

INTERIM MEMO FOR COMMENT

Posted: 03-24-2011

Comment period ends: 04-07-2011

This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Washington, D.C. 20529-2000



U.S. Citizenship
and Immigration
Services

March 22, 2011

PM-602-0033

Policy Memorandum

SUBJECT: Supplemental Guidance to USCIS Service Centers on Adam Walsh Act Adjudication - Centralization of Identified Adam Walsh Act Related Petitions at the Vermont Service Center for Adjudication and Review (*AFM* Update AD11-23)

Purpose

This memorandum provides guidance to USCIS service centers regarding changes in the handling of all stand-alone I-130 and I-129F petitions filed by petitioners who have been convicted of any “specified offense against a minor” under the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act” or “AWA”) and related issues.¹ This memorandum applies only to petitions that are adjudicated at the service centers and not to petitions adjudicated at USCIS field offices.

Scope

This policy memorandum applies to and is binding on all USCIS employees unless specifically exempt.

Authority

Immigration and Nationality Act (INA) section 103; Title 8 of the Code of Federal Regulations (8 CFR) §103.2.

Background

The AWA was enacted on July 27, 2006, to: (a) protect children from sexual exploitation and violent crime; (b) prevent child abuse and child pornography; (c) promote internet safety, and (d) honor the memory of Adam Walsh and other child crime victims.

Section 402(a) of AWA amends INA §§ 204(a)(1)(A) and 204(a)(1)(B)(i) to prohibit a U.S. citizen or lawful permanent resident who has been convicted of any “specified offense against a

¹ The guidance is not applicable to overseas field offices within the jurisdiction of USCIS’s Refugee, Asylum and International Operations Directorate (RAIO). The Service Center Operations Directorate and RAIO have established processes for forwarding AWA-related cases to the designated service center for adjudication. RAIO will issue guidance specific to internationally filed AWA-related cases in the future.

minor” from filing a family-based visa petition for any beneficiary, unless the Secretary of Homeland Security determines, in his or her sole and unreviewable discretion, that the petitioner poses no risk to the beneficiary.

This memorandum outlines operational changes to the handling and adjudication of these cases by service centers. Centralization of AWA-related adjudications at one designated service center will:

- Promote consistency in the adjudication of these sensitive and complex adjudications;
- Promote uniformity and transparency in the application of the “no-risk” standard;
- Enhance efficiency by developing a highly trained team of adjudicators;
- Enhance the integrity of the adjudications process by enabling the team of adjudicators to identify and address sensitive and unique issues quickly; and
- Enhance case management and tracking through centralized filing.

The centralization of identified AWA-related adjudications at the Vermont Service Center (VSC) will enable USCIS to process these sensitive cases more efficiently and expeditiously.

Policy

USCIS will centralize at VSC all files currently at service centers if the service center adjudicator has made a preliminary determination that the petition warrants review as an AWA-related case. The VSC will serve as a central clearinghouse for inquiries from Federal, State, and local agencies regarding AWA-related cases that are pending or were recently adjudicated at one of the four service centers [hereafter referred to as “originating service center” or “sending service center”]. While AWA-related cases require special handling, the decision to centralize AWA-related adjudications at the VSC will affect caseloads at other service centers only minimally.

Before sending an AWA-related petition to the VSC, the originating service center will first preliminarily determine if the petition warrants review as an AWA-related case. To make this determination, the originating service centers will:

- First, run front-end criminality searches and, if a hit results, determine preliminarily whether AWA applies.
- Second, if no AWA criminality information is found as a result of the front-end search, run all petitioner aliases through the IBIS Manifest to determine preliminary AWA applicability before taking any steps to adjudicate any I-130s or I-129Fs (e.g., issuing RFE, ITD, or ITR).
- Third, run any new aliases discovered during adjudication before final adjudication.

Note: Service centers should not transfer any petition containing AWA-related derogatory information to VSC if the petition has been subsequently closed, administratively withdrawn, or terminated for reasons unrelated to AWA. Also, service centers should not transfer to VSC any petition that is statutorily ineligible (e.g., where the petitioner has filed for a family member who is not a parent, child, spouse or sibling).

Implementation

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

- ☞ 1. Chapter 21.2 of the *AFM* is revised by adding a new section (f)(3)(F) to read:

(F) Centralization of AWA-applicable Visa Petitions (Forms I-130 and I-129F) at the Vermont Service Center. As of March 22, 2011, service center adjudication of all relative visa petitions subject to the Adam Walsh Act (AWA) is centralized at the VSC. Using the procedures set forth in this section, all other service centers will transfer Forms I-130 or I-129F in their possession to the VSC upon determining preliminarily that AWA applies.

(i) Sources of Information. An officer adjudicating a Form I-130 or Form I-129F may identify derogatory information on criminality through any of the following sources:

- Front-end search,
- Back-end referral from an adjudicator based on a hit in TECS or IBIS Manifest, or
- Non-IBIS referral from an adjudicator based on criminal documents in the file or other documents indicating criminality.

(ii) Sufficiency of Information. The following derogatory information is sufficient to determine preliminarily that AWA applies:

- An NCIC sexual offender registry hit, unless it can be conclusively demonstrated that the victim was an adult or that the charge was dismissed, withdrawn, or the prosecution entered “no prosecution [*nolle prosequi*].”
- A TECS hit revealing anything sexual in nature, unless it can be conclusively demonstrated that the victim was an adult or that the investigation has been closed (with no resulting arrest), dismissed, recorded as “no prosecution,” or withdrawn.
- A review of NN16 / NN11 indicates any sexual offense, unless it can be conclusively demonstrated that the victim was an adult or that the charge was dismissed, recorded as “no prosecution,” or withdrawn.
- A check of any system reveals derogatory information involving kidnapping or false imprisonment (unless the offense was committed by parent or guardian).

Note: All AWA-related files that are transferred to the VSC must contain a timely and unexpired AWA petitioner criminality-resolution memorandum.

The resolution memorandum will detail all criminality issues related to the petition and indicate that a preliminary AWA determination has been made.

(iii) Cases with Scheduled Fingerprinting Appointments. Where the petitioner has a history of criminality, the petition has been transferred to the VSC after the originating service center issued a fingerprint-appointment notice, and the petitioner later fails to appear for (or seeks postponement of) the originally scheduled fingerprinting appointment, the VSC will do the following:

(a) determine whether it is necessary to reschedule the fingerprinting appointment; (b) if so, apply its local fingerprint scheduling procedures; and (c) determine whether the petition should undergo AWA-related review and adjudication.

(iv) Post-adjudication Transfers to the VSC. Where an originating service center or the VSC has already adjudicated the underlying petition, but where new derogatory evidence is uncovered, or where a remand from the Board of Immigration Appeals (BIA) requires that a service center review the case for possible AWA determinations, the originating service center should forward the case to the VSC for reconsideration.

Note: If there is a concurrently filed Form I-485 associated with the underlying petition that was to be adjudicated by the originating service center, that Form I-485 will also be adjudicated by the VSC. Additionally, if an AWA-related case is remanded by the BIA to an originating service center, the originating service center should transfer the case to the VSC for AWA-related review and adjudication. In those cases, the originating service center must also provide the petitioner with written notice of the case transfer.

(v) File Transfer. The originating service center will package and send to the VSC all files where there has been a preliminary determination that the petition warrants review as an AWA-related case. The following procedure applies:

- Create a manifest for each box detailing the file receipt and box numbers.
- Record the number of files and list the corresponding barcodes on the manifest.
- Number each box (e.g., "1 of 4") for each shipment (a copy of the manifest should be maintained by the audit team of the sending service center).
- Place a copy of the manifest in the box.

- Send an electronic copy of each manifest via email to the VSC after every shipment, detailing the contents of each shipment.
- Relocate each file to VSC in CLAIMS using “Relocated to new jurisdiction (VSC)” and “batch transfer forward” in NFTS to the VSC shipping destination.
- Affix an AWA cover sheet to each AWA-related case file being transferred to the VSC (see attached uniform AWA cover sheet). For previously batched AWA case shipments, use only one cover sheet for each batch.
- Provide written notice to each petitioner regarding the transfer of the underlying petition or application.
- Forward all AWA petitions to the following VSC shipping address:

DHS-USCIS Vermont Service Center
Attn: AWA TEAM
75 Lower Welden Street
St. Albans, VT 05479-0001

(vi) Post-shipment Audit. VSC will audit each shipment of AWA files, as follows:

- The audit will consist of random checks (i.e., samples will be pulled from each box) to an AQL of 1.5 % Level II of ANSI/ASQ Z1.4-2003.*
- The audit will:
 - Verify that the files have been properly transferred forward in NFTS;
 - Verify that the files have been properly manifested;
 - Verify that the files have been properly relocated in CLAIMS “Transferred to new jurisdiction (VSC)”;
 - Verify the files are I-130s and I-129Fs; and
 - Verify the I-130 and I-129F data is in CLAIMS 3.
- Once the petition is received at the VSC, all files will be routed to the designated AWA shelf in Essex “Attn: AWA BCU Team” for review and processing. Each file must be clearly marked so that BCU is aware that the petition has been identified as an AWA petition.

(vii) Jurisdiction over AWA-related Determinations. The decision to centralize the adjudication of AWA-related petitions filed does not alter the VSC’s ability

to refer petitions to district offices when an interview is deemed necessary or an investigation of suspected fraud is merited. In those instances, the VSC will retain exclusive authority to make all AWA-related determinations. Any case referred to a district office should be accompanied by a completed AWA-approval worksheet indicating the VSC has determined that the petitioner poses no risk to his or her intended beneficiary.

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

AD 11-23 03/22/2011	Chapter 21.2(f)(3)(F)	Provides guidance on the centralization of VAWA petition casework at the Vermont Service Center
------------------------	-----------------------	---

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 regarding this memorandum should be directed to the Service Center Operations Directorate through appropriate channels.