

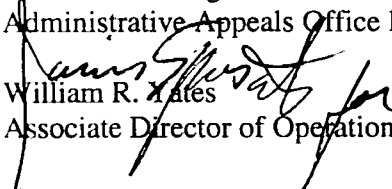


U.S. Citizenship
and Immigration
Services

HQOPRD 70/33.1

Interoffice Memorandum

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

From: 
William R. Yates
Associate Director of Operations

Date: JAN 27 2005

Re: Clarification of Classes of Applicants Eligible for Naturalization under Section 319(a) of the Immigration and Nationality Act (INA), as amended by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386

Purpose

This memorandum modifies the October 15, 2002, policy memorandum entitled, "Instructions Regarding the Expanded Meaning of Section 319(a)" (INS Policy Memo #89), to incorporate one additional class of qualified applicants who may claim eligibility for naturalization under section 319(a) of the INA, as amended. This memorandum clarifies that individuals who obtained lawful permanent residence by reason of an approved waiver of the joint filing requirement under section 216(c)(4)(C) of the INA are also eligible to apply for naturalization under section 319(a).

Background

Section 316(a) of the INA lists the general eligibility requirements for naturalization. Under that section, a lawful permanent resident (LPR) must be a resident continuously for a period of five years subsequent to obtaining LPR status before he or she may apply for naturalization. However, section 319(a) of the INA provides that if the LPR is married to a U.S. citizen (USC), the LPR may naturalize after only three years if the LPR has lived in marital union with his or her USC spouse during the three years immediately preceding the date of filing of the naturalization application. The VTVPA amended INA section 319(a) by expanding this provision to include spouses, former spouses, intended spouses, and children of USCs who obtained lawful permanent residence by reason of having been battered or subjected to extreme cruelty by their USC spouse or parent.

Clarification of Classes of Applicants Eligible for Naturalization under Section 319(a) of the Immigration and Nationality Act (INA), as amended by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386

HQOPRD 70/33.1

Page 2

Guidance

The following three categories of individuals became eligible to apply for naturalization under section 319(a) by the enactment of the VTVPA:

- (1) Aliens who obtained lawful permanent residence by reason of an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant under section 204(a)(1)(A)(iii) or (iv) of the INA, or under section 204(a)(1)(B)(ii) or (iii), if the abusive spouse or parent naturalizes after the Form I-360 has been approved.;
- (2) Aliens who obtained lawful permanent residence by reason of cancellation of removal under section 240A(b)(2)(A)(i)(I), or 240A(b)(2)(A)(i)(III) of the INA where the applicant was the intended spouse of a USC; or
- (3) Aliens who obtained lawful permanent residence by reason of an approved waiver of the joint filing requirement under section 216(c)(4)(C) of the INA.

Motions to Reopen

A naturalization applicant whose application was denied on or after October 28, 2000, on the sole ground that s/he was not entitled to benefit under section 319(a) of the INA based upon an approved waiver of the joint-filing requirement under section 216(c)(4)(C), may seek reconsideration of the denial by filing a motion to reopen with the appropriate USCIS office with the appropriate fee or fee waiver request.

Further information

The preceding clarification of INS Policy Memo #89 is effective immediately and applies to all naturalization applications filed by the above listed categories of applicants pending on or filed on or after October 28, 2000.