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Office of Public Engagement United States Citizenship and Immigration Services 20 Massachusetts Ave. NW Washington, DC 20529

Via e-mail: opefeedback@uscis.dhs.gov

Re: AILA Comment on USCIS Draft Memorandum: "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)

The American Immigration Lawyers Association (AILA) submits the following comments to the above-named draft memorandum. AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. AILA has been in existence since 1946 and is affiliated with the American Bar Association. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. Citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this draft memorandum and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

#### **Introduction**

AILA appreciates the opportunity to provide comment on the recent draft policy memorandum, "Continued Eligibility to File for Child VAWA Self-Petitioners After Attaining Age 21; Revisions to Adjudicator's Field Manual (AFM) Chapter 21.41 (AFM Update AD07-02) ("draft memorandum"). The draft memorandum is straightforward and limited to providing guidance on adjudicating late petitions permitted for eligible sons and daughters under section

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204(a)(1)(D) of the Immigration and Nationality Act as amended by section 805(c) of VAWA 2005.

## (B) Eligibility Qualifications for Filing Late Petitions

The language in the draft memorandum follows the language of the regulation, stating that the self-petitioning son or daughter must have been qualified to file, and all qualifying factors must have been in place on *the day before* attaining the age of 21. We assume new adjudicators will understand this to mean that the abuse could have taken place anytime prior to the son or daughter turning 21. However, for the sake of clarity and to prevent misinterpretation by an officer, we recommend using the word "before" rather than "the day before."

## "At Least One Central Reason"

The Act provides that the applicant show that the abuse was "at least one central reason" for the filing delay. The interpretation of "one central reason" in the draft memorandum is reasonable ("nexus between [battery and extreme cruelty] and the delay must be more than incidental or tangential") in that it reminds the adjudicating officer that an abusive situation may encompass trauma, experiences and related episodes that render the survivor of abuse unable to file the I-360. The abuse is central to an action or inaction. In other words, the abuse in and of itself is not the only reason for an action or inaction but will be central to a victim's behavior. The examples of qualifying reasons provided in the draft memorandum further clarify this by discussing that trauma could render a young adult survivor of domestic violence incapable of taking action, be it physical or mental. AILA suggests adding language after the example discussion stating that these are not exhaustive, that the adjudicator take the totality of the circumstances into account to determine the nexus between the abuse and the filing delay, and to "step in the shoes" of the applicant.

# Use of the Language "Battery and Cruelty"

AILA recognizes that the term "battery and extreme cruelty" is utilized in the I-360 instructions, and is referred to in the AFM and other battered spouse and child types of cases. However, for VAWA victims, the statute and regulations refer to "abuse." The term "abuse" is broader than physical and sexual abuse, encompassing threats, verbal abuse, witnessing abuse of another, and trauma. We recommend remaining consistent with the regulation and using the term "abuse" in place of "battery and extreme cruelty" throughout the draft memorandum.

<u>Fees</u>: Section (b) (iii) provides that the I-360 self-petition must be filed prior to the survivor attaining age 25. We note that the provision calls for the filing of the "appropriate fee" prior to the child's 25<sup>th</sup> birthday. Please note there is no fee required for a Form I-360 for a self-petitioning battered or abused spouse, parent or child of a U.S. citizen or permanent resident.

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Evidence of the Qualifying Abuse to be Filed With Form I-360: Paragraph D of AFM Chapter 21.14(c)(8) entitled "Consideration of Evidence" contained in the draft memorandum requires the adjudicating officer to consider "any credible evidence that establishes the qualifying abuse was one central reason for the delay in filing" and requires that the evidence of the qualifying abuse be submitted with Form I-360. It goes on to note that in the event that evidence of the qualifying abuse is "absent from the submission," "it may be requested." Many self-petitioners do not file with the aid of counsel, many are quite traumatized from the abuse, and many are indigent and living in difficult circumstances. Moreover, this group of self-petitioners is comprised of young adults age 21-24. It is highly desirable that the adjudicator be required to request additional evidence of the abuse from the self-petitioner. The language in the Draft memorandum would make this optional, leaving it to the discretion of the individual officer whether to issue a request for evidence, a summary denial or a notice of intent to deny. It is more equitable and just for the officer to enumerate the deficiencies in the supporting documentation and permit the self-petitioner to correct them rather than deny the petition outright.

#### Conclusion

AILA appreciates the opportunity to comment on this draft memorandum and we look forward to a continued dialogue with USCIS on issues concerning this important Act.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION