



December 18, 2020

Kenneth T. Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., NW
Washington, DC 20529

RE: Comment Submitted in Response to USCIS Policy Manual Revisions:
USCIS PM – Prerequisite of Lawful Admission for Permanent Residence under
All Applicable Provisions for Purposes of Naturalization, 12 USCIS-PM B.4, 10
USCIS-PM D.2, 12 USCIS-PM F.2,
Submitted via email to: USCISPolicyManual@uscis.dhs.gov

Dear Mr. Cuccinelli:

On behalf of ASISTA, I submit this comment in response to USCIS' Policy Alert published on the USCIS website on November 18, 2020 making revisions to the USCIS Policy Manual regarding the "Prerequisite of Lawful Admission for Permanent Residence under All Applicable Provisions for Purposes of Naturalization" (hereinafter "guidance")¹.

The mission of our agency is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA). We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors by providing individual technical assistance, in-depth training opportunities and coalition building. We submit this comment based on our guiding principles and our extensive experience.

This guidance is USCIS's latest attempt to leverage bureaucracy to limit access to protections, by encouraging extreme vetting of underlying applications for relief and adjustment of status. This guidance not only will needlessly and unjustly waste agency resources, but create an enormous

¹ See USCIS Policy Alert "Prerequisite of Lawful Admission for Permanent Residence under All Applicable Provisions for Purposes of Naturalization PA-2020-23" (November 18, 2020), available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20201118-LPRAdmissionForNaturalization.pdf>

chilling effect on those coming forward to naturalize. We write in strong opposition to this new guidance and call for its withdrawal in its entirety.

I. USCIS has Failed to Provide a Meaningful Opportunity for Review

The guidance is extremely problematic both in substance and in form. USCIS issued this policy alert almost simultaneously with numerous other policy manual revisions, including changes to the naturalization examination, and the use of discretion in adjustment of status adjudications, among others. USCIS provided the public with a mere 30-day period in which to review and comment on this guidance; a time frame which is utterly insufficient. Stakeholders, including our own organization, must balance the demands of responding to constant and complex changes to immigration policy, while at the same adapting to irregular work conditions and engaging in care-taking responsibilities due to the COVID-19 national emergency.

Furthermore, this guidance substantially changes how USCIS determines whether a naturalization applicant has satisfied the “lawful admission” eligibility requirement under INA § 318. Indeed, this new guidance represents a drastic departure from prior USCIS policy and should have been subject to a formal notice and comment period. Instead, USCIS continues to circumvent the proper vehicles for policy change in their near constant effort to limit access to immigration relief.

II. The Guidance Requires Adjudicators to Engage in Extreme Vetting and Review Legal Issues outside Their Expertise

This guidance directs officers to engage in extreme vetting and subjects all naturalization applicants to unnecessary and overbroad scrutiny. The guidance instructs officers to verify the underlying immigrant visa petition or other basis for immigrating that formed the basis of the adjustment of status or admission as an immigrant to the United States.² The guidance for naturalization states that “USCIS may find that the [foreign national] was not lawfully admitted to the United States for permanent residence. This may apply in cases where there was an underlying petition that formed the basis of the LPR status was approved in error, was incorrect, or was approved unlawfully. Officers *must* review the underlying family and employment-based petitions or other immigration benefit.”³

² Volume 12: Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization, available at <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-2>

³ *Id.* [emphasis added]

Thus, an adjudicator reviewing a naturalization is now **required** to review the entirety of the applicant's underlying form of relief, adjustment application in addition to the 20-page naturalization application. The guidance instructs **naturalization adjudicators** to re-evaluate the eligibility of K-1 fiance visa holders, inadmissibility waivers, with a particular separate analysis of the public charge ground of inadmissibility⁴ for certain adjustment applications and fraud, and more. Inadmissibility does not apply at naturalization, and yet the clear mandate from the guidance is that all elements are subject to adjudication and review, even issues normally outside the purview and scope of the naturalization adjudication process.

Of particular concern to our organization is the re-evaluation of the underlying marriage of the naturalization applicant, especially in cases based on domestic violence. For Violence Against Women Act (VAWA) self-petitioners, this guidance is not only extremely problematic from a policy perspective but also contrary to existing law. In order to qualify for a VAWA self-petition based on marriage, a petitioner must prove that they entered into the marriage in good faith. This requirement is not relevant at the time of adjustment nor should it be relevant at the time of naturalization. To re-adjudicate this issue at the time of naturalization is to needlessly and unjustifiably subject VAWA self-petitioners to additional trauma and instability. With regard to the validity of the marriage, VAWA also contains protections for abused spouses in instances where the abusive LPR or USC spouse did not legally terminate a prior marriage. This "bigamy exception" would apply if a marriage ceremony was performed between the self-petitioner and the abuser, the VAWA self-petitioner entered the marriage in good faith and had no prior knowledge of the abusive spouse's existing marriage.⁵ The guidance is silent on this particular issue, which will cause confusion for naturalization adjudicators (who lack the specialized training of VAWA-unit adjudicators) and may unjustly jeopardize survivors' cases.

Indeed, the adjudicators for VAWA self-petitions, U visa and T visa relief have extensive specialized training in domestic violence, sexual assault, crime victimization, trauma and other patterns of abuse. As a National Immigrant Women's Advocacy Project report shows, "the legislative history of the 2005 amendments to VAWA makes clear, this level of training is necessary to both the efficiency of the Unit, but also protects victims' confidentiality and expedited processing of their sensitive cases."⁶ The legislative history indicates:

⁴ *Id.* The guidance states for adjustment applications that were postmarked on or after February 24, 2020, the officer may consider the public charge grounds of inadmissibility in their determination whether the individual was lawfully admitted.

⁵ See INA §101(a)(50) The term "intended spouse" means any alien who meets the criteria set forth in Section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB), or 240A(b)(2)(A)(i)(III).

⁶ NIWAP. "How Training and Expertise Improve VAWA Immigration Case Processing: The Efficacy and Legislative History of the Specialized VAWA Unit" (Jan 6, 2015), available at <http://library.niwap.org/wp-content/uploads/2015/IMM-Tool-TrainingImrpoveVAWACaseProcess-1.6.15.pdf>

"In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created 'to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . .', to [engender] uniformity in the adjudication of all applications of this type" and to '[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies.' See 62 Fed. Reg. 16607-16608 (1997).

T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. See USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002). Consistent with these procedures, the Committee recommends that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (Sec. Sec. 202 or 203), and VAWA HRIFA petitions, 214(c)(15)(work authorization under section 933 of this Act), battered spouse waiver adjudications under 216(c)(4)(C) and (D), applications for parole of VAWA petitioners and their children, and applications for children of victims who have received VAWA cancellation."⁷

These "VAWA Unit" adjudicators have specific technical training regarding how to properly evaluate the requirements of survivor-based cases; a naturalization adjudicator would typically have no need for this level of specialized training. Thus, to subject survivor-based relief to this level of extreme review by a naturalization adjudicator destabilizes and undermines the relief itself.

III. The Guidance Provides Will Harm Survivors and Other Vulnerable Naturalization Applicants

The guidance *requires* naturalization officers to engage in extreme vetting of each applicant's immigration history, which will disproportionately affect *pro se* and other vulnerable naturalization applicants, who may not have the resources to come to interviews prepared with detailed justifications for legal issues that were resolved in the past, often years before. For example, in the case of a U visa holder, a petitioner must wait about 5 years to have their cases adjudicated for placement on the waitlist,⁸ may face an additional year or more for the issuance of the U visa itself, then three to four years later apply for adjustment of status, wait another year

⁷ Committee on the Judiciary, House of Representatives, Department of Justice Appropriations Authorization Act, Fiscal Years 2006 to 2009 to Accompany HR 3402. 109th Congress, 1st Session, Report 109- 233, September 22, 2005 p. 116, available at <https://www.congress.gov/109/crpt/hrpt233/CRPT-109hrpt233.pdf>

⁸ Under current processing times which is 57 to 57.5 months. See USCIS Case Processing Times, available at <https://egov.uscis.gov/processing-times/>

for the adjustment to be adjudicated, and then 5 years after be eligible for naturalization. Thus, *at a minimum*, the road to naturalization for U visa holders currently may take about 15 years.

The guidance states that an applicant is ineligible for naturalization under INA § 318 if his or her LPR status was obtained in error, even in the absence of fraud or willful misrepresentation, including when USCIS “incorrectly” approved an adjustment application. This provision is extremely subjective, as the original adjudicator may have deemed a ground of inadmissibility not to apply in a particular case or that the applicant warranted approval of a waiver. The guidance does not specify what it will consider to be an “incorrect approval” or how it will evaluate if an applicant was “mistakenly admitted as an LPR” leading to inconsistent application of this guidance nationwide. The guidance also does not account for changes in USCIS policy that may render an adjustment that was correctly approved at the time of adjudication to later be considered “incorrect.”

IV. Conclusion

Given the limitations USCIS have placed on the comment period, this comment reflects only a fraction of the substantive issues we would have liked to address in our response. We remain deeply concerned about the guidance’s directive to engage in unnecessary and wasteful extreme vetting in adjudicating naturalization applications. USCIS has not provided any justification for this new guidance and--as in so many other recent policy changes--creates “solutions” without giving grounds for or naming what problems the agency is aiming to solve. For these reasons, we call for the immediate withdrawal of this guidance.

Respectfully submitted:



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ASISTA