



U.S. Citizenship
and Immigration
Services

HQ 70/8

Interoffice Memorandum

To: Regional Directors
District Directors
Officers-in-Charge
Administrative Appeals Office Director

From: Michael Aytes /s/
Acting Associate Director, Domestic Operations

Date: October 31, 2005

Re: Eligibility to Self-Petition as a Battered Spouse or Child of a U.S. Citizen or
Lawful Permanent Resident Within Two Years of the Abuser's Loss of Status;

Revisions to *Adjudicator's Field Manual (AFM)* Chapter 21.14(q)
(*AFM* Update AD05-12)

This memorandum provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers in the field regarding amendments made to the self-petitioning provisions of the Immigration and Nationality Act (the Act) by 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 contained in the Act. This guidance concerns the change in the self-petitioning eligibility requirements regarding the effect of an abuser's loss of immigration status prior to the filing of and following the approval of a self-petition.

This guidance is effective immediately. Please direct any questions concerning these changes through appropriate supervisory channels to Laura Dawkins, Office of Program and Regulations Development, via electronic mail.

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Accordingly, the *AFM* is revised as follows:

- ☞ 1. The *AFM* currently contains chapter 21.14 entitled, "Self-petitions by Abused Spouses and Children." That chapter has been revised to add a new chapter 21.14(q) (revision date [insert date memo signed]). Revised chapter 21.14 reads:

(q) Citizenship or Immigration Status of the Abuser. (Chapter 21.14(q) Revised [insert date memo signed]; *AFM 05-07*) A self-petitioning spouse or child must demonstrate that his or her abusive spouse or parent is or was a U.S. Citizen (USC) or Lawful Permanent Resident (LPR).

(1) Evidence. A self-petition filed by a battered spouse or child must be accompanied by evidence of citizenship of the U.S. citizen or evidence of the immigration status of the lawful permanent resident abuser. Self-petitioners are encouraged to submit primary evidence whenever possible, although adjudicators should consider any relevant credible evidence. 8 CFR 204.2(c)(2)(i). However, the determination of what evidence is credible, and the weight to be given that evidence, is left to the discretion of the adjudicating officer. Section 204(a)(1)(J) of the INA. USCIS regulations at 8 CFR 204.1(g) provide detailed information concerning the primary supporting documentation needed as evidence of a petitioner's U.S. citizenship or lawful permanent residence. Self-petitioners can submit evidence of a spousal relationship to a USC or LPR. The evidence allowed under 8 CFR 204.1(g)(1) will also be allowed for self-petitioners. Primary evidence of the abuser's U.S. citizenship or lawful permanent residence includes:

- A birth certificate issued by a civil authority that shows the abuser's birth in the United States;
- The abuser's unexpired U.S. passport issued initially for a full ten-year period to a citizen of the United States;
- The abuser's expired U.S. passport issued initially for a full five-year period to a citizen of the United States who was under the age of 18 at the time of issuance;
- A statement executed by a U.S. consular officer certifying the abuser to be a U.S. citizen and the bearer of a currently valid U.S. passport;
- The abuser's Certificate of Naturalization or Certificate of Citizenship;
- Department of State Form FS-240, Report of Birth Abroad of a Citizen of the United States, relating to the abuser;

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- The abuser's Form I-551 Alien Registration Receipt Card, or other proof given by USCIS as evidence of lawful permanent residence.

Pursuant to the "Instructions" section of the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, photocopies of the above documents may be accepted as primary evidence.

If primary evidence is unavailable, the self-petitioner must present secondary evidence. Any evidence submitted as secondary evidence should be evaluated for authenticity and credibility. USCIS regulations at 8 CFR 204.1(g)(2) provide detailed information concerning secondary supporting documentation of a spousal relationship to a USC or LPR.

If a self-petitioner is unable to present primary evidence or secondary evidence of the abuser's status, the officer will attempt to electronically verify the abuser's citizenship or immigration status from information contained in DHS computerized records. Other DHS records may also be reviewed at the discretion of the adjudicating officer. It is ultimately, however, the self-petitioner's burden to establish the abuser's U.S. citizenship or immigration status. If USCIS is unable to identify a record as relating to an 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. See **8 CFR 204.1(g)(3)**.

(2) Loss of Immigration Status. On October 28, 2000, the **Battered Immigrant Women Protection Act of 2000 (BIWPA)**, Pub. L. 106-386, was enacted. The BIWPA amended some of the self-petitioning provisions, including those relating to status of the abuser. Prior to the enactment of the BIWPA, an alien was ineligible to file a self-petition as a battered spouse or child of a USC or LPR if the USC or LPR spouse or parent lost his or her status prior to the date the self-petition was properly filed or approved. The BIWPA amended the Act to preserve self-petitioning eligibility for spouses and children of abusive USCs or LPRs if the spouse or child can demonstrate that the abusive USC or LPR lost his or her status during the two-year period immediately preceding the filing of the self-petition for a reason that was "related to" or "due to" an incident of domestic violence. This change applies to all self-petitioners, including those who file under sections 204(a)(1)(A)(v) or 204(a)(1)(B)(iv) as self-petitioners living abroad. 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.

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(A) Loss of Status Due to Death of the Abusive USC Spouse or Parent. The spouse or child of a U.S. citizen who died within the two years immediately preceding the filing of the self-petition may benefit from the self-petitioning provisions. **Section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) and 204(a)(1)(A)(iv) of the INA**. Note: This provision is only applicable to spouses or children of U.S. citizens.

(B) Loss of Status Prior to Filing or Approval of the Form I-360. The spouse or child of a USC or LPR who lost USC or LPR status may benefit from the self-petitioning provisions provided the loss of status occurred within the two years immediately preceding the filing of the self-petition, and the loss of status was related to or due to an incident of domestic violence. In other words, if the self-petitioner can demonstrate that the abuser's loss of status was related to or due to an incident of domestic violence, and the self-petitioner files his or her self-petition within two years of the loss of status, that self-petition should not be denied on the grounds that the abuser is not a USC or LPR. **Sections 204(a)(1)(A)(iii)(II)(CC)(bbb) and (iv); 204(a)(1)(B)(ii)(II)(CC)(aaa) and (iii) of the INA**.

Whether the abuser's loss of status is "related to" or "due to" an incident of domestic violence is a matter of evidentiary proof. In order for an act or conviction to be considered sufficiently related to or due to an incident of domestic violence, the evidence must establish:

- The circumstances surrounding the loss of status;
- The requisite causal relationship between the loss of status and the incident of domestic violence; and
- The loss of status occurred within the two-year period immediately preceding the filing of the self-petition.

When determining whether the alleged abusive spouse's loss of status is related to or due to an incident of domestic violence, the adjudicating officer should consider the full history of the domestic violence in the case. The credibility and probative value of the evidence submitted by the self-petitioner is a determination left to the discretion of the adjudicating officer.

(C) Loss of Status after Filing or Approval of the Form I-360. Loss of USC status by denaturalization, renunciation or other means, death of a USC abuser, divorce from a USC abuser, or changes to a USC abuser's citizenship status after the filing of the self-petition shall not adversely affect the approval of the self-petition, nor shall it affect the ability of an approved self-petitioner to adjust status to that of an LPR.

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Similarly, divorce from an LPR or loss of LPR status by an LPR abuser after the filing of the self-petition shall not adversely affect the approval of the self-petition, nor shall it affect the ability of an approved self-petitioner to adjust status to that of an LPR. Sections 204(a)(1)(A)(vi) and 204(a)(1)(B)(v)(I) of the INA.

(D) Effective Date. The provisions of the BIWPA affecting this eligibility requirement apply to all self-petitions pending on or filed on or after October 28, 2000.

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

AD 05-12 [Insert date of signature]

Chapter 21.14(q)

This memorandum replaces Chapter 21.14(q) with a revised Chapter 21.14(q) of the *Adjudicator's Field Manual (AFM)*.

cc: CIS Headquarters Directors
Bureau of Immigration and Customs Enforcement
Bureau of Customs and Border Protection