



**Homeland
Security**

RECOMMENDATION FROM THE CIS OMBUDSMAN TO THE DIRECTOR, USCIS

To: Eduardo Aguirre, USCIS Director
Cc: Admiral Jim Loy

From:: Prakash Khatri, CIS Ombudsman

Date: October 06, 2004

Re: Recommendation to USCIS to Correct a Naturalization Policy Memorandum in order to Fully Comply with Section 319(a) of the Immigration and Naturalization Act, as amended by Public Law 106-386.

I. BACKGROUND

The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) amended section 319(a) of the Immigration and Naturalization Act (INA) to allow certain survivors of domestic violence to naturalize after residing in the U.S. for three years as a lawful permanent resident.¹ Under prior law, the ability to naturalize after just three years of permanent residency in the U.S. – as opposed to the general requirement of five years – was limited to spouses of U.S. citizens. The VTVPA expanded this provision to include spouses, former spouses and children of U.S. citizens who have been battered or subjected to extreme mental cruelty by their U.S. citizen spouse or parent.

On October 15, 2002, USCIS released a policy memorandum that inexplicably limited eligibility to naturalize under the amended law to individuals who gained permanent residency based on an approved I-360 self-petition or cancellation of removal under the Violence Against Women Act. *See Instructions Regarding the Expanded Meaning of Section 319(a)*, INS Policy Memo #89, HQISD 70/33. This policy excludes individuals who gain permanent residency through the approval of a form I-751 with a waiver of the joint filing requirement due to battery or subjection to extreme mental cruelty. *See* INA § 216(c)(4)(C) and 8 CFR § 216.5 (e)(3). Under the amended statute, these individuals are also eligible for three-year naturalization and should not be denied this benefit by incorrect USCIS policy.

II. JUSTIFICATION

The amendment to INA § 319(a) clearly extends three-year naturalization eligibility to all otherwise eligible survivors of domestic violence who obtained lawful permanent residency as the spouse or child of a U.S. citizen who subjected them to battery or extreme mental cruelty.²

¹ VTVPA, Sec. 1503(e), title V, Pub. L. No. 106-386, Act of Oct. 28, 2000, 114 Stat. 1464.

² A copy of the amended section is attached.

Under the INA there are three paths for survivors of domestic violence to obtain lawful permanent residency without having to rely on their U.S. citizen abusers:

1. Approval of a Form I-751, Petition to Remove the Conditions on Residence with a waiver of the joint-filing requirement based on the petitioner having been battered or subjected to extreme mental cruelty by the U.S. citizen spouse or parent pursuant to INA § 216(c)(4)(C) and 8 CFR § 216.5 (e)(3).³
2. Approval of a Form I-360, Self-Petition under the Violence Against Women Act (VAWA) and subsequent adjustment of status under INA §§ 204(a) and 245(a); and 8 CFR § 204.2(e).⁴
3. Cancellation of Removal and subsequent adjustment of status for battered spouses and children under INA § 240A(b)(2) (“VAWA Cancellation”).

The USCIS policy memorandum includes the second and third categories, but inexplicably and incorrectly excludes individuals under the first category. This policy denies early naturalization to many individuals who are entitled to this important benefit under the amended law. Moreover, the continued enforcement of this erroneous policy leaves USCIS vulnerable to class action litigation.

III. BENEFITS

Customer Service:

Correcting the policy memorandum will greatly improve customer service by restoring integrity to naturalization adjudications under the amended law. USCIS will also regain a measure of public trust by proactively correcting its error.

USCIS Efficiency:

Complying with the law will increase efficiency by eliminating the resources currently spent on motions to reconsider and appeals of erroneous denials of naturalization applications filed under the amended INA § 319(a).

National Security:

This recommendation poses no risks to national security and actually enhances the integrity of the current naturalization system.

³ The regulations have not been amended to comply with Sec. 40702(a) of the Violent Crime Control and Law Enforcement Act of 1994, Act of September 13, 1994, Sec. Pub. L. 103-322, 108 Stat. 1796.

⁴ The regulations have not been revised to comply with subsequent amendments to the INA.

ATTACHMENT:

INA, Section 319 - Married Persons And Employees Of Certain Nonprofit Organizations

Sec. 319. [8 U.S.C. 1430]

(a) Any person whose spouse is a citizen of the United States, *or any person who obtained status as a lawful permanent resident by reason of his or her status as a spouse or child of a United States citizen who battered him or her or subjected him or her to extreme cruelty,* may be naturalized upon compliance with all the requirements of this title except the provisions of paragraph (1) of section 316(a) if such person immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his application has been living in marital union with the citizen spouse (*except in the case of a person who has been battered or subjected to extreme cruelty by a United States citizen spouse or parent*), who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months.

[As amended by the Victims of Trafficking and Violence Protection Act of 2000, Sec. 1503(e), title V, div. B, Pub. L. No. 106-386, Act of Oct. 28, 2000, 114 Stat. 1464. The amended text is italicized.]