have none, write "None." If additional space is needed, see Page 3 of the instructions.)

Family Name (Last Name)	Given Name (First Name)	Middle Initial	Date of Birth (mm/dd/yyyy)
JONES	Isabel		08/09/2007
Country of Birth	Relationship	A-Number (if any)	Applying with you?
United States	Daughter		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Family Name (Last Name)	Given Name (First Name)	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A-Number (if any)	Applying with you?
			Yes <input type="checkbox"/> No <input type="checkbox"/>
Family Name (Last Name)	Given Name (First Name)	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A-Number (if any)	Applying with you?
			Yes <input type="checkbox"/> No <input type="checkbox"/>
Family Name (Last Name)	Given Name (First Name)	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A-Number (if any)	Applying with you?
			Yes <input type="checkbox"/> No <input type="checkbox"/>
Family Name (Last Name)	Given Name (First Name)	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A-Number (if any)	Applying with you?
			Yes <input type="checkbox"/> No <input type="checkbox"/>





**Part 3. Processing Information (Continued)**

C. List your present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society, or similar group in the United States or in other places since your 16th birthday. Include **any military service** in this part. If none, write "None." Include the name of each organization, location, nature, and dates of membership. If additional space is needed, attach a separate sheet of paper. Continuation pages must be submitted according to the guidelines provided on **Page 3** of the instructions under **General Instructions**.

Name of Organization	Location and Nature	Date of Membership From	Date of Membership To
None			

Answer the following questions. (If your answer is "Yes" to any question, explain on a separate piece of paper. Continuation pages must be submitted according to the guidelines provided on **Page 3** of the instructions under **General Instructions**. Information about documentation that must be include with your application is also provide in this section.) Answering "Yes" does not necessarily mean that you are not entitled to adjust status or register for permanent residence.

1. Have you **EVER**, in or outside the United States:
  - a. Knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? Yes  No
  - b. Been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? Yes  No
  - c. Been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency, or similar action? Yes  No
  - d. Exercised diplomatic immunity to avoid prosecution for a criminal offense in the United States? Yes  No
2. Have you received public assistance in the United States from any source, including the U.S. Government or any State, county, city, or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? Yes  No
3. Have you **EVER**:
  - a. Within the past 10 years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? Yes  No
  - b. Engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? Yes  No
  - c. Knowingly encouraged, induced, assisted, abetted, or aided any alien to try to enter the United States illegally? Yes  No
  - d. Illicitly trafficked in any controlled substance, or knowingly assisted, abetted, or colluded in the illicit trafficking of any controlled substance? Yes  No
4. Have you **EVER** engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to any person or organization that has ever engaged or conspired to engage in sabotage, kidnapping, political assassination, hijacking, or any other form of terrorist activity? Yes  No



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**Part 3. Processing Information (Continued)**

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5. Do you intend to engage in the United States in:
- a. Espionage? Yes  No
  - b. Any activity a purpose of which is opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unlawful means? Yes  No
  - c. Any activity to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information? Yes  No
6. Have you **EVER** been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? Yes  No
7. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist, or otherwise participate in the persecution of any person because of race, religion, national origin, or political opinion? Yes  No
8. Have you **EVER** been deported from the United States, or removed from the United States at government expense, excluded within the past year, or are you now in exclusion, deportation, removal, or rescission proceedings? Yes  No
9. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act (INA) for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States, or any immigration benefit? Yes  No
10. Have you **EVER** left the United States to avoid being drafted into the U.S. Armed Forces? Yes  No
11. Have you **EVER** been a J nonimmigrant exchange visitor who was subject to the 2-year foreign residence requirement and have not yet complied with that requirement or obtained a waiver? Yes  No
12. Are you now withholding custody of a U.S. citizen child outside the United States from a person granted custody of the child? Yes  No
13. Do you plan to practice polygamy in the United States? Yes  No
14. Have you **EVER** ordered, incited, called for, committed, assisted, helped with, or otherwise participated in any of the following:
- a. Acts involving torture or genocide? Yes  No
  - b. Killing any person? Yes  No
  - c. Intentionally and severely injuring any person? Yes  No
  - d. Engaging in any kind of sexual contact or relations with any person who was being forced or threatened? Yes  No
  - e. Limiting or denying any person's ability to exercise religious beliefs? Yes  No
15. Have you **EVER**:
- a. Served in, been a member of, assisted in, or participated in any military unit, paramilitary unit, police unit, self-defense unit, vigilante unit, rebel group, guerrilla group, militia, or insurgent organization? Yes  No
  - b. Served in any prison, jail, prison camp, detention facility, labor camp, or any other situation that involved detaining persons? Yes  No
16. Have you **EVER** been a member of, assisted in, or participated in any group, unit, or organization of any kind in which you or other persons used any type of weapon against any person or threatened to do so? Yes  No



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**Part 3. Processing Information** *(Continued)*

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17. Have you **EVER** assisted or participated in selling or providing weapons to any person who to your knowledge used them against another person, or in transporting weapons to any person who to your knowledge used them against another person? Yes  No

18. Have you **EVER** received any type of military, paramilitary, or weapons training? Yes  No

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**Part 4. Accommodations for Individuals With Disabilities and/or Impairments** *(See Page 7 of the instructions before completing this section.)*

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Are you requesting an accommodation because of your disability(ies) and/or impairment(s)? Yes  No

If you answered "Yes," check any applicable box:

- a. I am deaf or hard of hearing and request the following accommodation(s) (if requesting a sign-language interpreter, indicate which language (e.g., American Sign Language)):

- b. I am blind or sight-impaired and request the following accommodation(s):

- c. I have another type of disability and/or impairment (describe the nature of your disability(ies) and/or impairment(s) and accommodation(s) you are requesting):

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**Part 5. Signature** *(Read the information on penalties on Page 8 of the instructions before completing this section. You must file this application while in the United States.)*

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**Your Registration With U.S. Citizenship and Immigration Services**

"I understand and acknowledge that, under section 262 of the Immigration and Nationality Act (INA), as an alien who has been or will be in the United States for more than 30 days, I am required to register with U.S. Citizenship and Immigration Services (USCIS). I understand and acknowledge that, under section 265 of the INA, I am required to provide USCIS with my current address and written notice of any change of address within **10** days of the change. I understand and acknowledge that USCIS will use the most recent address that I provide to USCIS, on any form containing these acknowledgements, for all purposes, including the service of a Notice to Appear should it be necessary for USCIS to initiate removal proceedings against me. I understand and acknowledge that if I change my address without providing written notice to USCIS, I will be held responsible for any communications sent to me at the most recent address that I provided to USCIS. I further understand and acknowledge that, if removal proceedings are initiated against me and I fail to attend any hearing, including an initial hearing based on service of the Notice to Appear at the most recent address that I provided to USCIS or as otherwise provided by law, I may be ordered removed in my absence, arrested, and removed from the United States."

**Selective Service Registration**

**The following applies to you if you are a male at least 18 years of age, but not yet 26 years of age, who is required to register with the Selective Service System:** "I understand that my filing Form I-485 with U.S. Citizenship and Immigration Services (USCIS) authorizes USCIS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon USCIS acceptance of my application, I authorize USCIS to transmit to the Selective Service System my name, current address, Social Security Number, date of birth, and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, USCIS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached 26 years of age."



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**Part 5. Signature (Continued)**

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**Applicant's Statement (Check one)**

- I can read and understand English, and I have read and understand each and every question and instruction on this form, as well as my answer to each question.
- Each and every question and instruction on this form, as well as my answer to each question, has been read to me in the Spanish language, a language in which I am fluent, by the person named in **Interpreter's Statement and Signature**. I understand each and every question and instruction on this form, as well as my answer to each question.

I certify, under penalty of perjury under the laws of the United States of America, that the information provided with this application is all true and correct. I certify also that I have not withheld any information that would affect the outcome of this application.

I authorize the release of any information from my records that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

<b>Signature (Applicant)</b>	<b>Print Your Full Name</b>	<b>Date</b> (mm/dd/yyyy)	<b>Daytime Phone Number</b> (include area code)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**NOTE:** If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit, and this application may be denied.

---

**Interpreter's Statement and Signature**

I certify that I am fluent in English and the below-mentioned language.

**Language Used (language in which applicant is fluent)**

I further certify that I have read each and every question and instruction on this form, as well as the answer to each question, to this applicant in the above-mentioned language, and the applicant has understood each and every instruction and question on the form, as well as the answer to each question.

<b>Signature (Interpreter)</b>	<b>Print Your Full Name</b>	<b>Date</b> (mm/dd/yyyy)	<b>Phone Number</b> (include area code)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

---

**Part 6. Signature of Person Preparing Form, If Other Than Above**

---

I declare that I prepared this application at the request of the above applicant, and it is based on all information of which I have knowledge.

<b>Signature</b>	<b>Print Your Full Name</b>	<b>Date</b> (mm/dd/yyyy)	<b>Phone Number</b> (include area code)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Firm Name and Address

E-Mail Address (if any)



**G-325A, Biographic Information**

Family Name	First Name	Middle Name	<input type="checkbox"/> Male <input type="checkbox"/> Female	Date of Birth (mm/dd/yyyy)	Citizenship/Nationality	File Number <b>A</b>
All Other Names Used (include names by previous marriages)			City and Country of Birth		U.S. Social Security No. (if any)	
Family Name Father Mother (Maiden Name)	First Name	Date of Birth (mm/dd/yyyy)	City, and Country of Birth (if known)		City and Country of Residence	
Current Husband or Wife (If none, so state) Family Name (For wife, give maiden name)	First Name	Date of Birth (mm/dd/yyyy)	City and Country of Birth	Date of Marriage	Place of Marriage	
Former Husbands or Wives (If none, so state) Family Name (For wife, give maiden name)	First Name	Date of Birth (mm/dd/yyyy)	Date and Place of Marriage		Date and Place of Termination of Marriage	

**Applicant's residence last five years. List present address first.**

Street Name and Number	City	Province or State	Country	From		To	
				Month	Year	Month	Year
						<b>Present Time</b>	

**Applicant's last address outside the United States of more than 1 year.**

Street Name and Number	City	Province or State	Country	From		To	
				Month	Year	Month	Year

**Applicant's employment last five years. (If none, so state.) List present employment first.**

Full Name and Address of Employer	Occupation (Specify)	From		To	
		Month	Year	Month	Year
<b>Present Time</b>					

**Last occupation abroad if not shown above. (Include all information requested above.)**

This form is submitted in connection with an application for: <input type="checkbox"/> Naturalization <input type="checkbox"/> Other (Specify): <input type="checkbox"/> Status as Permanent Resident	Signature of Applicant _____ Date _____
---	--

If your native alphabet is in other than Roman letters, write your name in your native alphabet below:

--

**Penalties: Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact.**

**Applicant: Print your name and Alien Registration Number in the box outlined by heavy border below.**

Complete This Box (Family Name)	(Given Name)	(Middle Name)	(Alien Registration Number)
			<b>A</b>

Department of Homeland Security  
U.S. Citizenship and Immigration Services

# I-864W, Intending Immigrant's Affidavit of Support Exemption

## Part 1. Information about the intending immigrant. (You or your adopted child.)

1. Name	Last Name	
	First Name	Middle Name
2. Address	Street Number and Name <i>(include apartment number)</i>	
	City	State or Province
	Country	Zip/Postal Code
3. Date of Birth	<i>(mm/dd/yyyy)</i>	
4. Country of Birth <i>(city/country)</i>		
5. Telephone Number	<i>(Include area code or country and city codes)</i>	
6. Social Security Number <i>(if any)</i>		
7. Alien Registration Number <i>(if any)</i>		

For Government Use Only
<b>This I-864W:</b>
<input type="checkbox"/> does not meet the requirements of exemption.
<input type="checkbox"/> meets the requirements of exemption.
_____ Reviewer
_____ Location
_____ Date <i>(mm/dd/yyyy)</i>

## Part 2. Reason for exemption.

### I am EXEMPT from filing a Form I-864 Affidavit of Support because:

- I have earned (or can be credited with) 40 quarters (credits) of coverage under the Social Security Act (SSA). (Attach SSA earnings statements. Do not count any quarters during which you received a means-tested public benefit.)
- I am under 18, unmarried, immigrating as the child of a U.S. citizen, and will automatically become a U.S. citizen under the Child Citizenship Act of 2000 upon my admission to the United States.
- I am filing for an immigrant visa or adjustment of status as a self-petitioning widow(er) using Form I-360.
- I am filing for an immigrant visa or adjustment of status as a battered spouse or child using Form I-360.

## Part 3. Concluding provision.

I, \_\_\_\_\_, certify under penalty of perjury under the laws of the United States that:

- (a) I know the contents of this exemption request which I signed;
- (b) All the statements in this exemption request are true and correct; and
- (c) I authorize the Social Security Administration to release information about me in its records to the Department of State and U.S. Citizenship and Immigration Services.

\_\_\_\_\_  
*(Signature of intending immigrant, or of U.S. citizen parent if intending immigrant is less than 14 years old)*

\_\_\_\_\_  
*(Date--mm/dd/yyyy)*



a HEARTLAND ALLIANCE partner

June 5, 2007

U.S. Citizenship & Immigration Services  
Attn: Examinations Officer  
101 W. Congress Parkway  
Chicago, IL 60605

**NOTICE OF IIRIRA SECTION 384**

RE: CLIENT, A12 345 678

Dear Immigration Officer:

This is notice to you of your obligations under Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

CLIENT submitted an application to adjust status in February 1999 based on the petition filed on his behalf by his United States citizen wife, CLIENT'S WIFE. CLIENT was scheduled for an adjustment of status interview on October 23, 2001. On October 22, 2001 he submitted a letter requesting that his appointment be rescheduled. Attached is a copy of his appointment notice and his request to reschedule.

CLIENT has been subject to battery and extreme cruelty by his wife throughout their marriage. In March 2002 he filed a self-petition under the Violence Against Women Act with the USCIS's Vermont Service Center, and his self-petition is pending. Attached is a copy of the receipt notice. In accordance with Section 384 of the IIRIRA, the INS may not (a) provide any information to the self-petitioner's spouse or (b) rely on any information provided by the "abusive spouse or parent or other member of the household." Please find attached a copy of the Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA Section 384 memorandum issued on May 5, 1997 by Paul Virtue.

Thank you for your consideration. Please feel free to contact me at 312/660-1370 if you have any questions. A copy of my G-28 is attached.

Sincerely,

Attorney at Law

Enclosures



a HEARTLAND ALLIANCE partner

November 3, 2006

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Attn: Adjudications  
101 W. Congress Parkway  
Chicago, IL 60605

RE: REQUEST TO HOLD THE I-485 IN ABEYANCE BASED ON A  
PENDING VIOLENCE AGAINST WOMEN ACT (VAWA)  
SELF-PETITION, FORM I-360

CLIENT, A12 345 678  
I-485 Adjustment of Status Application

Dear Officer:

Please be advised that through this letter CLIENT With this letter notifies you that:

- (i) I am now representing her in immigration matters (to that end, I attach a completed Form G-28);
- (ii) her current address is as follows:
- (iii) she has been subjected to physical abuse and extreme mental cruelty by her U.S. citizen husband; and
- (iv) on January 6, 2006 she filed a Violence Against Women Act (VAWA) Self-Petition on Form I-360 at the Vermont Service Center.

Through this letter, CLIENT requests:

- (i) that the U.S. Citizenship & Immigration Services (hereinafter "USCIS") keeps her I-485 adjustment application open (in other words, holds it in abeyance) until the I-360 is adjudicated and the Vermont Service Center has renders a decision on her I-360;
- (ii) that USCIS replace the visa petition previously filed by her husband with the I-360 as the basis for CLIENT's I-485; and





a HEARTLAND ALLIANCE partner

- (iii) that in accordance with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) § 384<sup>1</sup>, Department of Homeland Security employees (a) do not provide any information to her husband; and (b) do not rely on any information provided by him. (*See Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA Section 384 Memorandum issued on May 5, 1997 by Paul Virtue*).

Should you have any questions, please do not hesitate to contact me. I have attached an executed Form G-28. Thank you for your attention to this matter.

Sincerely,

Mony Ruiz-Velasco  
Attorney at Law

Enclosures

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<sup>1</sup>

Section 384 of IIRIRA specifically prohibits (i) the disclosure of information to an abusive spouse relating to a spouse that he or she has abused and (ii) the reliance on any information provided by an abusive spouse to the Immigration and Naturalization Service (INS). Employees of the INS who violate either of these provisions are subject to fines of up to \$5,000 for each violation.



# National Immigrant Justice Center

February 5, 2011

U.S. Citizenship & Immigration Services  
Vermont Service Center  
ATTN: VAWA  
75 Lower Welden Street  
St. Albans, VT 05479

**RE: FORM I-765, APPLICATION FOR EMPLOYMENT AUTHORIZATION  
WITH FEE WAIVER REQUEST  
Jones, Patricia (A 222-333-444)**

Dear Immigration Officer:

Our office represents Patricia Jones in her self-petition pursuant to the Violence Against Women Act and her corresponding applications for adjustment of status and employment authorization. Ms. Jones is the abused spouse of a U.S. citizen, therefore, she will be immediately eligible for adjustment of status pursuant to INA § 245(a) once her VAWA self-petition is approved.

Because Ms. Jones has a pending application for adjustment of status, she qualifies for employment authorization pursuant to 8 C.F.R. 274a.12(c)(9).

Enclosed please find the following in support of Ms. Jones' application for employment authorization:

- Form G-28, Notice of Entry of Appearance as Attorney
- Form I-912, Fee Waiver Request
- Form I-765, Application for Employment Authorization
- Two Passport-Style Photographs
- Copy of Birth Certificate of Ms. Jones with English Translation

Please do not hesitate to contact me at (312) 660-1611 if you have any further questions. Thank you for your time and attention to this matter.

Sincerely,

Karolyn Talbert  
Attorney

Department of Homeland Security  
U.S. Citizenship and Immigration Services

**I-765, Application For  
Employment Authorization**

**Do not write in this block.**

Remarks	Action Block	Fee Stamp
A#		
Applicant is filing under §274a.12 _____		
<input type="checkbox"/> Application Approved. Employment Authorized / Extended ( <i>Circle One</i> ) until _____ (Date). Subject to the following conditions: _____ (Date). Application Denied. <input type="checkbox"/> Failed to establish eligibility under 8 CFR 274a.12 (a) or (c). <input type="checkbox"/> Failed to establish economic necessity under 8 CFR 274a.12(c)(14), (18) and 8 CFR 214.2(f)		

I am applying for:  Permission to accept employment.  
 Replacement (*of lost employment authorization document*).  
 Renewal of my permission to accept employment (*attach previous employment authorization document*).

1. Name (Family Name in CAPS) (First) (Middle)	Which USCIS Office?	Date(s)
JONES Patricia	N/A	N/A
2. Other Names Used (include Maiden Name)	Results (Granted or Denied - attach all documentation)	
FLORES RUIZ, Patricia	N/A	
3. U.S. Mailing Address (Street Number and Name) (Apt. Number)	12. Date of Last Entry into the U.S., on or about: (mm/dd/yyyy)	
1818 W 18th Street 2	05/2009	
(Town or City) (State/Country) (ZIP Code)	13. Place of Last Entry into the U.S.	
Chicago IL 60608	San Ysidro, CA	
4. Country of Citizenship/Nationality	14. Status at Last Entry (B-2 Visitor, F-1 Student, No Lawful Status, etc.)	
Guatemala/Guatemalan	No Lawful Status	
5. Place of Birth (Town or City) (State/Province) (Country)	15. Current Immigration Status (Visitor, Student, etc.)	
Guatemala City Guatemala Guatemala	AOS Applicant/ApprovedVAWA Self-Petitioner	
6. Date of Birth (mm/dd/yyyy) 7. Gender	16. Go to the "Who May File Form I-765?" section of the instructions. In the space below, place the letter and number of the eligibility category you selected from the instructions. (For example, (a)(8), (c)(17)(iii), etc.).	
05/01/1980 <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	( c ) ( 9 ) ( )	
8. Marital Status <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Widowed <input checked="" type="checkbox"/> Divorced	17. If you entered the eligibility category, (c)(3)(C), in Question 16 above, list your degree, your employer's name as listed in E-Verify, and your employer's E-Verify Company Identification Number or a valid E-Verify Client Company Identification Number in the space below.	
9. Social Security Number (Include all numbers you have ever used, if any)	Degree: N/A	
None	Employer's Name as listed in E-Verify: N/A	
10. Alien Registration Number (A-Number) or I-94 Number (if any)	Employer's E-Verify Company Identification Number or a valid E-Verify Client Company Identification Number N/A	
A205123456		
11. Have you ever before applied for employment authorization from USCIS?		
<input type="checkbox"/> Yes (Complete the following questions.) <input checked="" type="checkbox"/> No (Proceed to Question 12.)		

**Certification**

**Your Certification:** I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking. I have read the "Who May File Form I-765?" section of the instructions and have identified the appropriate eligibility category in **Question 16**.

Signature \_\_\_\_\_ Telephone Number \_\_\_\_\_ Date \_\_\_\_\_  
 (312) 660-1362

**Signature of Person Preparing Form, If Other Than Above:** I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name \_\_\_\_\_ Address \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Remarks	Initial Receipt	Resubmitted	Relocated		Completed		
			Received	Sent	Approved	Denied	Returned



# National Immigrant Justice Center

*VIA CERTIFIED MAIL*

March 10, 2009

U.S. of Citizenship and Immigration Services  
Vermont Service Center  
Attn: VAWA Unit  
75 Lower Welden Street  
St. Albans, VT 05479-0001

**RE: REQUEST TO RENEW DEFERRED ACTION  
APPLICATION TO RENEW EMPLOYMENT AUTHORIZATION (I-765)**

**Maria Ochoa (A987 654 321)**

Dear Immigration Officer:

This office represents Ms. Maria Ochoa in her request to renew Deferred Action and her application to renew her employment authorization pursuant to 8 C.F.R. § 274a.12(c)(14). Ms. Ochoa is the beneficiary of an approved VAWA self-petition, Form I-360. She currently has Deferred Action and employment authorization valid to June 4, 2009. At this time we are requesting that the Vermont Service Center renew Ms. Ochoa's Deferred Action and employment authorization.

Enclosed please find the following in support of this request:

- Form G-28, Notice of Entry of Appearance as Attorney
- Money Order for \$380 payable to "Department of Homeland Security"
- Form I-765, Application for Employment Authorization
- Two passport style photographs
- Form I-797, Approval Notice for Form I-360, VAWA self-petition
- Form I-797, Approval Notice for Form I-765, Application for Employment Authorization, valid to June 4, 2009
- Copy of current Employment Authorization Document
- Form I-797, Grant of Deferred Action valid to June 4, 2009

Please do not hesitate to contact me at (312) 660-1335 if you require more information. Thank you for your attention to this matter.

Sincerely,

Sara A. Doody,  
BIA Accredited Representative



# National Immigrant Justice Center

September 16, 2010

U.S. of Citizenship and Immigration Services  
Vermont Service Center  
Attn: VAWA Unit  
75 Lower Welden Street  
St. Albans, VT 05479-0001

**RE: REQUEST FOR RENEWAL OF PRIMA FACIE NOTICE  
Susan Smith (A123-456-789)**

Dear Immigration Officer:

Our office represents Ms. Susan Smith in her Form I-360, VAWA self-petition. On February 15, 2010, the Vermont Service Center issued a prima facie notice valid until October 14, 2010. Ms. Smith has relied on this notice to obtain the necessary public benefits in order to support herself and her children. At this time, we are writing to request that the Vermont Service Center extend Ms. Smith's prima facie notice during the pendency of her VAWA self-petition.

Enclosed please find the following in support of this request:

- Form G-28, Notice of Entry of Appearance as Attorney
- Receipt Notice for I-360 VAWA self-petition
- Prima Facie Notice issued February 15, 2010 and valid to October 14, 2010

Please do not hesitate to contact me at (312) 660-1335 if you require more information. Thank you for your time and attention to this matter.

Sincerely,

Sara A. Doody  
BIA Accredited Representative



**Request for Fee Waiver**  
**Department of Homeland Security**  
 U.S. Citizenship and Immigration Services

**USCIS**  
**Form I-912**  
 OMB No. 1615-0116  
 Expires 05/31/2015

► Before you fill out this form, please read the instructions.

**Section 1. Information About You** *(Provide information about yourself. If you are applying for a minor child, provide information about the minor child.)*

**Line 1. a.** Family Name (Last Name)

**Line 1. b.** Given Name (First Name)

**Line 1. c.** Middle Initial

**Line 2.** Alien Registration Number ► A-

**Line 3.** Date of Birth *(mm/dd/yyyy)* ►

**Line 4.** Marital Status  Never Married  Divorced  Marriage Annulled  
 Married  Widow(er)  Legally Separated

**Line 5.** Applications and Petitions (Enter the form number(s) of the application(s) and/or petition(s) for which you are requesting a fee waiver.)  
 Biometrics services fees, where applicable, will be included in the fee waiver request.

**FOR USCIS USE ONLY**

Application Received At  
*(check only one box):*

**USCIS Field Office**

Fee Waiver Approved  
 Date: \_\_\_\_\_

Fee Waiver Denied  
 Date: \_\_\_\_\_

**USCIS Service Center**

Fee Waiver Approved  
 Date: \_\_\_\_\_

Fee Waiver Denied  
 Date: \_\_\_\_\_

**Section 2. Additional Information for Dependent(s)**

**Line 6.** Complete the Table below if applicable. *(If you need more space, attach a separate sheet of paper.)*

Name (First, MI, Last)	A-Number (If applicable)	Is Individual Included in Fee Waiver Request?	Date of Birth <i>(mm/dd/yyyy)</i>	Relationship to You
	A-	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	A-	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	A-	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	A-	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	A-	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	A-	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	A-	<input type="checkbox"/> Yes <input type="checkbox"/> No		

**Section 3. Basis for Your Request (Check any that apply. For additional information, see the form instructions.)**

- Line 7. a.  I am or a relevant member of my household is currently receiving a means-tested benefit. (Complete Sections 4 and 7.)
- Line 7. b.  My household income is at or below 150% of the Federal Poverty Guidelines. (Complete Sections 5 and 7.)
- Line 7. c.  I have a financial hardship. (Complete Sections 5, 6 and 7.)

**Section 4. Means-Tested Benefit**

Line 8. Complete the Table Below (If you need more space, attach a separate sheet of paper.)

Name of Person Receiving the Benefit	Name of Agency Awarding Benefit	Date Benefit Was Awarded	Is This Benefit Being Received Now?
David Flores	ILDHS: SNAP	01/01/2010	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

**Section 5. Household Income (Provide evidence of monthly income or other support.)**

- Line 9. Other than you, how many others in your household depend on the stated income? ▶
- (round to the nearest dollar)
- Line 10. Average monthly wage income from household members ▶
- Line 11. Enter other money received each month that is not included in Line 14. (This could include spousal support, child support, unemployment, etc.) ▶
- 
- TOTAL (USCIS will compare this amount to Federal Poverty Guidelines) ▶

**Section 6. Financial Hardship**

**Line 12.** Describe your particular situation. Be sure to include how this situation has caused you to incur costs (and what the costs were) or loss of income that you have experienced (and what that loss was). Complete this section in English; otherwise, provide an accompanying English translation. *(If you need more space, attach a separate sheet of paper.)*

**If you are currently unemployed, you must complete Lines 13 and 14.**

**Line 13.** Date that you became unemployed *(mm/dd/yyyy)* ►

**Line 14.** Amount of unemployment compensation (monthly) that you are receiving (enter dollars)

**Line 15.** List your assets and the value of your assets. *(If you need more space, attach a separate sheet of paper.)*

Type of Asset	Value (enter dollars)
<b>TOTAL Value of Assets</b>	<input style="width: 100%;" type="text"/>



**Section 6. Financial Hardship (Cont'd)**

**Line 16.** List your average monthly costs, and provide evidence of monthly payments where possible. *(If you need more space, attach a separate sheet of paper.)*

Type of Cost	Value (Enter Dollars)	Type of Cost	Value (Enter Dollars)
Rent		Loan Payment	
Mortgage		Commuting Costs	
Food		Medical	
Utilities		School	
Child/Elder Care		Other Expenses	
Insurance		<b>TOTAL Monthly Costs</b>	<input type="text"/>

**Section 7. Your Signature and Authorization**

*Do not sign your Form I-912 until it is complete and you are ready to file.*

I take full responsibility for the accuracy of all the information provided, including all supporting documentation. I authorize the release of any information, including the release of my Federal tax returns, that USCIS needs to determine my eligibility.

**Each person applying for a fee waiver request must sign Form I-912. This includes individuals identified in Sections 1 and 2 if 14 years of age or older. (If you need more space, attach a separate sheet of paper.)**

**Line 17.** Your Signature  Date (mm/dd/yyyy) ►   
 Printed Name

**Line 17.1.** Additional Signature  Date (mm/dd/yyyy) ►   
 Printed Name

**Line 17.2.** Additional Signature  Date (mm/dd/yyyy) ►   
 Printed Name

**Line 17.3.** Additional Signature  Date (mm/dd/yyyy) ►   
 Printed Name

**Line 17.4.** Additional Signature  Date (mm/dd/yyyy) ►   
 Printed Name

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**Section 7. Your Signature and Authorization (continued)**

Line 17.5. Additional Signature  Date (mm/dd/yyyy) ▶

Printed Name

---

Line 17.6. Additional Signature  Date (mm/dd/yyyy) ▶

Printed Name

---

Line 17.7. Additional Signature  Date (mm/dd/yyyy) ▶

Printed Name



a HEARTLAND ALLIANCE partner

June 5, 2007

National Records Center  
150 Space Center Loop, Ste. 300  
Lee's Summit, MO 64064-2140

**FREEDOM OF INFORMATION ACT REQUEST**

**RE: CLIENT**  
**Date of Birth: 01/01/1975**  
**A Number: Axx xxx xxx**

Dear FOIA Officer:

This is a request pursuant to the Freedom of Information Act ("FOIA"), 5 USC Section 552, *et seq.* Enclosed please find Forms G-639 and G-28. I am writing to request all written materials pertaining to Ms. X's immigration file.

As provided in the FOIA, I will be expecting a response to my request within 10 working days. Please send your response to my attention. Thank you for your prompt attention to this request.

Sincerely,

Mony Ruiz-Velasco  
Attorney at Law

Enclosures

Certified mail return receipt number:

Department of Homeland Security  
U.S. Citizenship and Immigration Services

## Form G-639, Freedom of Information/Privacy Act Request

**NOTE:** Use of this form is optional. Any written format for a Freedom of Information or Privacy Act request is acceptable.

**START HERE - Type or print in black ink. Read instructions before completing this form.**

**1. Type of Request** (Check appropriate box. **NOTE:** If you are filing this request for records on behalf of another individual, please respond to Number 1 as it would apply to that individual.)

- Freedom of Information Act (FOIA): I am not a U.S. citizen/Lawful Permanent Resident and I am requesting my own records.
- Freedom of Information Act (FOIA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting documents other than my own records.
- Privacy Act (PA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting my own records.
- Amendment of Record (PA only): I am a U.S. citizen/Lawful Permanent Resident and I am requesting amendment of my own records.
- Other: \_\_\_\_\_

**2. Description of Record(s) Requested:**

**NOTE:** While you are not required to respond to all items in Number 2, failure to provide complete and specific information as requested may result in a delay in processing or an inability to locate the record(s) or information requested.

<input checked="" type="checkbox"/>	Complete Alien File (A-File)
<input type="checkbox"/>	Other (please specify): _____

**Purpose:** (Optional: You are not required to state the purpose of your request. However, doing so may assist USCIS in locating the record(s) needed to respond to your request.)

Family Name (Last Name)	Given Name (First Name)	Middle Name	
Other Names Used (if any)		Name at time of entry into the U.S.	I-94 Admission #
Alien Registration Number (A#)	Petition or Claim Receipt #	Country of Birth	Date of Birth (mm/dd/yyyy)

**Names of other family members that may appear on requested record(s) (i.e., spouse, daughter, son):**

<b>Family Member's Name:</b> Given Name (First Name)	Middle Name	Family Name (Last Name)	Relationship
<b>Father's Name:</b> Given Name (First Name)	Middle Name	Family Name (Last Name)	
<b>Mother's Name:</b> Given Name (First Name)	Middle Name	Family Name (Last Name, including Maiden Name)	
Country of Origin (Place of Departure)	Port of Entry Into the U.S.		Date of Entry (mm/dd/yyyy)
Manner of Entry (Air, Sea, Land)		Mode of Travel (Name of Carrier)	

**3. Subject of Record Consent to Release Information** (Must be signed by the subject of record(s) requested.)

By my signature, I consent to allow USCIS to release to the requester named in Number 5 (Check applicable box):

- All of my records       A portion of my records (If a portion, specify below what part, i.e., copy of application.)

Print Name of Subject of Record \_\_\_\_\_

Signature of Subject of Record \_\_\_\_\_

Date (mm/dd/yyyy) \_\_\_\_\_

- Deceased Subject - **Proof of death must be attached** (Obituary, Death Certificate, or other proof of death required)

**4. Verification of Identity** (Required; Fill out all that apply.)

Name of Subject of Record (First, Middle, Last)		Daytime Telephone	E-mail Address
Address (Street Number and Name)		Apt. Number	
City	State	Zip Code	
Date of Birth (mm/dd/yyyy)	Place of Birth		

The Subject of Record must provide a signature under either a Notarized Affidavit of Identity or a Sworn Declaration Under Penalty of Perjury:

- Notarized Affidavit of Identity

Signature of Subject of Record \_\_\_\_\_

Date (mm/dd/yyyy) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Telephone No. \_\_\_\_\_

Signature of Notary \_\_\_\_\_

My Commission Expires on \_\_\_\_\_

**OR**

- Sworn Declaration Under Penalty of Perjury

**Executed outside the United States**

If executed outside the United States: "I declare (certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

**Executed in the United States**

If executed within the United States, its territories, possessions, or commonwealths: "I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

Signature of Subject of Record \_\_\_\_\_

Signature of Subject of Record \_\_\_\_\_

**5. Requester Information**

By my signature, I consent to pay all costs incurred for search, duplication and review of materials up to \$25 (See instructions)

Signature of Requester: \_\_\_\_\_

Name of Requester (Fill out if different from the Subject of Record.)		Daytime Telephone	E-mail Address
Address (Street Number and Name)		Apt. Number	
City	State	Zip Code	



# National Immigrant Justice Center

VIA CERTIFIED MAIL

December 10, 2009

U.S. Customs and Border Protection  
FOIA Division  
799 9<sup>th</sup> Street NW, Mint Annex  
Washington, D.C. 20229-1177

**Re: FOIA Request**  
**Name:**  
**D/O/B:**

I am writing to request a copy of my immigration record with the U.S. Customs and Border Protection. I was detained by CBP at or around Tijuana/San Diego in or around November of 2008. Please send a copy of my record to the following address:

NAME  
ADDRESS

Thank you for your time and attention to this matter.

Sincerely,

---

<Signature>



# National Immigrant Justice Center

*VIA CERTIFIED MAIL*

September 24, 2009

Office of the General Counsel  
Attn: FOIA Section  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 2600  
Falls Church, VA 22041

**Re: NAME:  
A#:  
DOB:**

## **FOIA REQUEST**

I am writing to request a copy of my record with the Executive Office for Immigration Review pursuant to 5 U.S.C. § 552. Attached please find my completed Form DOJ-361.

Please send a copy of my record to the following address:

NAME  
ADDRESS

If you have any questions, please do not hesitate to call me at \_\_\_\_\_. Thank you for your time and attention to this matter.

Sincerely,

---

<Signature>



## National Immigrant Justice Center

Date:

Address:

Dear:

Please find enclosed correspondence from U.S. Citizenship & Immigration Services (USCIS) showing you established a *prima facie* case for your I-360 self-petition. Although the *prima facie* letter is not an approval letter, it does state that the initial review of your application appears to meet all the requirements to state a claim under the Violence Against Women Act. You may still be required to provide additional information to USCIS.

This *prima facie* letter may be used to assist you in receiving certain public benefits. There are a couple of things you should keep in mind when applying for public benefits. When you apply to become a lawful permanent resident, you will need to show immigration that you will not become a “public charge.” This means that you must convince the U.S. Citizenship and Immigration Services (USCIS) that you will be able to support yourself and your family without long-term welfare and other assistance from the government. You should be careful about what benefits you receive, and the length of time during which you receive such assistance.

To determine whether and how certain types of assistance will affect your immigration case can be a confusing matter. State benefit granting agencies are not always informed about how certain benefits may affect your future immigration status. I am sending you a flyer on information about benefits you may be eligible for, and a policy manual which can be presented to caseworkers at various state agencies if they do not think you are eligible for benefits.

If you have further questions, please visit our office during consultation hours.

Sincerely,  
National Immigrant Justice Center





## National Immigrant Justice Center

Fecha:

Dirección:

Estimada:

Encuentre anexo correspondencia del Servicio de Ciudadanía e Inmigración (USCIS) a cerca de la notificación *prima facie* para su auto-petición, el formulario I-360. La carta *prima facie* no es una aprobación, pero si indica que al revisar su solicitud preliminarmente parece que ha cumplido con los requisitos para aprobar su caso bajo la ley de VAWA (Ley en Contra de la Violencia hacia la Mujer). Tal vez necesitará proveer más información al USCIS.

Esta carta, *prima facie*, podrá ser utilizada para obtener algunos beneficios públicos. Hay algunos detalles que debe tomar en cuenta cuando aplique para beneficios públicos. Cuando aplique para la residencia permanente, necesitará demostrar a inmigración que no se convertirá en una “carga publica.” Esto significa que necesitará enseñar a USCIS que usted podrá mantener a su familia y mantenerse a si misma, sin la ayuda del Departamento de Bienestar Publica u otra asistencia del gobierno. Usted debe de ser cuidadosa al obtener beneficios, y tener cuidado con la duración de dichos beneficios públicos.

Es un asunto complicado el averiguar cuales tipos de asistencia afectaran su caso de inmigración. Agencias del estado en muchas ocasiones no están bien informadas de como algunos beneficios pueden afectar su status legal migratorio. Si tiene mas preguntas, visite nuestra oficina durante las horas de consulta.

Le estoy enviando un folleto con información acerca de los beneficios a los cuales usted si es elegible para recibir. Si los trabajadores de las agencias del estado no creen que es elegible para recibir dichos beneficios, usted puede mostrar una copia de la póliza de orientación (guidance policy), incluida en esta carta.

Atentamente,  
Centro Nacional de Justicia para Inmigrantes



## National Immigrant Justice Center

### **Public Benefits in Illinois: Information for VAWA Applicants and Their Advocates**

If you are a domestic violence survivor working to secure permanent status in the United States and safety for yourself and your children, you may be able to access certain benefits and services provided by the U.S. government and the state of Illinois.

#### **To apply for benefits...**

...contact your local office of the Illinois Department of Human Services (IDHS). Address and contact information can be found at their website, <http://www.dhs.state.il.us/officeLocator/>, or may be accessed by calling the IDHS helpline at 1-800 843-6154.

#### **When you arrive for your appointment...**

... you will be interviewed by an IDHS caseworker, who will assess your eligibility for benefits under state and federal law. You should be advised that many immigrants are *not* eligible for public assistance programs, and you may meet resistance from your caseworker. It is extremely important that you tell the caseworker that you are applying under the regulations governing “Abused Noncitizens and Their Children or Parents.” In most cases, your immigration status, independent of this information, is not sufficient to establish eligibility for assistance, and failure to state that your application relates to abuse may result in a denial of benefits.

#### **If you believe you were erroneously denied benefits...**

...Please tell your NIJC legal representative immediately.

#### ***Please Note...***

**...that the above information applies only to your eligibility based on immigration status. IDHS, and every benefits-granting agency, will have individual program-related criteria to determine whether you are ineligible because of income, work status, etc.**



# National Immigrant Justice Center

## **BENEFICIOS PUBLICOS EN ILLINOIS: INFORMACIÓN PARA APLICANTES DE VAWA**

Si Usted eres una sobreviviente de violencia doméstica solicitando un estatus permanente en los Estados Unidos y trabajando para mantener la seguridad para Usted y sus hijos, Usted podrá tener acceso a algunos beneficios públicos y servicios que proveen el gobierno Estadounidense y el estado de Illinois

### **Para aplicar para beneficios...**

...comuníquese con su oficina local del Departamento de Servicios Humanos de Illinois (Illinois Department of Human Services, IDHS). Las localidades y información se puede obtener por la pagina de Internet, <http://www.dhs.state.il.us/officeLocator/>, o podrá ser obtenido llamando a la línea de ayuda de IDHS at 1 800 843-6154.

### **Cuando llegas a su cita ...**

... será entrevistada por un asistente social de IDHS, quien podrá evaluar su elegibilidad para beneficios bajo ley federal y estatal. Usted debe saber que varios inmigrantes no son elegibles para programas de asistencia publica, y podrás recibir resistencia de su asistente social. Es muy importante que le digas al asistente social que Usted esta aplicando bajo las regulaciones “Abused Noncitizens and Their Children or Parents.” En la mayoría de los casos, su estatus migratorio, independiente de esta información, no es suficiente para establecer su elegibilidad para asistencia, y falta de declara que su aplicación esta relacionada con abuso podrá resultar en una negación de beneficios.

### **Si su crees que fuiste negado beneficios erróneamente...**

...por favor dile a su representante legal de NIJC inmediatamente.

### ***POR FAVOR SEPA ...***

...que la información previa solamente aplica a su elegibilidad basado en su estatus migratorio. IDHS, y cada agencia que provee beneficios, tendrá propio criterio para determinar si eres elegible a causa de ingresos, estatus de empleo, etc.

**Notice To Client Regarding Pending Matters**

Client's Name: \_\_\_\_\_

Date: \_\_\_\_\_ Representative: \_\_\_\_\_

Type of matter pending:       I-360, VAWA Self-Petition  
    I-485, Adjustment of Status Application  
    Other \_\_\_\_\_

We appreciate you coming to our office today to prepare the above application. Today we have explained to you what you will need to bring back to us so that we may fully complete this stage of your case.

It is important that we promptly prepare this part of your case. We are not able to hold your case indefinitely with this matter pending. We are, therefore, giving you a deadline date of:

Date: \_\_\_\_\_

by which to mail the needed documents and/or fees. Please mail the documents and/or fees to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you do not return the requested documents and/or government fees by this date, we will close your case with our office without further notice and the National Immigrant Justice Center will also close your case. If we close your case you may need to seek representation elsewhere

Please promptly gather together the items we discussed and mail the documents as discussed.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Date

Original:      Give to client  
Copies to:      Client's file and NIJC



**Aviso al Cliente Con Respecto a Materiales Pendientes**

Nombre de Cliente: \_\_\_\_\_

Fecha: \_\_\_\_\_ Consejero/a: \_\_\_\_\_

Tipo de Caso Pendiente       I-360, Auto-Petición bajo VAWA  
    I-485, Aplicación para Ajuste del Estatus  
    Otro \_\_\_\_\_

Apreciamos el que hoy haya venido a nuestra oficina para preparar su aplicación. Le hemos explicado lo que necesita presentar para poder terminar con esta etapa de su caso.

Es importante que preparemos esta etapa de su caso lo más pronto posible. Nuestra oficina no puede continuar con este asunto pendiente indefinidamente. Por lo tanto hemos decidido darle hasta el día:

Fecha: \_\_\_\_\_

fecha en la cual usted necesita enviar los documentos y/o honorarios necesario por correo. Por favor, envía los documentos y/o honorarios a la siguiente dirección:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Si usted no se envía la información necesaria por el día que se le indica esta carta, **cerrará su caso sin más notificación** y el Centro Nacional de Justicia para Inmigrantes (NIJC) va a cerrar su caso también. Si cerramos su caso, es posible que usted necesitara buscar otro representante legal.

Favor de juntar la información/documentación que le hemos indicado y envía los documentos pedidos antes de la fecha indicada.

\_\_\_\_\_  
Firma del cliente

\_\_\_\_\_  
Fecha

Original:      Dar al Cliente  
Copias a:      Archivo del Cliente y NIJC



## **Frequently Asked Questions In Filing a VAWA Case**

### **FORMS**

- **Where can I find the government forms?**
  - [www.uscis.gov](http://www.uscis.gov)
- **What version of the forms should I use?**
  - Please check [www.uscis.gov](http://www.uscis.gov) for the most recent version of the forms. The government updates the forms frequently. Upon updating the forms, USCIS will indicate on the website under the relevant forms section whether or not it will accept former versions of the forms.
- **What forms do I need?**
  - It depends on your client's eligibility.
  - If your client is only eligible for the I-360, Self-Petition for Battered Spouse/Child:
    - Form G-28, Notice of Appearance as Attorney
    - Form I-360, Self-Petition for Battered Spouse/Child
  - If your client is also eligible to file the I-485, application for adjustment of status simultaneously:
    - Form G-28, Notice of Appearance as Attorney (for I-360)
    - I-360, Self-Petition for Battered Spouse/Child
    - Form G-28, Notice of Appearance as Attorney (for I-485)
    - I-485, Application for Adjustment of Status
    - G-325A, Biographic Information
    - I-864W, Waiver of Affidavit of Support
    - I-693, Report of Medical Examination and Vaccination Record
    - Form G-28, Notice of Appearance as Attorney (for I-765)
    - I-765, Application for Employment Authorization
- **Does my client need to sign the forms or is the attorney signature sufficient?**
  - Both the applicant and the person preparing the form (generally the attorney) need to sign the forms

### **ELIGIBILITY**

- **What applications can my client file? Only the I-360? Or, can she/he also file the I-765 and I-485?**



- Please consult with NIJC if this is unclear. This information should be in the case summary as well as in the NIJC case notes. It is important to confirm eligibility for the application before filing.

## **USCIS FEES AND FEE WAIVERS**

- **What are the USCIS fees for the applications?**
  - Please check [www.uscis.gov](http://www.uscis.gov) for the current fees for each application
- **Can we submit a request for a waiver of the fees? If so, how do we submit this request?**
  - VAWA applicants can request a fee waiver for the I-485 and I-765. There is no fee for the I-360 and thus, no need for a fee waiver.
  - A request for a fee waiver should be made on Form I-912. USCIS will exercise its discretion to grant a fee waiver in the case of an applicant who: a) is receiving a means-tested benefit, b) has a household income of 150% or below of the poverty guidelines, or c) can demonstrate financial hardship. An applicant may claim eligibility for a fee waiver on more than one ground. It is recommended that you submit any documentation that would substantiate the fee waiver request such as means-tested benefits statements, taxes, pay stubs, utility bills, rent receipts, medical bills, etc.
  - In addition, we recommend noting in the cover letter that the client is requesting a fee waiver request.

## **ENGLISH TRANSLATION**

- **Does NIJC provide translators for client phone calls and/or interview?**
  - Unfortunately, NIJC does not have the resources to provide translators. We ask that *pro bono* attorneys first attempt to find a translator at their firm. If this is not an option, please check with the client to see if she/he has a translator. The translator cannot be the client's family member. If all fails, please contact NIJC to inquire about volunteer interpreters.
- **Does the translator need to be certified to conduct the translation?**
  - No, but they should be competent in both English and the foreign language
- **Do all documents that contain foreign language require translations?**
  - Yes, except when the entire document is issued in both English and the foreign language. For example, some passports have all information in the foreign language and also English.
- **What if only part of the document is in a foreign language?**
  - You need to submit a translation for foreign language portion of the document.
- **What are the requirements for the translation?**
  - The English translation must have a signed certificate of translator's competence:

## Certificate of Translator's Competence

I, (translator's name), hereby certify that the above is an accurate translation of the original in (foreign language) and that I am competent in both English and (foreign language) to render such a translation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

- **Do translations need to be notarized?**
  - No, but they must be signed by the translator
- **Is there a format for translation of foreign birth certificates and marriage certificates?**
  - Yes, please see the appendix for samples
- **Is a full translation of the entire document required or can you submit a translation of only the relevant portion?**
  - A full translation is generally required. However, USCIS will accept the translation templates for birth and marriage certificates found in the appendix.

### **FILING QUESTIONS**

- **When an immigrant qualifies to file multiple applications simultaneously, including Forms I-360, I-765, and I-485, should these be mailed in the same envelope?**
  - Yes. However, each application (I-360, I-485, and I-765) should be its own packet including a cover letter, the relevant immigration forms, and supporting documents. In addition, it is helpful to place each application packet in its own individual envelope labeled accordingly (e.g., "Patricia Flores I-360"), then place all envelopes together in one large envelope for mailing.
- **If the I-485 and I-765 is filed concurrently with the I-360, should we simply note in the I-485 cover letter that the I-485 is filed concurrently with the I-360, or do we need to enclose evidence of the I-360 petition in the I-485 packet, such as a copy of the Form I-360?**
  - We recommend referencing the concurrent filing in the cover letter. There is no need to include a copy of the I-360 form in the I-485 and I-765 packets.
- **Where should I mail the I-360, I-485, and I-765 packets?**
  - U.S. Citizenship and Immigration Services  
Vermont Service Center  
Attn: VAWA Unit  
75 Lower Welden St.

St. Albans, VT 05479

- **Should the application and supporting documents be professionally bound?**
  - No. Instead, two-hole punch the entire filing (including the cover letter, applications and documents) and either use a two-hole fastener to bind the filing or a binder clip.
  
- **Should the supporting documents be tabbed?**
  - Vermont Service Center discourages the use of tabs and has commented that they oftentimes have to remove the tabs in order to fit the filing in their government files. Instead of using tabs, please use page numbers or exhibit stickers that stick directly on the exhibit and do not extend past the edge of the paper.
  
- **When do I need to send passport photos?**
  - The I-485 and I-765 each require 2 passport photos at the time of filing. Therefore if you are submitting both an I-485 and I-765, you should send 4 passport photos.
  
- **Should the passport photos be stapled or clipped and to what?**
  - Place them in a small envelope writing the clients name and A number (if the client has one) both on the back of the photo (in pencil) and on the envelope. Staple the envelope to the upper left corner of the relevant application.

## **SUPPORTING DOCUMENTS**

- **Should letters of support from family and friends be notarized?**
  - We recommend notarizing letters, but it is not required as long as the writer has signed the letter himself/herself.

## **PROCESSING TIMES**

- **How long will it take VSC to adjudicate the VAWA self-petition?**
  - Please see the current processing times at [www.uscis.gov](http://www.uscis.gov). Processing times vary per office. Please review the VSC for I-360 processing times.
  
- **Once the VAWA self-petition is approved, how long will it take for an interview on the application for adjustment of status?**
  - Please see the current processing times at [www.uscis.gov](http://www.uscis.gov). Please review the Chicago District Office for the processing time on the I-485.
  
- **How long will it take for my client to receive her work permit?**
  - Once your client is eligible to file her application for a work permit, please check the processing times at [www.uscis.gov](http://www.uscis.gov) for the VSC for I-765.

## **BIOMETRICS APPOINTMENT**

- **My client has been scheduled for a biometrics appointment. What is this appointment and should I attend with my client?**
  - The biometrics appointment is required for all applicants for employment authorization (I-765) and adjustment of status (I-485). At the appointment, the official will take your client's digital fingerprints and digital photograph. Your client must attend this appointment or she will abandon her application. There is no need for you to accompany your client to the appointment.
- **What should my client take to the appointment?**
  - Your client should take the original biometrics appointment notice and her photo identification

## **VAWA PRIMA FACIE NOTICE**

- **My client received a prima facie notice. Does she qualify for public benefits?**
  - With a VAWA prima facie notice, your client may qualify for public benefits. Please refer her to the nearest Illinois Department of Human Services to apply for benefits. <http://www.dhs.state.il.us/page.aspx?>
- **Are there any immigration consequences if my client accepts public benefits with her prima facie notice?**
  - When applying for adjustment of status (Form I-485), your client will need to demonstrate that she will not be a public charge. Therefore, if your client receives public benefits, she should be working toward self-sufficiency by the time of the adjustment of status interview in order to demonstrate that she will not be a public charge.

## **VAWA APPROVAL NOTICE AND DEFERRED ACTION**

- **The Vermont Service Center approved my client's I-360 and issued her deferred action status for 15 months. Is this normal to receive deferred action without requesting it?**
  - Yes, the VSC issues deferred action with approved I-360s for principal applicants.
- **Can my client travel outside the country with deferred action?**
  - No, please strongly advise against travel. Your client can be barred from applying to adjust status to that of lawful permanent resident if they have accrued unlawful presence and leave the United States. Deferred action does not permit an individual to re-enter the United States lawfully if they were to leave. Please contact NIJC if your client is considering travel for emergency reasons.
- **My client's children are included on the I-360 approval notice but they did not receive deferred action. Is this normal? Can we request deferred action for the**

### derivatives?

- Yes, derivatives must request deferred action in writing to the VSC after the principal's I-360 is approved.

## EMPLOYMENT

- My client is working under a false name. On the I-360, I-485, and G-325A, it asks about current employment. Do I need to disclose this employment?
  - Yes. The client must answer all questions on the government forms truthfully and should disclose employment if she is working.
- What are the consequences of my client working under a false name?
  - It depends. There are permanent bars to several forms of immigration relief for individuals who make a false claim to U.S. citizenship on a Form I-9 in order to work. On the other hand, if you client did not make a false claim to U.S. citizenship, he/she needs to disclose the unlawful employment but she remains eligible for the VAWA self-petition and adjustment of status. *Please contact NIJC if your client states that she made a false claim to U.S. citizenship.*
- I am filing a VAWA self-petition for my client. Is she eligible to file for work authorization (I-765) at the same time?
  - No, unless she is filing her application for adjustment of status concurrently.
- What are the categories under which a VAWA client qualified for employment authorization?
  - (c)(9) – a client with a pending application for adjustment of status (I-485)
    - NOTE: There is no category for a client with a pending VAWA self-petition; therefore until the VAWA self-petition is approved, there is no manner for an individual to obtain a work permit UNLESS they also have a pending application for adjustment of status (I-485)
  - (c)(14) – a client who has been granted deferred action (Deferred Action is granted to the principal applicant once the VAWA self-petition is approved)
  - (c)(31) – an client with an approved VAWA self-petition
    - This category is generally only used when the client does not want to request Deferred Action because he/she likely has a past deportation or removal order.
- The VSC approved my client for employment authorization and mailed her the card. It is only valid for one year. Can I request that it be extended? If so, how do I extend or renew the employment authorization?
  - Yes, but she cannot renew her work permit until she is within four months of the expiration date of her current card. NIJC can assist the client in renewing her work authorization card each year if your representation ends once the VAWA application is approved. Please refer them to our consultation hours.

- To renew employment authorization depends on the category under which she qualified.
  - Work permit under (c)(9) – Submit renewal application (Form I-765 and Form G-28 with proof that the application for adjustment of status remains pending).
  - Work permit under (c)(14) – Submit renewal application (Form I-765 and Form G-28) with a written request in the cover letter that Deferred Action be extended as well
  - Work permit under (c)(31) – Submit renewal application (Form I-765 and Form G-28) with proof of the approved VAWA self-petition
- My client received her employment authorization card. What does she need to do to work?
  - The client should go to the nearest social security office with her employment authorization card and request a social security number. Upon receipt of the social security number, the client can work lawfully so long as the employment authorization is valid.

### **ADJUSTMENT OF STATUS INTERVIEW**

- **My client has been scheduled for her adjustment of status interview. Should I attend the interview?**
  - Yes, as her representative, you should represent your client at the interview.
- **What do we need to do to prepare for the interview?**
  - We recommend scheduling a meeting with your client to practice questions for the interview and to confirm that your client has all the necessary documents. Please see the interview document list in the appendix for a list of necessary documents. For the questions, please practice all questions on the I-485 and prepare your client for questions on whether or not she is still married.
  - *Please contact NIJC to advise of the interview and to discuss it in more detail.*
- **My client needs a translator. Will USCIS provide one?**
  - No, USCIS will not provide the translator and your client will need to bring one. Any non-relative who is 18 or older and competent in both English and the foreign language can translate.
- **Does the translator need to be certified?**
  - No
- **Can the attorney translate for the interview?**
  - No
- **Will the officer give the decision at the interview?**
  - Sometimes officers will explain that they plan to approve the case; however, nothing is final until the client receives the approval notice.

- **How long after the interview will it take to receive a decision?**
  - It depends. If you do not receive a decision within 90 days of the interview, please contact NIJC and we can explain how to submit an inquiry to the local USCIS office.

### **CLOSING A CASE**

- **My client has been granted her I-360 VAWA self-petition and/or I-485 adjustment of status. What do I need to do to close out the case with the client and NIJC?**
  - Please check with your firm for internal case closing procedures.
  - We recommend sending the client a closing letter and sending NIJC a copy of the file.
  - Upon receipt of the file, NIJC will mail the client our closing letter with advisals regarding her status and will close out the case.



## How to Find an Interpreter

Nearly all of NIJC's *pro bono* cases require the use of an interpreter. Even if a client speaks English fairly proficiently, attorneys may find that they need an interpreter or translator to prepare a detailed affidavit or to translate foreign language documents. Immigrant clients who speak English may also benefit from the assistance of an interpreter because the information regarding their immigration case may be difficult for the client to discuss and the client may be able to communicate more effectively in her native language.

Attorneys who accept an NIJC *pro bono* case should expect that they will need an interpreter for the case unless specifically informed otherwise and are responsibly for finding an interpreter, although NIJC will assist with the interpreter search when possible.

There are various volunteer and fee-based resources that *pro bono* attorneys can use to try to find an interpreter for their case. Generally, NIJC recommends that attorneys not use a client's family member as the primary interpreter because the family member may have a difficult time remaining objective. Moreover, at times, the family relationship may inhibit the client from speaking openly with her attorney.

Below is a list of foreign language resources that NIJC *pro bono* attorneys have utilized to secure an interpreter or translator for their case:

- **Other attorneys or support staff** within the *pro bono* attorney's law firm.
- **University foreign language programs.**
- **Community organizations** from your client's country or ethnic group.
- **Fee-based language services**, such as Heartland Alliance's Cross-Cultural Interpreting Services (<http://www.heartlandalliance.org/ccis>) and Transperfect Translations (<http://www.transperfect.com/>).
- **NIJC's Language of Human Rights: Volunteer Interpreter Project** (please see the Language of Human Rights Volunteer Interpreter Project link on NIJC's website. Information regarding the volunteer interpreters is available for registered users only).



## How to Work with an Interpreter<sup>1</sup>

- Initiate a pre-session with the interpreter. Explain that you would like him or her to interpret everything that is said without adding, deleting, or changing the meaning of anything. Explain that if the interpreter needs clarification of a term (as frequently happens with legal and technical terms), the interpreter should ask you to clarify, rather than attempt to explain it to the client. Ask the interpreter to speak in the first person, so if the client says, “my husband hit me,” the interpreter should state, “my husband hit me.” Explain the purpose of the interview or client meeting to the interpreter.
- Ask the interpreter to sign a confidentiality agreement.
- Allow for additional time for the interview/meeting as it will generally take twice as long.
- Provide an area that is private. **Arrange seating comfortably with the interpreter sitting diagonally behind the client so that you are looking and speaking directly to the client.**
- Introduce yourself and the client to the interpreter. Inform the client that what is discussed will remain confidential, that both you and the interpreter are bound by a code of ethics which includes confidentiality.
- **Speak directly to the client, not the interpreter (say "How can I help you" rather than "Ask her how I can help her").**
- Use short sentences in plain English. Avoid using legal jargon or slang terms. Pause after two or three sentences to allow the interpreter to interpret.
- Encourage the interpreter to take notes if it will assist him or her in interpreting accurately
- **Maintain your role in managing the interview. The interpreter should not conduct the interview, you should.** Avoid side conversations between the interpreter and the client. If a side conversation begins, gently steer the interpreter back into her role as an interpreter by reminding her that you need to know everything that the client is saying. Reaffirm that if the client has questions they are asking the interpreter, you will answer those questions.
- Expect the interpreter to interpret everything that is said by you and your client. Confirm your understanding of the client's situation with the client to ensure accurate interpreting and accurate comprehension on your part. Check the client's understanding of any important or difficult information to ensure accurate interpreting and accurate comprehension on the client's part.
- Summarize where necessary during and at the end of the interview and confirm that your understanding of the situation is accurate. Ask the client to repeat back to you any difficult or complicated information to ensure accurate interpreting and accurate comprehension.
- Ask the client if there are any further questions and confirm what will happen next.

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<sup>1</sup> Adapted from Immigrant Women's Support Service Fact Sheet available at: [http://www.iwss.org.au/iwss\\_publications/fact\\_2.htm](http://www.iwss.org.au/iwss_publications/fact_2.htm) and Legal Momentum's Identifying Whether an Interpreter is Needed and Tips for Working with an Interpreter, available at [http://www.legalmomentum.org/assets/pdfs/15-tips\\_for\\_working\\_with\\_an\\_interpreter.pdf](http://www.legalmomentum.org/assets/pdfs/15-tips_for_working_with_an_interpreter.pdf)