INTERIM MEMO FOR COMMENT
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This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

PM-602-0110

Policy Memorandum

SUBJECT: VAWA amendments to the Cuban Adjustment Act: Continued Eligibility for Abused Spouses and Children

Purpose

This policy memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers regarding the Violence Against Women Act (VAWA) amendments to the Cuban Adjustment Act (CAA). The amendments provide for continued eligibility for adjustment of status under section 1 of the CAA for an abused spouse or child of a *qualifying Cuban principal*[1]. The guidance contained in this PM is effective immediately and in advance of regulatory amendments. This PM revises Chapter 23.11 of the Adjudicator's Field Manual (AFM); AFM Update AD13-04.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees. This policy supplements, but does not supersede, previous guidance on the application of the CAA to principal or dependent applicants.

Authority

- The Victims of Trafficking and Violence Protection Act of 2000 (VAWA 2000)
- The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005)
- The Cuban Adjustment Act of 1966
- The Immigration and Nationality Act (the "Act") section 101(a)(51)(D)
- 8 U.S.C. 1367

Background

The CAA became law on November 2, 1966, and provides relief to certain Cuban nationals present in the United States. Section 1 of the CAA was designed to permit Cuban nationals to

[1] A *qualifying Cuban principal* is one who satisfies all of the criteria of a principal applicant for adjustment of status as listed in section 1 of the CAA.

adjust their status to that of a lawful permanent resident. Section 1 of the CAA also permits the spouse or child of a *qualifying Cuban principal* to adjust status if the spouse or child:

- Was inspected and admitted or paroled into the United States after January 1, 1959;
- Has been physically present in the United States for at least one year; and
- Resides with the *qualifying Cuban principal*.

VAWA 2000 and VAWA 2005 amended the CAA to make it easier for battered or abused spouses or children of *qualifying Cuban principals* to adjust status under section 1 of the CAA. Sections 1509 of VAWA 2000 and 823 of VAWA 2005 remove the current residency requirements in the CAA for abused spouses and children, and create death and divorce exceptions for abused spouses of *qualifying Cuban principals*. Specifically, for an abused spouse or child applying for adjustment of status under section 1 of the CAA, the VAWA amendments provide that:

- The abused spouse or child does not need to demonstrate he or she currently resides with the abusive Cuban spouse or parent;
- The abused spouse remains eligible to file an application for adjustment of status within two years after the death of the abusive Cuban spouse, if the applicant lived with the abusive Cuban spouse; and
- The abused spouse remains eligible to file an application for adjustment of status within two years after the termination of the marital relationship (i.e., divorce or annulment) from the abusive Cuban spouse, if the abused spouse demonstrates that the:
  - Termination of the marriage and the abuse by the Cuban spouse are connected; and
  - The abused spouse lived with the abusive Cuban spouse.

The above provisions, added by the VAWA amendments to the CAA, are only applicable to abused spouses and children of *qualifying Cuban principals*.

Policy

An abused spouse or child may apply for adjustment of status to that of a lawful permanent resident under section 1 of the CAA provided that his or her abuser is a *qualifying Cuban principal*. This PM does not affect the adjudications of, or procedures relating to, non-abused CAA spouse and/or child cases.

Only *qualifying Cuban principals* will be able to confer eligibility to adjust status under section 1 of the CAA to abused spouses and children. A *qualifying Cuban principal* is one who:

- Was inspected and admitted or paroled into the United States after January 1, 1959;
- Was physically present in the United States for at least one year;
- Is eligible to receive an immigrant visa;

- Is admissible to the United States for lawful permanent residency; and
- Has applied for, and is eligible for, adjustment of status; or
- Has adjusted status, whether under the CAA or another adjustment of status provision.

The VAWA amendments establish divorce and death exceptions and remove the residency requirements for abused spouses and children, but do not change the requirement that the abuser be a *qualifying Cuban principal*.

The "any credible evidence" provision of section 204(a)(1)(J) of the Act applies to these cases. USCIS will consider any and all credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS.

VAWA confidentiality provisions (8 U.S.C. 1367) apply to applicants with a pending or approved application for adjustment of status as the battered or abused spouse or child of a *qualifying Cuban principal*.

Implementation

The AFM is amended as follows:

☞ 1. Chapters 23.11(a), (e), (g), (h), (i), (j), (k), and (m) are revised to read:

23.11 Cuban Adjustment Act Cases.

(a) General.

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The Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386) (VAWA 2000) and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162) (VAWA 2005), amended the CAA to provide continued eligibility for adjustment of status as the battered or abused spouse or child under section 1 of the CAA. Under certain circumstances, abused spouses or children may remain eligible for adjustment of status even where the:

- Spouse or child is not currently residing with the *qualifying Cuban principal*;
- Marital relationship was terminated (by divorce, annulment, etc.) not more than two years ago; or
- *Qualifying Cuban principal* died not more than two years ago.

A spouse or child must provide sufficient and credible evidence demonstrating that he or she was the subject of abuse or extreme cruelty by the *qualifying*

Cuban principal, during the relationship, to qualify for the VAWA eligibility provisions for adjustment of status under the CAA.

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(e) Dependents.

(1) General requirements for spouse or child.

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(2) Continued eligibility provisions for abused spouse or child (VAWA). The spouse or child of a *qualifying Cuban principal*, subjected to battery or extreme cruelty by the *qualifying Cuban principal*, may seek adjustment of status under section 1 of the CAA without having to demonstrate current residency with the *qualifying Cuban principal*. The abused spouse or child must have resided with the *qualifying Cuban principal* at some point during the relationship as spouse or child of the *qualifying Cuban principal*.

A *qualifying Cuban principal* is an individual who is eligible for and has applied for adjustment of status or has adjusted status to a lawful permanent resident, whether under the CAA or another adjustment of status provision.

Final adjudication of the qualifying Cuban principal's (abuser's) adjustment of status application is not required for the approval of the abused spouse's or child's CAA application. The adjustment of status of the abused spouse or child may precede the adjustment of status of the principal.

- Loss of status. As a matter of policy, USCIS has elected to preserve eligibility for abused spouses or children of *qualifying Cuban principals* to adjust status when the qualifying Cuban principal has lost status or lost eligibility to adjust status due to an incident of domestic violence. An abused spouse or child will remain eligible to adjust status under the CAA if the *qualifying Cuban principal* lost lawful permanent resident status due to an incident of domestic violence. An abused spouse or child will also remain eligible to adjust status under the CAA if the qualifying Cuban principal was found to be ineligible for adjustment of status due to an incident of domestic violence. See sections 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb) and (iv), (B)(ii)(II)(aa)(CC)(aaa) and (iii) of the Act (the VAWA self-petitioner loss of status provisions for abused spouses and children of U.S. citizens and LPRs).

  The following *qualifying Cuban principals* will remain eligible to confer benefits to an abused spouse or child:

– A *qualifying Cuban principal* who adjusted status and subsequently lost status due to an incident of domestic violence;

– A *qualifying Cuban principal* with a pending application for adjustment of status who was eligible for adjustment of status but for an incident of domestic violence which rendered the *qualifying Cuban principal* ineligible for adjustment of status; or

– A *qualifying Cuban principal* who was eligible for adjustment of status, but whose application was denied due to an incident of domestic violence.

The abused spouse or child needs to file his or her own application for adjustment of status within two years of the *qualifying Cuban principal's* loss of status or loss of eligibility for adjustment of status. Additionally, the abused spouse or child needs to provide evidence demonstrating the *qualifying Cuban principal's* loss of status, or loss of eligibility for adjustment of status was due to an incident of domestic violence.

- Divorce. If, at the time of filing, the spousal relationship has been legally terminated (ex. divorce, annulment, etc.) within the past two years, the abused spouse remains eligible for adjustment of status under section 1 of CAA provided that:

  – There is a demonstrated connection between the legal termination of marriage within the past two years and the battering or extreme cruelty perpetrated by the *qualifying Cuban principal*;

  – The abused spouse files an application for adjustment of status under section 1 of the CAA within two years of the legal termination of the marriage; and

  – The abused spouse resided, at some point during the spousal relationship, with the *qualifying Cuban principal*.

- Death. The abused spouse who lived, at some point during the relationship, with the *qualifying Cuban* spouse will remain eligible for adjustment of status under section 1 of the CAA for a period of two years after the death of the *qualifying Cuban principal*.

The above loss of status provisions are applicable only to battered or abused spouses and children. The above divorce and death provisions are applicable only to abused spouses.

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(g) Procedure for applying.

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(1) Form I-485, Application to Register Permanent Residence or Adjust Status.

- The current I-485 (Rev. 06/20/13) does not provide an application type for an abused spouse or child of a Cuban applicant. An abused spouse or child must apply for adjustment of status under section 1 of the CAA using Form I-485, and selecting the application type utilized by non-abused spouses and children of a Cuban applicant ("I am the husband, wife, or minor unmarried child of a Cuban…"). Abused spouses and children may select this application type even if they are no longer residing with the *qualifying Cuban principal* at the time of filing. A VAWA self-petition is not required.

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(h) Proof of eligibility.

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- A abused spouse or child of a *qualifying Cuban principal* must present the same evidence listed above as a non-Cuban spouse or child who is not abused. However, section 204(a)(1)(J) of the Act ("any credible evidence") will apply to determinations relating to the VAWA CAA eligibility provisions. USCIS will consider any and all credible evidence relevant to the application, provided by the abused spouse or child, to demonstrate the following:

– That abuse occurred in the relationship;

– The applicant resided with the *qualifying Cuban principal* at some point during the relationship;

– The termination of the marital relationship was connected to the abuse;

– The *qualifying Cuban principal* lost status, or eligibility for status, due to an incident of domestic violence; or

– The *qualifying Cuban principal* died within two years of the filing of an application for adjustment of status by an abused spouse.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS.

The VAWA amendments to the CAA do not alter other existing evidentiary standards or requirements applicable to adjustment of status applications. (e.g., evidence demonstrating that the spouse or child is the spouse or child of the *qualifying Cuban principal*, was inspected and admitted or paroled, physically present in the United States for 1 year).

- A non-Cuban abused spouse or child does not need to provide a copy of the *qualifying Cuban principal's* adjustment of status application. However, the abused spouse or child must provide sufficient information to enable USCIS to verify the *qualifying Cuban principal's* status or a pending application for adjustment of status under the CAA. Such information may include the following: abuser's full name, date of birth, place of birth, parents' names, A#, I-94s, SSN, etc.

- The burden rests with the applicant to demonstrate by a preponderance of the evidence that he or she is eligible for the benefit sought.

(i) Jurisdiction.

All applications for adjustment of status under the CAA must be filed in accordance with current Form I-485 instructions. Abused spouses and children do not need to file a separate VAWA self-petition.

The Vermont Service Center's (VSC) VAWA Unit will adjudicate applications for adjustment of status under section 1 of CAA for an abused spouse or child. The VSC may refer the application to the appropriate field office for interview. If the VSC decides to relocate the application for interview, the adjudicating officer will first render an opinion on the abuse determination, and then relocate the alien file to the appropriate field office for a final decision on the adjustment of status application.

(j) Processing instructions.

(1) Procedures.

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(2) Class of Admission Updates: "384" For VAWA CAA.

An officer adjudicating an application for adjustment of status under section 1 of the CAA filed pursuant to the VAWA amendments will ensure that the Central Index System (CIS) is properly updated with the appropriate class of admission (COA), 384, used to identify these specially protected cases. If the officer is unable to update CIS, then the officer must contact the local records office with write access to CIS to request the update to the COA. The 384 COA is entered in advance of a final decision on the adjustment of status application. Once a final decision is made, the COA is populated to reflect the correct classification (i.e., CU-7 if approved); however, the history screen of CIS will maintain the previous 384 COA.

(3) Previously filed VAWA self-petition, approved, denied, or pending.

If there is evidence of a previously filed VAWA self-petition, the adjudicating officer must review the entire record prior to making a decision on the application for adjustment of status under section 1 of the CAA.

– A previously approved VAWA self-petition based on the same relationship may be considered persuasive evidence of the existence of abuse in the relationship. Nevertheless, the adjudicating officer should not assume that the alleged abuser and the basis for the claim in the VAWA self-petition is the same as the basis for the application for section 1 CAA adjustment of status as an abused spouse or child.

– Similarly, a previously denied VAWA self-petition is not necessarily proof that the claim of abuse in the application for section 1 CAA adjustment of status as an abused spouse or child is unfounded. The VAWA self-petition may have been denied because the abuser was not an LPR at the time of filing or for other reasons unrelated to the abuse or the relationship between abuser and the abused spouse or child. In the case of a denied VAWA self-petition, the adjudicating office must request the complete alien file and review the evidence provided in support of the VAWA self-petition and reason for denial in advance of a final decision on the section 1 CAA adjustment of status application.

– If the VAWA self-petition is pending, it is within the discretion of the adjudicating officer to wait for a final decision on the VAWA self-petition prior to rendering a decision on the application for section 1 CAA adjustment of status as an abused spouse or child. The adjudicating officer may contact the VSC to request a possible expedite of the VAWA self-petition.

(k) Interview.

At the discretion of USCIS, the application may be referred to the appropriate field office for an interview. The interviewing procedures and techniques are essentially the same as those on a section 245 interview (see subchapter 23.4). However, three areas of potential difficulty should be addressed:

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- When an applicant has made a claim of abuse and is seeking adjustment of status as an abused spouse or child, the confidentiality provisions of 8 U.S.C. 1367 apply.

– An abused spouse or child with a pending or approved application for adjustment of status to that of a lawful permanent resident under section 1 of the CAA is by definition a “VAWA self-petitioner” as defined at section 101(a)(51)(D) of the Act (even if a VAWA self-petition is never filed). If the application for adjustment of status under section 1 of the CAA is denied, the confidentiality provisions will continue to apply to the applicant until all final appeal rights are

exhausted. Please refer to the 12/15/10 guidance memo entitled "Revocation of VAWA-Based Self-Petitions (Forms I-360) (AFM Update AD10-49)" for information on how to comply with the VAWA confidentiality provisions.

(l) Waivers.

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(m) Approval Procedures.

(1) General.

With the exception of rollback provisions discussed in paragraphs (2) and (3), the general procedures for approval of an adjustment of status application set forth in subchapter 23.2 of this field manual apply to all CAA cases (including VAWA CAA cases). The class of admission codes pertaining to CAA cases are:

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- CU-7: Adjustment of status class of admission for non-Cuban spouses and children adjusting under the Act (to include battered or abused spouses and children of a *qualifying Cuban principal* or CU-6).

(2) General Rollback Provisions.

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This same rule applies to VAWA CAA cases.

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

AD13-04 [DATE]	**Chapter 23.11**	Provides guidance on the VAWA amendments to the Cuban Adjustment Act for abused spouses and children.

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 Family Immigration & Victim Protection Division, Office of Policy & Strategy.