



U.S. Department of Justice
Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

*425 I Street NW
Washington, DC 20536*

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MEMORANDUM FOR MICHAEL A. PEARSON
EXECUTIVE ASSOCIATE COMMISSIONER
OFFICE OF FIELD OPERATIONS

FROM: Stuart Anderson /s/
Executive Associate Commissioner
Office of Policy and Planning

SUBJECT: Eligibility to Self-Petition as a Battered Spouse of a U.S. Citizen or
Lawful Permanent Resident Within Two Years of Divorce.

On October 28, 2000, the President signed the Victims of Trafficking and Violence Protection Act (VTVPA). 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 Immigration and Nationality Act (the Act). The purpose of this memorandum is to inform Immigration and Naturalization Service (Service) officers in the field of the change in the law concerning the legal termination of marriage prior to filing a self-petition.

Prior to the enactment of the BIWPA, an alien was ineligible to file a self-petition as a battered spouse of a U.S. citizen (USC) or lawful permanent resident (LPR) if s/he was not legally married to the abusive USC or LPR spouse on the date the petition was properly filed with the Service. Sections 1503(b) and (c) of the BIWPA amend the Act to preserve self-petitioning eligibility for former spouses of abusive USCs or LPRs if the marriage was legally terminated during the two-year period immediately preceding the filing of the self-petition for a reason connected to the battering or extreme mental cruelty. In other words, if the self-petitioner can demonstrate that the battering or extreme mental cruelty led to or caused the divorce, and the self-petitioner files her/his self-petition within two years of the divorce, that self-petition should not be denied on the grounds that a legal marriage no longer exists.

Subject: Eligibility to Self-Petition as a Spouse or Child of an Abusive U.S. Citizen or Lawful Permanent Resident Within Two Years of Divorce.

An alien who claims to be eligible to file a self-petition although now divorced from her/his spouse must nevertheless fully satisfy all other eligibility requirements. S/he must demonstrate that s/he was the spouse of a USC or LPR, that s/he entered the marriage in good faith, that there was battering or extreme mental cruelty during the marriage, that at some point s/he resided with the abuser, and that s/he is a person of good moral character.

Whether the legal termination of the marriage is connected to the battering or extreme mental cruelty is a matter of evidentiary proof. That proof must demonstrate that the abuse occurred during the marriage, that the abuser was a USC or LPR when the abuse occurred, and that the legal termination of the marriage occurred within the two-year period immediately preceding the filing of the self-petition. The evidence submitted to meet the core eligibility requirements may be sufficient to demonstrate a connection between the divorce and the battering or extreme mental cruelty. While a copy of the self-petitioner's final divorce decree (with date issued) shall be required in every case where divorce is an issue, the Service will not require that the divorce decree specifically state that the termination of the marriage was due to domestic violence.

This provision of the BIWPA applies to all self-petitions pending on or filed on or after October 28, 2000. However, a self-petitioner whose petition was denied prior to October 28, 2000 on the sole ground that s/he became divorced prior to the date her/his self-petition was filed, may file a motion to reopen with the Vermont Service Center if s/he can demonstrate that her/his divorce occurred within the two-year period immediately preceding October 28, 2000 (i.e., on or after October 28, 1998).

Please direct any questions concerning these changes to the Residence and Status Branch, Office of Adjudications, (202) 514-4754.