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Posted: 06-10-2010
Comment Period Ends: 06-24-2010
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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-XXXX

Policy Memorandum

SUBJECT: Continued Eligibility to File for Child VAWA Self-Petitioners After Attaining Age 21;
Revisions to Adjudicator's Field Manual (AFM) Chapter 21.14 (AFM Update AD07-02)

Purpose
This Policy Memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers regarding an amendment to the Immigration and Nationality Act (Act) that provides for continued eligibility for certain individuals to file a VAWA self-petition as a child after attaining age 21, but before attaining age 25. The guidance contained in this PM is effective immediately and in advance of regulatory amendments.

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

Authority
The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162 (2006); the Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments, Pub. L. 109-271 (2006).

Background
Section 805(c) of VAWA 2005 and section 6(a) of the VAWA 2005 technical amendments amended section 204(a)(1)(D) of the Act[1] by providing for continued eligibility for certain individuals to file a VAWA self-petition as a child after attaining age 21, but before attaining age 25, if the individual can demonstrate that the abuse was at least one central reason for the filing delay.

Policy

[1] INA 204(a)(1)(D)(v).

This PM provides guidance to adjudicators regarding adjudication of VAWA self-petitions filed by individuals over age 21, and younger than age 25, if the abuse was at least one central reason for the filing delay.

Implementation
Accordingly, the *AFM* is revised as follows:

☞ 1. Add new paragraphs (a) and (c)(8) to *AFM* Chapter 21.14 entitled "Self-petitions by Abused Spouses and Children" to read:

Chapter 21: Family-based Petitions and Applications

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21.14 Self-petitions by Abused Spouses and Children

(a) Background. Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (Crime Act), enacted September 13, 1994, is the Violence Against Women Act of 1994 (VAWA). Section 40701 of VAWA amended section 204 of the Act, permitting certain abused spouses and children of U.S. citizens and lawful permanent residents to self-petition for immigrant classification. Although the title of this portion of the Crime Act reflected the fact that many abuse survivors were women, abused spouses and children of either sex can benefit from these provisions. The original VAWA was broadened by the Battered Immigrant Women Protection Act (BIWPA), enacted as Title V of Pub. L. 106-386, on Oct. 28, 2000. This self-petitioning provision was further broadened by Title VIII of Pub. L. 109-162, the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), which became effective Jan. 5, 2006.

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(c) Adjudicative Issues.

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(8) Late Petition Permitted for Eligible Sons and Daughters as Children.

(A) Background. Otherwise eligible sons and daughters of United States citizens and lawful permanent residents have found themselves precluded from filing a VAWA self-petition because they attained age 21 before the petition could be filed. The inability to file the self-petition before attaining

age 21 may have been due to various reasons, including the nature of the abuse or the time period during which the abuse took place. Section 805(c) of VAWA 2005 amends section 204(a)(1)(D) of the Act by adding a new paragraph (v) which permits the late filing of a VAWA self-petition in certain instances.

(B) Eligibility Qualifications for Filing Late Petitions.

(i) Self-petitioner Qualified Before Attaining Age 21. The self-petitioning son or daughter must have been qualified to file the self-petition on the day before the individual attained age 21. This means that all qualifying factors must have been in place on that date. For instance, if the "qualifying" abuse took place only after the individual attained age 21, the individual would not have been qualified to file the self-petition on the day before he or she attained age 21.

(ii) Qualifying Abuse Must be One Central Reason for Delay in Filing. Section 204(a)(1)(D)(v) of the Act requires the qualifying abuse to be "one central reason" for the self-petitioner's delay in filing. For these purposes, one central reason is one that is caused by or incident to the battery or extreme cruelty to which the self-petitioner was subjected. The battery or extreme cruelty is not required to be the sole reason for the delay in filing, but to be considered central, the nexus between the battery or extreme cruelty and the filing delay must be more than incidental or tangential.

An example of a qualifying reason would be that the abuse took place so near in time to the self-petitioning son or daughter attaining age 21 that there was insufficient time to timely file. Another example would be that the abuse was so traumatic that the self-petitioner was mentally or physically incapable of filing in a timely manner. Although not limited to the foregoing examples, the abuse must be identifiable as one central reason for the delay.

(iii) Self-petition Must Be Filed Prior to Attaining Age 25. The child self-petitioner over age 21 must file Form I-360 with all accompanying documentation and the appropriate fee before his or her 25th birthday.

(C) Filing Requirements. The late-filing self-petitioner must file a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, along with relevant, credible evidence establishing eligibility and that the battering or extreme cruelty was one central reason for the delay in filing.

(D) Consideration of Evidence. The adjudicating officer must consider any credible evidence that establishes the qualifying abuse was one central reason for the delay in filing. The self-petitioner should submit that evidence with the petition. If the evidence is absent from the submission, it may be requested. The self-petitioner may be requested to submit a statement explaining how submitted evidence establishes the required nexus.

(E) Approval. If the self-petitioning child will apply for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the self-petitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center (8 CFR 204.2(e)(3)(i)).

(F) Denial. The adjudicating officer must deny a self-petition filed after the petitioner attains age 21 and before the petitioner attains age 25 that is not supported by credible evidence establishing the qualifying abuse was one central reason for the delay in filing. The denial should address the insufficiency in the evidence and all other eligibility deficiencies in the record.

(G) Classification. A petitioner qualifying for continued eligibility under sub-paragraph (v) of section 204(a)(1)(D) of the Act shall be classified as if the petition had been filed on the day before the self-petitioner attained age 21. Continued eligibility and subsequent classification for visa issuance or adjustment of status shall be governed by section 201(f) of the Act or paragraph (i) of section 204(a)(1)(D) of the Act, whichever is appropriate.

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

AD 07-02 [Insert date of signature]	**Chapter 21.14(a)** and **Chapter 21.14(c)(8)**	This memorandum provides guidance on continued eligibility for a VAWA self-petition as a child after attaining age 21, but before attaining age 25.

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.