

DRAFT FOR COMMENT ONLY

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

[Date Applied by EXSO]

PM-602-XXXX

Policy Memorandum

SUBJECT: Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen;
Revisions to Adjudicator's Field Manual (AFM) Chapter 21.15 (AFM Update
AD 06-32)

Purpose

This Policy Memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers regarding amendments to the Immigration and Nationality Act (Act) that extend the ability to self-petition to battered parents of U.S. citizens. Additionally, this memorandum will provide guidance regarding work authorization for approved VAWA self-petitioners.

Scope

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

Authority

Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162 (2006).

Background

Section 816 of VAWA 2005 added a new paragraph (vii) to section 204(a)(1)(A) of the Act. The new paragraph provides certain parents who were subjected to battery or extreme cruelty by their U.S. citizen sons or daughters the ability to file a self-petition.

Additionally, section 814(b) of VAWA 2005 amends section 204(a)(1) of the Act by adding a new paragraph (K). The new paragraph provides for automatic eligibility for employment authorization upon the approval of a VAWA self-petition.

Although the statutory language of VAWA 2005 clearly extends self-petitioning eligibility to parents of U.S. citizens and employment authorization for all approved VAWA self-petitioners, the statute is not as clear on whether an abused stepparent of a U.S. citizen may also benefit from these provisions.

Section 101(b)(1)(A) of the Act defines "child" to include a "stepchild...provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred." Section 101(b)(2) of the Act provides:

The term "parent", "father", or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) 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 or 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.

Policy

The provisions of section 204(a)(1)(A) of the Act extend to abused stepparents of U.S. citizens. Accordingly, the stepparent of an abusive U.S. citizen son or daughter may file a VAWA self-petition provided the abusive son or daughter had not reached the age of eighteen years at the time the marriage creating the step-relationship occurred and the step-relationship existed at the time of filing the VAWA self-petition.

Implementation

The Adjudicator's Field Manual (AFM) is revised as follows:

1. The Table of Contents is revised by adding an entry to read "Chapter 21.15 Self-petitions by Abused Parents of U.S. Citizens"
2. A new Chapter 21.15 is added to read:

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

(a) **Background.** Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322 (Crime Act), enacted September 13, 1994, contains the Violence Against Women Act of 1994 (VAWA). VAWA amended section 204 of the Act, permitting certain spouses and children of U.S. citizens and lawful permanent residents who were subjected to battery or extreme cruelty to self-petition for immigrant classification. Although the title of VAWA reflects the fact that many abuse victims are women, battered spouses and children of either sex can benefit from these provisions. The immigration provisions of VAWA were expanded by the Battered Immigrant Women Protection Act (BIWPA), enacted as Title V of Pub. L. 106-386, on October 28, 2000. The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Tit. VIII, Pub. L. No. 109-162, which became effective January 5, 2006, further expanded the immigration provisions of VAWA. Section 816 of VAWA 2005 added paragraph (vii) to section 204(a)(1)(A) of the Act which provides certain parents who were subjected to battery or extreme cruelty by their U.S. citizen sons or daughters the ability to file a self-petition.

(b) Eligibility Requirements. The self-petitioning parent must demonstrate that he or she:

- Possesses the requisite qualifying relationship to the U.S. citizen son or daughter. The following relationships qualify:
 - The parent of a U.S. citizen son or daughter who is at least 21 years of age when the self-petition is filed; or
 - The parent of a former U.S. citizen son or daughter who lost or renounced citizenship within the two years prior to filing the self-petition as a result of an incident of domestic violence. At the time of the loss of status, the son or daughter must have been at least 21 years of age; or
 - The parent of a U.S. citizen son or daughter who was at least 21 years of age and who died within two years prior to filing the self-petition;

Note: In order for a son or daughter to confer immediate relative status upon a parent, the petitioner must be a U.S. citizen, at least 21 years of age, and must have qualified as the "child" of the beneficiary as defined in 101(b) of the Act. *Matter of Hassan*, 16 I&N Dec. 16 (1976). A child is defined as "an unmarried person under twenty-one years of age" in 101(b) of the Act. 101(b)(1)(A) of the Act further defines child to include a "stepchild...provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred." The stepparent of an abusive U.S. citizen son or daughter may file a VAWA self-petition if the abusive son or daughter had not reached the age of eighteen years at the time the marriage creating the step-relationship occurred and the step-relationship existed at the time of filing the VAWA self-petition. It need not continue after filing.

- Is a person of good moral character;
- Is otherwise eligible as an immediate relative parent as described in **section 201(b)(2)(A)(i)** of the Act;
- Resides with or has previously resided with the abusive citizen son or daughter; and
- Has been subjected to battery or extreme cruelty by the U.S. citizen son or daughter.

(c) Filing Requirements. (1) Generally. An eligible self-petitioning parent must submit a properly completed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, to the Vermont Service Center (VSC) with the appropriate fee or request for fee waiver and supporting evidence described in this section.

(A) Primary Evidence. Self-petitioners should submit primary evidence whenever possible, although adjudicators must consider all relevant credible evidence. The determination of what evidence is credible, and the weight to be given to that

evidence, is left to the discretion of the adjudicator in accordance with the guidance provided in this section.

A self-petition filed under **section 204(a)(1)(A)(vii)** of the Act must include the following:

- Evidence of the abuser's U.S. citizenship;
- Evidence of the parental relationship as described in **8 CFR 204.2(f)(2)**; or evidence of the stepchild relationship as described in **8 CFR 204.2(d)(2)(iv)**

Note: In the case of a self-petitioning stepparent, evidence supporting the relationship as defined at **101(b)(1)(B)** of the Act, and other relevant evidence of the parental step-relationship will be considered. Examples include but are not limited to: marriage certificate of self-petitioner and natural parent of the abusive stepson or stepdaughter showing that the marriage occurred before the U.S. citizen abuser's 18th birthday, other legal or court documents supporting the same, birth certificates, affidavits, or other evidence.

- Evidence the self-petitioner resides or has resided with the abusive U.S. citizen son or daughter. Examples include but are not limited to: employment records, school records, utility receipts, medical records, police reports, leases, mortgages, or affidavits;
- Evidence of the battery or extreme cruelty. Examples include, but are not limited to: police reports, court records, medical records, or reports from social service agencies. If there is a protective order in place, a copy should be submitted; and
- Evidence of good moral character of the self-petitioner. Such evidence should be in the form of an affidavit and should be supported by a local police clearance and a state-issued criminal background check or similar report from each locality or state in which the self-petitioner has resided for at least six months during the three years prior to filing the self-petition.

(B) Secondary Evidence. **Section 204(a)(1)(J)** of the Act was not specifically amended to encompass consideration of secondary evidence submitted by self-petitioning abused parents. The discussion of evidence found at **8 CFR 204.1(f)(1)** and **(3)** regarding self-petitions filed under **section 204(a)(1)(A)(iii)** of the Act shall apply to self-petitions filed by battered parents of U.S. citizen sons or daughters. Agency records relating to the abusive son or daughter may also be used to verify his or her citizenship status.

(2) Filing from Outside the United States. There is no statutory requirement that a self-petitioning parent be living in the United States at the time the self-petition is filed. The filing requirements found at **section 204(a)(1)(A)(v)** of the Act relating to a self-petitioning spouse, intended spouse, or child living abroad of a U.S. citizen shall be apply to self-petitions filed by a battered parent of a U.S. citizen son or daughter. For these reasons, self-petitioners filing from abroad must file with the VSC and be in compliance with section 204(a)(1)(A)(v) of the Act. The self-petitioner should submit primary evidence whenever possible, although the adjudicator must consider all relevant credible evidence. The determination of what evidence is credible, and the weight to be given to that evidence, is left to the discretion of the adjudicator and in accordance with the guidance provided in this section.

(d) Adjudication. (1) Authority. Authority to adjudicate self-petitions filed pursuant to section 204(a)(1)(A)(vii) of the Act rests solely with the VSC. VAWA self-petitions filed elsewhere should be promptly transferred to VSC.

(2) Prima Facie Eligibility. There shall be no prima facie determination for self-petitions filed by self-petitioning parents.

(3) Review and Consideration of Documentary Evidence. The primary evidence to establish the relationship between the abuser and the self-petitioner and to establish the abuser's United States citizenship submitted with Form I-360 by an battered parent is the same as that which is generally submitted by self-petitioning spouses and children pursuant to section **8 CFR 204.2(c)(2)** and **204.2(e)(2)**. However, in view of the circumstances surrounding a self-petition, primary documentation may not be readily available. Adjudicators must consider whatever evidence is available, using agency records and secondary evidence when submitted in lieu of primary documents. Before sending an RFE in such cases, consider the totality of circumstances in the case and, if the RFE is needed, suggest appropriate forms of secondary evidence which might be appropriate to the case.

(4) Other Considerations. There are several other important considerations for the adjudicator processing a self-petition by a battered parent that are similar to those encountered during the adjudication of self-petitions filed by battered spouses and children. These are discussed fully in 8 CFR 204.2(c) and (e). General adjudicative issues relating to the parent-child relationship are applicable to parental self-petitions.

(5) Loss of Citizenship Status or Death of Abusive Son or Daughter. Eligibility to petition for classification as a parent who has been battered or subjected to extreme cruelty by a U.S. citizen son or daughter will be preserved if, within the 2 years immediately preceding the filing of the self-petition, the U.S. citizen son or daughter loses or renounces citizenship for a reason related to an incident of domestic violence or dies. In cases where the abusive U.S. citizen son or daughter has lost

his or her status, adjudicators should follow the guidance found in AFM **Chapter 21.14(q)** relating to the method by which a self-petitioning spouse or child may establish that an abuser's loss of status is related to an incident of domestic violence. The evidentiary requirements applicable to self-petitioning spouses and children in cases where there has been a loss of status shall be the same for self-petitioning parents.

A parent whose eligibility is thus preserved will be eligible for issuance of a visa or adjustment of status pursuant to section 201(b)(2)(A)(i) of the Act as though the abusive son or daughter were still a United States citizen at the time of visa issuance or adjustment of status.

(6) Closing Actions. See **AFM 21.2(f)**. An appeal from the denial of an I-360 petition filed by an abused parent may be filed on Form I-290B with the Administrative Appeals Office.

(e) Employment Authorization. (1) Eligibility. All self-petitioners (including self-petitioning parents) with approved self-petitions are eligible for work authorization. An Employment Authorization Document (EAD) may be issued upon approval of the Form I-765. Those self-petitioners who are living outside the United States will not be issued an EAD.

(2) New Code. A new code (C31) has been provided for work authorization for the beneficiary of an approved VAWA self-petition.

(3) Filing Requirements. A self-petitioner desiring an EAD must file Form I-765, Application for Employment Authorization, with the Vermont Service Center (VSC).

(4) Adjudication.

(A) Authority. Authority to adjudicate applications for employment authorization pursuant to section 204(a)(1)(K) of the Act is limited to the VSC. Applications filed elsewhere should be promptly transferred to VSC.

(B) Review and Consideration of Documentary Evidence. The adjudicating officer must ensure that the following criteria are met when adjudicating the Form I-765:

- Proper fee or waiver thereof and application is signed;
- Required photos and signature are present;
- Applicant is residing in the United States;
- Applicant has an approved VAWA self-petition;

- Applicant does not currently hold a valid EAD under another provision of **8 CFR 274a.12**; and
- Applicant has not adjusted status.

(C) Closing Action. If found to meet the criteria, the application will be approved for employment pursuant to **8 CFR 274a.12(c)(31)**. There is no appeal from the denial of Form I-765, Application for Employment Authorization.

(f) Deferred Action. Although no longer necessary for providing employment authorization to a VAWA self-petitioner with an approved petition, consideration of placing a self-petitioner in deferred action will continue to be a part of the adjudication process.

(g) Precedent Decisions. There are no precedent decisions relating to this specific class of I-360 self-petition. However, precedent decisions listed in **AFM 21.8(d)** relating to petitions filed for a parent are generally applicable to this class of case.

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

AD06 - 32 [Insert date Chapter 21.15 of signature]	Adds guidance on adjudication of self-petitions by abused parents of U.S. citizens and related issues.
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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, Family Immigration & Victim Protection Division.