



U.S. Citizenship  
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Services

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## Interoffice Memorandum

To: Paul E. Novak  
Director  
Vermont Service Center

From: William R. Yates /S/  
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Operations

Date: January 19, 2005

Re: Determinations of Good Moral Character in VAWA-Based Self-Petitions

### Purpose

On October 28, 2000, the President signed the Victims of Trafficking and Violence Protection Act (VTVPA), Pub. L. 106-386. Title V of the VTVPA is entitled the Battered Immigrant Women Protection Act (BIWPA), and contains several provisions amending the self-petitioning eligibility requirements for battered spouses and children contained in the Immigration and Nationality Act (INA or the Act). Those provisions were established by the Violence Against Women Act of 1994 (VAWA). The purpose of this memorandum is to inform U.S. Citizenship and Immigration Services (USCIS) adjudicators at the Vermont Service Center (VSC) of the change in the law concerning determinations of good moral character made in connection with VAWA-based self-petitions (Forms I-360).

### Guidance

Sections 204(a)(1)(A) and (B) of the Act contain the self-petitioning eligibility requirements for battered spouses and children. One of the eligibility requirements is that a self-petitioner must demonstrate that he/she is a person of good moral character. A VAWA-based self-petition will be denied or revoked if the record contains evidence to establish that the self-petitioner lacks good moral character. The inquiry into good moral character focuses on the three years immediately preceding the filing of the self-petition, but the adjudicating officer may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-

petitioner may not have been a person of good moral character during that time.<sup>1</sup> 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.<sup>2</sup> Prior to the enactment of the BIWPA, a finding of good moral character could not be made in a battered spouse or child case filed under the VAWA immigration provisions if the self-petitioner committed an act or had a conviction that was included in section 101(f) of the Act. Section 1503(d) of the BIWPA has amended section 204(a)(1) of the Act to make an exception for battered spouses and children in certain circumstances.

*Step 1: Determine whether the alien is subject to section 101(f) of the Act.*

Section 101(f) of the Act describes the classes of aliens who are statutorily ineligible to be considered persons of good moral character. If the VAWA self-petitioner has committed an act or has a conviction that places him or her into one of the classes contained in section 101(f) of the Act, the adjudicator is barred from making a finding of good moral character unless the self-petitioner demonstrates that the amendments made to section 204(a)(1) of the Act apply to him or her.

Section 204(a)(1)(C) of the Act as amended provides USCIS with the discretion to make a finding of good moral character despite an act or conviction that would be a disqualifying act or conviction under INA § 101(f) or that would otherwise adversely reflect upon a self-petitioner's moral character. A finding of good moral character may be made if: 1) the act or conviction is waivable for purposes of determining inadmissibility or deportability under INA § 212(a) or § 237(a); and 2) the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty. This change applies to all self-petitioners, including those who file under INA § 204(a)(1)(A)(v) or § 204(a)(1)(B)(iv) as self-petitioners living abroad, despite the fact that these situations are not specifically referenced in INA § 204(a)(1)(C).<sup>3</sup>

*Step 2: Determine whether a waiver would be available.*

If the adjudicator determines that the self-petitioner has committed an act or has a conviction that renders the self-petitioner inadmissible under section 212(a) of the Act or deportable under section 237(a) of the Act, and that would bar a finding of good moral character, he/she should next determine whether a waiver would be available for the act or conviction. The evidence submitted by the self-petitioner must address whether a waiver would be available for the act or conviction at issue (this includes the waivers created by the BIWPA found at sections 212(h)(1), 212(i)(1),

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<sup>1</sup> Preamble to Interim Regulations, 61 Fed. Reg. 13065, 13066 (Mar. 26, 1996).

<sup>2</sup> 8 CFR § 204.2(c)(1)(vii). See also, 8 CFR § 316.10(a)(2).

<sup>3</sup> This determination is based on the fact that sections 204(a)(1)(A)(v) and 204(a)(1)(B)(iv) of the Act state that the claimant must be "eligible to file a petition" under section 204(a)(1)(A)(iii) or (iv) of the Act or section 204(a)(1)(B)(ii) or (iii) of the Act, respectively, and that section 204(a)(1)(C) does not specifically preclude a waiver under this provision.

237(a)(7), and 237(a)(1)(H) of the Act). It is important to note that the adjudicator does not have to find that a waiver would be granted, only that one would be available for filing at the time the adjustment of status application (or visa application) is filed.

In situations where an adjudicator questions whether a waiver would be available because the act or conviction involves a violent or dangerous crime, he/she should consult 8 CFR 212.7(d). That provision discusses the circumstances in which a waiver of a violent or dangerous crime may be available. If the adjudicator determines that an act or conviction constitutes an aggravated felony as defined in section 101(a)(43) of the Act, he/she should refer the case for issuance of a notice to appear (NTA) in accordance with the guidelines set out in the Service Center NTA SOP.

Attached to this memorandum as Attachment 1, is a chart indicating which bars to establishing good moral character contained in section 101(f) of the Act are for acts or convictions that may be waived and which are not. This chart is intended to serve as a quick point of reference for adjudicators. Also attached, as Attachment 2, is a quick reference guide for authorities affecting false testimony determinations under section 101(f)(6) of the Act. If the adjudicator is not certain whether a particular act or conviction may be waived, the adjudicator and his/her supervisor should seek legal guidance from the VSC Counsel prior to making a final determination.

*Step 3: Determine whether the act or conviction is “connected” to the battering or extreme cruelty.*

If the adjudicator determines that a waiver would be available for the act or conviction at issue, he/she should next determine whether the act or conviction is "connected" to the battering or extreme cruelty. In order for an act or conviction to be considered sufficiently "connected" to the battering or extreme cruelty, the evidence must establish that the battering or extreme cruelty experienced by the self-petitioner compelled or coerced him/her to commit the act or crime for which he/she was convicted. In other words, the evidence should establish that the self-petitioner would not have committed the act or crime in the absence of the battering or extreme cruelty. To meet this evidentiary standard, the evidence submitted must demonstrate:

- The circumstances surrounding the act or conviction, including the relationship of the abuser to, and his/her role in, the act or conviction committed by the self-petitioner; and
- The requisite causal relationship between the act or conviction and the battering or extreme cruelty.

In order for a connection to be found, the battering or extreme cruelty must have been perpetrated by the self-petitioner’s qualifying USC or LPR spouse, intended spouse, former spouse, or parent. However, self-petitioners are not required to establish that the act or conviction that would bar a finding of good moral character occurred during the marriage to the self-petitioner’s qualifying USC or LPR spouse. If the self-petitioner establishes that there was battering or extreme

cruelty during the marriage as well as prior to the marriage to the qualifying USC or LPR spouse, the adjudicating officer may find that the self-petitioner has established the required “connection” between the act or conviction, even if it occurred prior to the marriage.

When determining whether a sufficient connection exists between the alien’s disqualifying act or conviction and the battering or extreme cruelty suffered by the alien, the adjudicating officer should consider the full history of the domestic violence in the case, including the need to escape an abusive relationship. The adjudicating officer should consider all credible evidence that is in compliance with 8 U.S.C. § 1367 when making this determination. The credibility and probative value of the evidence submitted by the self-petitioner is a determination left to the discretion of the adjudicating officer.

*Step 4: Determine whether the self-petitioner warrants a finding of good moral character in the exercise of discretion.*

Whether a self-petitioner is a person of good moral character is, in accordance with section 204(a)(1)(C) of the Act, a discretionary determination to be made by the adjudicating officer. For example, even if the evidence submitted by a self-petitioner establishes that (1) a waiver for his or her disqualifying act or conviction is available, and (2) the requisite connection exists between his or her disqualifying act or conviction and the battering or extreme cruelty he or she suffered, the adjudicating officer may nevertheless find that the severity or gravity of the self-petitioner’s act or conviction warrants an adverse finding of good moral character in the exercise of discretion.

#### Further Information

This provision of the BIWPA applies to all self-petitions pending on or filed on or after October 28, 2000. Personnel with questions regarding this memorandum or other VAWA-related issues, please contact Laura Dawkins, Office of Program and Regulations Development by electronic mail.

Attachments

## **Authorities Affecting False Testimony Determinations (Attachment 2)**

### **Step #1: Has the self-petitioner ever given “false testimony” for purposes of 101(f)(6):**

False written statements that appear in an application, even if the application bears a statement of oath, do not constitute testimony within the meaning of section 101(f)(6). *Matter of L-D-E-*, 8 I&N Dec. 399 (BIA 1959).

False statements uttered orally under oath at a deportation hearing constitute false testimony within the meaning of section 101(f)(6) of the Act. *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1998).

False oral statements made under oath to an asylum officer can constitute "false testimony" under section 101(f)(6). *In re R-S-J*, 22 I&N Dec. 863 (BIA 1999).

Note: The Ninth Circuit, in which *In re R-S-J* arose, has held that oral statements must be made "to a court or tribunal." *Phinpathya v. INS*, 673 F.2d 1013, 1018-19 (9<sup>th</sup> Cir. 1981, rev'd on other grounds, 464 U.S. 183 (1984)). However, in a more recent case, the Ninth Circuit held that false statements made under oath during a naturalization examination constitute false testimony within the meaning of section 101(f)(6). *Bernal v. INS*, 154 F.3d 1020 (9<sup>th</sup> Cir. 1998). In deciding *In re R-S-J*, the BIA concluded that an asylum officer is a member of a "tribunal" for purposes of the false testimony bar to establishing good moral character under section 101(f)(6), as that provision has been construed in the Ninth Circuit.

Outside the Ninth Circuit, false statements need not be uttered in administrative or judicial proceedings to constitute "false testimony" under section 101(f)(6), but can include statements made under oath to government officials, including Service officers and consular officials. *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973) (false statement under oath to a border patrol agent); *Liwanag v. INS*, 872 F.2d 684 (5<sup>th</sup> Cir. 1989) ("false testimony" to a Service officer during an investigation).

### **Step #2: Was the false testimony material for purposes of 212(a)(6)(C)?**

A misrepresentation is material ... if it tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536 (BIA 1980); see also *Matter of Bosuego*, 17 I&N Dec. 125, 130 (BIA 1979, 1980) (A misrepresentation made in connection with a visa application is material if the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded).

**Waivable Conduct Contained in the Statutory Bars to Establishing Good Moral Character**  
(Attachment 1)

<b><u>Provision of INA</u></b>	<b><u>Conduct Prohibiting Finding of Good Moral Character</u></b>	<b><u>Conduct Waivable?</u></b>	<b><u>Waiver provision</u></b>	<b><u>Criteria for waiver</u></b>
INA § 101(f)(1)	Someone who is an habitual drunkard.	No		
INA § 101(f)(3)	Someone who engaged in prostitution within the past ten years. [INA § 212(a)(2)(D) ground of inadmissibility]	Yes	INA § 212(h)(1)(C) provides for a waiver of the § 212(a)(2)(D) ground of inadmissibility.	Alien qualifies as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or (iv) of 204(a)(1)(B) AND Sec. of DHS must consent to the waiver (i.e. exercise favorable discretion).
INA § 101(f)(3)	Someone who has ever knowingly encouraged, induced, assisted, abetted, or abided another alien to enter or to try to enter the U.S. in violation of law. [INA § 212 (a)(6)(E) ground of inadmissibility]	Yes	INA § 212(d)(11) provides for a waiver of the § 212(a)(6)(E) ground of inadmissibility.	Aliens seeking adjustment of status as an immediate relative or immigrant under INA § 203(a) may qualify for a waiver only if the alien encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
INA § 101(f)(3)	Aliens previously removed from the United States [INA § 212(a)(9)(A) ground of inadmissibility]	No		
INA § 101(f)(3)	Someone who committed or was convicted of either a crime involving moral turpitude or a crime relating to a controlled	Yes for CIMT  Waiver for drug offense only available for single	INA § 212(h)(1)(C) provides for a waiver of the 212(a)(2)(A)(i)(I) and (i)(II) grounds of	Alien qualifies as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or

	substance that doesn't fall within one of the exceptions set forth at INA § 212(a)(2)(A)(ii). [INA § 212(a)(2)(A) ground of inadmissibility]	offense of simple possession of 30 grams or less of marijuana.	inadmissibility.	(iv) of 204(a)(1)(B) AND Sec. of DHS must consent to the waiver (i.e. exercise favorable discretion).
INA § 101(f)(3)	Someone who was convicted of two or more offenses (other than purely political offenses), regardless of whether they arose from out of a single scheme or the conviction was in a single trial, for which the aggregate sentences to confinement were 5 years or more. [INA § 212(a)(2)(B) ground of inadmissibility]	Yes	INA § 212(h)(1)(C) provides for a waiver of the 212(a)(2)(B) ground of inadmissibility.	Alien qualifies as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or (iv) of 204(a)(1)(B) AND Sec. of DHS must consent to the waiver (i.e. exercise favorable discretion).
INA § 101(f)(3)	Someone who DHS knows or has reason to believe is, or has been an illicit trafficker in any controlled substance. [INA § 212(a)(2)(C) ground of inadmissibility]	No		
INA § 101(f)(4)	Someone whose present income is derived principally from illegal gambling activities.	No		
INA § 101(f)(5)	Someone who has been convicted of two or more gambling offenses during the period for which good moral character must be established.	No		
INA § 101(f)(6)	Someone who has given false testimony that was material for the purpose of obtaining any benefits under the INA. [INA § 212 (a)(6)(C)(i) ground of inadmissibility]	<b>NOTE:</b> Though there is no specific waiver for false testimony, an alien who gives false testimony may come within the ambit of INA § 212(a)(6)(C)(i)	INA §§ 212(i)(1) and 237 (a)(1)(H)(ii) provide for a waiver of the § 212 (a)(6)(C)(i) ground of inadmissibility.	Alien must qualify as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or (iv) of 204(a)(1)(B) and show that refusal of admission would result in extreme

		<p>which bars aliens who procure (or seek to procure) by fraud or willful misrepresentation, a visa, admission, other documentation or benefit under the INA.</p> <p>False testimony that is NOT material does not render an alien inadmissible under INA § 212(a)(6)(C)(i). However, such non-material false testimony DOES statutorily bar USCIS from making a finding of good moral character – i.e., such an “act or conviction” is not “waivable” for purposes of INA § 204(a)(1)(C). Therefore, adjudicators will need to determine two things: 1) whether the self-petitioner has ever given “false testimony”; and 2) if so, whether such testimony was “material.” Attached to this chart is guidance to assist in making these determinations.</p>		<p>hardship to the alien or the alien’s USC, LPR or qualified alien parent or child [INA § 212(i)(1)]</p> <p>Alien must qualify as battered spouse or child under clause (ii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or (iv) of 204(a)(1)(B). This waiver of removal also operates to waive deportation based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation. [INA §237(a)(1)(H)(ii)]</p>
INA § 101(f)(7)	Someone who, during the period for which good moral character must be established, has been confined, as a result of	No		



	conviction, to a penal institution for an aggregate period of 180 days or more, regardless of whether the offense, or offenses, for which she has been confined were committed within or without such period.			
INA § 101(f)(8)	Someone who at any time has been convicted of an aggravated felony, where the conviction was entered on or after 11/29/90 (date of enactment of IMMACT 90).	No		

**False statement or claim to U.S. citizenship or registering to vote or voting in Federal, State or local election in violation of lawful restrictions**

A person who falsely claims U.S. citizenship in order to vote, who registers to vote or who votes in violation of lawful restrictions is **not** barred from a good moral character finding if:

- 1) each natural parent is or was a USC;
- 2) the person permanently resided in the U.S. prior to attaining age 16; and
- 3) the person reasonably believed at the time of the statement, claim, or violation that he/she was a USC.

This exception was created by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, and is retroactively applied as if included in IIRIRA on September 30, 1996. Please refer to a memorandum entitled, "Procedures for Handling Naturalization Applications of Aliens Who Voted Unlawfully or Falsely Represented Themselves as U.S. Citizens by Voting or Registering to Vote," and dated May 7, 2002, for a detailed explanation of the exception described above.