



HQDOMO 70/23.1  
AFM Update AD08-16

# Memorandum

TO: Field Leadership

FROM: Michael L. Aytes /s/ Donald Neufeld  
Associate Director, Domestic Operations

DATE: April 11, 2008

SUBJECT: Adjustment of status for VAWA self-petitioner who is present without inspection

Revision of *Adjudicator's Field Manual (AFM) Chapter 23.5*  
(AFM Update AD 08-16)

## **1. Purpose**

This memorandum provides guidance to USCIS adjudicators for adjudicating adjustment of status applications filed by VAWA self-petitioners who are present in the United States without having been inspected and admitted or paroled.

## **2. Background**

As a general rule, an alien seeking adjustment of status under section 245(a) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255(a), must have been inspected at a port-of-entry and either admitted or paroled into the United States. Under section 245(a)(2) of the Act, the adjustment applicant must also be admissible as an immigrant. Section 212(a)(6)(A) of the Act renders inadmissible an alien who is present in the United States without inspection. Section 212(a)(6)(A)(ii) of the Act, in turn, provides for a waiver of inadmissibility for a VAWA self-petitioner who can show a "substantial connection" between the VAWA self-petitioner's unlawful entry and the VAWA self-petitioner's having been subjected to battery or extreme cruelty. Thus, section 245(a) provides two separate bars to denying adjustment of status, in the case of an alien who is present without inspection.

In October 2000, section 1506(a) of Public Law 106-386 amended section 245(a) of the Act so that the “inspection and admission or parole” requirement does not apply to an alien who is seeking adjustment of status as a VAWA self-petitioner. Section 1506(a), therefore, eliminated at least one bar to granting adjustment of status to a VAWA self-petitioner. Public Law 106-386 did not, however, specify what effect, if any, the amendment to the introductory text in section 245(a) should have on the second bar to granting adjustment of status. In particular, section 106-386 amended neither section 245(a)(2) of the Act, which requires an adjustment applicant to be admissible, nor the inadmissibility ground in section 212(a)(6)(A)(i) of the Act.

Effective immediately, USCIS interprets the introductory text in section 245(a) of the Act as effectively waiving inadmissibility under section 212(a)(6)(A)(i) of the Act for any alien who is the beneficiary of an approved VAWA self-petition. All USCIS adjudicators will follow this interpretation in adjudicating a VAWA self-petitioner’s adjustment of status application.

USCIS adjudicators will also deem this changed interpretation to be a sufficient basis to accept and approve, without filing fee, a motion to reconsider or reopen a VAWA self-petitioner’s adjustment application the VAWA self-petitioner filed the application on or after January 14, 1998, and USCIS denied the application solely because the VAWA self-petitioner was inadmissible under section 212(a)(6)(A) of the Act.

### **3. Field Guidance and Adjudicator’s Field Manual (AFM) Update**

The adjudicator is directed to comply with the following guidance.

1. Chapter 23.5 of the AFM entitled, “Adjustment of Status to Lawful Permanent Residence,” is amended by adding a new section (k), “VAWA-based Adjustment of Status Applications.”

#### **23.5 Adjustment of Status under Section 245 of the INA**

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(k) VAWA-based Adjustment of Status Applications. Under section 245(a) of the Act, the alien beneficiary of a VAWA self-petition may apply for adjustment of status even if the alien is present without inspection and admission or parole. USCIS has determined that this special provision in section 245(a) of the Act, in effect, waives the VAWA self-petitioner’s inadmissibility under section 212(a)(6)(A)(i) for purposes of adjustment eligibility. Thus, a USCIS adjudicator will not find, based solely on the VAWA self-petitioner’s inadmissibility under section 212(a)(6)(A)(i), that the VAWA self-petitioner cannot satisfy the admissibility requirement in section 245(a)(2) of the Act. The VAWA self-petitioner is *not* required to show a “substantial connection” between the qualifying battery or extreme cruelty and the VAWA self-petitioner’s unlawful entry.

As with adjustment applicants under section 245(i) of the Act, this interpretation applies only to inadmissibility under section 212(a)(6)(A) of the Act. *Cf. Matter of Briones*, 24 I&N Dec. 355 (BIA 2007). A VAWA self-petitioner who, by repeated violations of the Act, has made himself or herself inadmissible under section 212(a)(9) of the Act may obtain adjustment of status only if the VAWA self-petitioner applies for, and obtains, the related form of relief from inadmissibility. *Cf.* section 212(a)(9)(A)(iii), (B)(III)(iv), (9)(C)(iii) of the Act.

2. Current section 23.5(k), “Precedent Decisions Pertaining to Adjustment of Status,” is re-designated as section 23.5(l).

#### **4. Contact Information**

Questions regarding this memorandum may be directed to Amanda Atkinson, Office of Policy and Strategy, or David Tu, Service Center Operations. Inquiries should be vetted through appropriate supervisory channels.

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