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The USCIS Policy Manual: Exercising Questionable Authority through Obscure Language

In 2022, the United States Citizenship and Immigration Services (USCIS) began creating a centralized online repository for USCIS's immigration policies called the USCIS Policy Manual ("the Manual"), a tool to assist and further consistency in the decisions rendered by immigration officers.^[1] The Manual also establishes procedure around certain nuances of immigration policy.^[2] Consequently, USCIS has established new procedures around the Violence Against Women Act (VAWA) self-petition.^[3]

VAWA allows abused noncitizen spouses, children, and parents the opportunity to independently petition for lawful status, provided their abuser is a United States citizen or lawful permanent resident.^[4] VAWA requires that the petitioner has been battered or subjected to extreme cruelty by the abuser and can be classified as an "immediate relative" under 8 U.S.C. §1151(b)(2)(A)(i).^[5] "Immediate relatives" of a U.S. citizen may include children, spouses, and parents, with the proviso that when the petitioning immediate relative is a parent of the U.S. citizen, then "such citizens shall be at least 21 years of age."^[6] USCIS interprets this regulation to mean that the abusive child must be at least 21 years old at the time the abused parent submits their petition.^[7]

Immigration regulations do not address whether abusive children must meet a specific age requirement at the time they inflict abuse on their parents,^[8] yet USCIS presently does so in the Manual, conveying to immigration officers that it is a VAWA eligibility requirement for parent applicants to have experienced at least some of their abuse during a time when the abusive child was 21 years old.^[9] No legal source is cited in reference to this new rule.^[10]

The lack of a legal source cited in support invites speculation that USCIS's declaration of this eligibility requirement is derived from the "immediate relative" status requirement, since it is the only VAWA-relevant legal principle referenced in the Manual that imposes a 21-year age requirement on children to confer citizenship to their parents.^[11] However, it is imperative to note that this eligibility requirement cannot follow logically solely from the "immediate relative" status regulation, since other categories of noncitizens must also satisfy an "immediate relative" status requirement and so the regulation is not limited to abused noncitizens.^[12]

Furthermore, by the time USCIS declares that the abuse of the self-petitioning parent must have taken place "during the claimed relationship and while the son or daughter was 21 years old or older," USCIS has declared in the same section that the abuse "must have taken place during the qualifying relationship," seemingly conflating the term "qualifying relationship" with the concept of "immediate relative" status.^[13] Yet, in reference to this

sentence, USCIS cites VAWA-relevant statutes that make no mention of the term “qualifying relationships” nor make any mention of an age requirement for the infliction of abuse and instead merely confirm the familial relationships that must be established for VAWA eligibility.[14]

The use of the term “qualifying relationship” demonstrates how USCIS can utilize language in an obscure manner that imposes unfair and legally unsupported limitations on immigration applications. Furthermore, in doing so, USCIS implements law that does not exist, exercising an overreach of authority.[15]

[1] *Policy Manual*, U.S. Citizenship and Immigr. Servs., <https://www.uscis.gov/policy-manual> (Oct. 19, 2022).

[2] *Policy Manual*, *supra* note 1.

[3] *See id.* (under “Updates” tab, listing 3 USCIS-PM D - Part D - Violence Against Women Act as an “Affected Section” and stating “U.S. Citizenship and Immigration Services (USCIS) is publishing policy guidance in the USCIS Policy Manual addressing Violence Against Women Act Self-Petitions”).

[4] *Violence Against Women Act (VAWA)*, Immigr. Ctr. for Women and Child., <https://www.icwclaw.org/violence-against-women-act-vawa> (last visited Nov. 18, 2022, 2:12 PM).

[5] 8 U.S.C. § 1154(a)(1)(A)(vii); *see also* 8 U.S.C. § 1101(a)(51).

[6] 8 U.S.C. § 1151(b)(2)(A)(i).

[7] *Chapter 2 - Eligibility Requirements and Evidence*, U.S. Citizenship and Immigr. Servs., <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (Oct. 19, 2022) (expressed in Subsection 4 of Section B).

[8] *See* § 1154(a)(1)(A)(vii); *see also* § 1151(b)(2)(A)(i); *see also* § 1101(a)(51).

[9] *See* U.S. Citizenship and Immigr. Servs., *supra* note 7 (chart titled “Period of Battery or Extreme Cruelty” in Part E stating that the battery or extreme cruelty experienced by the self-petitioning parent must have occurred “during the claimed relationship and while the son or daughter was 21 years old or older”).

[10] *See id.* (omitting any citations to a supporting reference for the line “during the claimed relationship and while the son or daughter was 21 years old or older”).

[11] U.S. Citizenship and Immigr. Servs., *supra* note 7 (footnotes generally); *see also* § 1154(a)(1); *see also* § 1151(b).

[12] *See* § 1151(b)(2)(A)(i).

[13] U.S. Citizenship and Immigr. Servs., *supra* note 7.

[14] *Id.*; *see* § 1154(a)(1)(A)(iii)(I)(bb); *see* § 1154(a)(1)(A)(iv); *see* § 1154(a)(1)(A)(v)(I)(cc); *see* § 1154(a)(1)(A)(vii)(V); *see* § 1154(a)(1)(B)(ii)(I)(bb); *see* § 1154(a)(1)(B)(iii); *see* § 1154(a)(1)(B)(iv)(I)(cc); *see* 8 C.F.R. § 204.2(c)(1)(i)(E) (2022); *see* 8 C.F.R. § 204.2(e)(1)(i)(E) (2022).

[15] *What We Do*, U.S. Citizenship and Immigr. Servs., <https://www.uscis.gov/about-us/mission-and-core-values/what-we-do> (Feb. 27, 2020) (“U.S. Citizenship and Immigration Services (USCIS) is the federal agency that oversees lawful immigration to the United States”).