



February 10, 2022

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## Policy Alert

SUBJECT: Violence Against Women Act Self-Petitions

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is publishing policy guidance in the [USCIS Policy Manual](#) addressing Violence Against Women Act Self-Petitions.

### Background

The Violence Against Women Act of 1994 (VAWA) and its subsequent reauthorizations addressed the unique challenges faced by victims of domestic violence and abuse.<sup>1</sup> VAWA provided certain noncitizen family members of abusive U.S. citizens and lawful permanent residents (LPRs) the ability to self-petition for immigrant classification without the abuser's knowledge or participation in the immigration process. By removing their dependence on the abusive U.S. citizen or LPR family member to obtain immigration status, VAWA allowed noncitizen victims to seek both safety and independence from their abuser.

Through this publication, USCIS will begin to address some of the VAWA self-petition-related concerns that were raised in feedback received in stakeholder engagements. Further, this publication builds the framework for VAWA self-petitions guidance in the USCIS Policy Manual, facilitating future policy updates and clarifications.

Specifically, this guidance changes the interpretation of the requirement for shared residence. USCIS no longer requires self-petitioners to currently reside or to have resided in the past with the abuser during the qualifying spousal or parent-child relationship. Instead, USCIS has updated its interpretation of the statute to require self-petitioners to demonstrate that they currently reside or have resided with the abuser at any time in the past when filing the self-petition.<sup>2</sup>

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<sup>1</sup> See Title IV of the Violent Crime Control and Law Enforcement Act of 1994, [Pub. L. 103-322](#), 108 Stat. 1796, 1902 (September 13, 1994); Title V of the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386](#), 114 Stat. 1464, 1518 (October 28, 2000); Title VIII of the Violence Against Women and Department of Justice Reauthorization Act of 2005, [Pub. L. 109-162](#), 119 Stat. 2960, 3053 (January 5, 2006); Section 6 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments, [Pub. L. 109-271](#), 120 Stat. 750, 762 (August 12, 2006); and Title VIII of the Violence Against Women Reauthorization Act of 2013, [Pub. L. 113-4](#), 127 Stat. 54, 110 (March 7, 2013).

<sup>2</sup> See [INA 204\(a\)\(1\)\(A\)\(iii\)\(II\)\(dd\)](#), [INA 204\(a\)\(1\)\(A\)\(iv\)](#), [INA 204\(a\)\(1\)\(A\)\(vii\)\(IV\)](#), [INA 204\(a\)\(1\)\(B\)\(ii\)\(II\)\(dd\)](#), and [INA 204\(a\)\(1\)\(B\)\(iii\)](#). Although USCIS continues to believe its prior interpretation is reasonable, multiple courts have interpreted [INA 204\(a\)\(1\)\(A\)\(iii\)\(II\)\(dd\)](#) ("has resided with the alien's spouse or intended spouse") more broadly, which USCIS agrees is also a reasonable interpretation. See *Dartora v. U.S.*, No. 4:20-CV-05161-SMJ (E.D.W.A. June

The other two changes implement the decisions in *Da Silva v. Attorney General* and *Arguijo v. United States* nationwide.<sup>3</sup>

The guidance, contained in Volume 3 of the Policy Manual, consolidates, updates, and replaces Chapters 21.14 and 21.15 of the Adjudicator’s Field Manual (AFM) and related policy memoranda and changes USCIS’ interpretation of three policies. USCIS is implementing this guidance immediately and the guidance applies to all Petitions for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)) filed as VAWA self-petitions that are currently pending, or filed on or after February 10, 2022. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

### Policy Highlights

- Consolidates and updates guidance on eligibility, filing, and adjudication requirements for VAWA-based Form I-360s to reflect current laws and existing practice.
- Changes the interpretation of the requirement for shared residence to occur during the qualifying relationship and, instead, requires the self-petitioner to reside or have resided with the abuser at any time in the past.
- Implements the decision in *Da Silva v. Attorney General*,<sup>4</sup> which held that when evaluating the good moral character requirement, an act or conviction is “connected to” the battery or extreme cruelty when it has “a causal or logical relationship.”
- Implements the decision in *Arguijo v. USCIS*,<sup>5</sup> which allows stepchildren and stepparents to continue to be eligible for VAWA self-petitions if the parent and stepparent divorced.
- Clarifies how USCIS considers the 2-year filing requirement when the self-petitioner’s marriage is terminated, the abusive U.S. citizen family member dies, and the abusive family member loses or renounces U.S. citizenship or LPR status.
- Clarifies that [INA 204\(a\)\(2\)](#) does not apply when a self-petitioner files a Form I-360 based on a qualifying relationship to an abusive LPR spouse but does apply if the self-petitioner acquires LPR status and subsequently files a family-based spousal petition.

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7, 2021); *Bait It v. McAleenan*, 410 F. Supp. 3d 874 (N.D. Ill. 2019); and *Hollingsworth v. Zuchowski*, 437 F. Supp. 3d 1231 (S.D. Fla. 2020) (holding that self-petitioners are not required to have resided with the abuser during the qualifying relationship but must have resided with the abuser at some point before filing the self-petition).

<sup>3</sup> See *Da Silva v. Attorney General*, 948 F.3d 629 (3rd Cir. 2020) and *Arguijo v. USCIS*, 991 F.3d 736 (7th Cir. 2021), which were decided on January 3, 2020 and March 12, 2021, respectively. These cases were decided in different Circuits; however, in order to have consistency across agency adjudications, USCIS is adopting the decisions nationwide.

<sup>4</sup> See *DaSilva v. Attorney General*, 948 F.3d 629 (3rd Cir. 2020), holding that “connected to” as it is used in [INA 204\(a\)\(1\)\(C\)](#) means “having a causal or logical relationship.” USCIS has chosen to apply this holding regardless of where the self-petitioner resides.

<sup>5</sup> See *Arguijo v. USCIS*, 991 F.3d 736 (7th Cir. 2021), holding that divorce does not terminate a stepchild relationship for the purposes of eligibility for a VAWA self-petition. USCIS has chosen to apply this holding regardless of where the self-petitioner resides.

- Provides guidance on special considerations for self-petitions filed subsequent to a Petition for Alien Relative ([Form I-130](#)) and an Application to Register Permanent Residence or Adjust Status ([Form I-485](#)).

**Citation**

Volume 3: Humanitarian Protection and Parole, Part D, Violence Against Women Act  
[\[3 USCIS-PM D\]](#)