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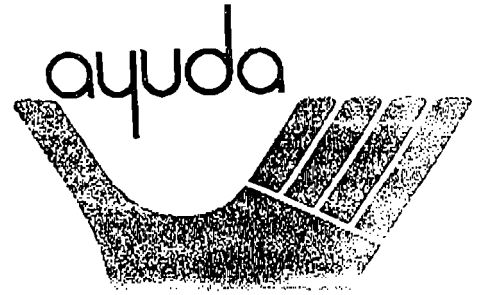
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Ayuda Inc., 1736 Columbia Road, N.W., Washington, D.C. 20009

November 3, 1998



Commissioner Doris Meissner
Immigration and Naturalization Service
425 I Street, N.W.
Washington, D.C. 20534

Re: Public Charge Exemption for Violence Against Women Act Self-Petitioners

Dear Commissioner Meissner:

We are writing to seek your help in confirming that battered immigrant women and children who access the public benefits safety net to escape or survive abuse perpetrated against them by U.S. citizen or lawful permanent resident spouses or parents will not be deemed inadmissible and denied adjustment of status. Battered immigrant qualified aliens must be exempt from public charge inadmissibility.

We write to you on behalf of Ayuda Inc. and the National Network on Behalf of Battered Immigrant Women. Ayuda and the Network are the national voice for issues affecting the legal rights of battered immigrant women and abused immigrant children. As you are aware, the INS has not published regulations that clarify the inapplicability of the public charge ground of inadmissibility §212(a)(4) of the Immigration and Nationality Act (INA) to battered immigrant women and children who qualify for relief under the Violence Against Women Act (VAWA) and who are qualified aliens to receive benefits under Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.¹ (PRWORA). We urge INS to adopt a statutory interpretation of §212(a)(4) that exempts battered immigrant self petitioners and qualified alien battered women and children from the public charge ground of inadmissibility. To do otherwise would undermine access to public benefits granted by Congress to battered immigrant self petitioners and battered immigrant qualified aliens. This will once again increase the risk of ongoing harm from domestic violence.

Executive Summary

The Illegal Immigration Reform and Personal Responsibility Act of 1996 (IIRAIRA) in Section 501² added a new subsection (c) to Section 431 of the Personal Responsibility and Work

¹8 U.S.C. 1641

²Pub. L. No. 104-208 §384, 110 Stat. 3009-546.

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Opportunity Reconciliation Act of 1996. This new Section 431(c) specifically authorized undocumented alien battered women and children who were in the country illegally to access public benefits on their own behalf. These public benefits provisions were included in IIRAIRA because Congress recognized that immigrants battered by their U.S. citizen or lawful permanent resident spouses or parents would not be able to leave their abusers, cooperate in their prosecution or seek protection from the courts if they could not sever the economic control their abusers held over them. Congress expressly provided access to public benefits to undocumented aliens who had filed an immigration case setting forth a prima facie case or who had received an approval in a case filed under sections (ii), (iii), or (iv) of section 204(a)(1)(A) or subsections (ii) or (iii) of section 204(a)(1)(B).

In IIRAIRA Congress went out of its way to grant access to public benefits for VAWA eligible battered immigrants who have received prima facie determinations, for battered immigrant spouses and children of U.S. citizens with approved I-130 petitions. Congress clearly wanted immigrant spouses and children abused to U.S. citizen and lawful permanent resident spouses and parents have access to the public benefits safety net.

Ayuda and other members of the National Network on Behalf of Battered Immigrant Women have been monitoring the implementation of this provision nationally. We have found that lack of clarity about public charge inadmissibility is driving battered immigrants away from the relief that was to be available to them, heightening the danger to battered immigrant women and their children. This problem is undermining access to the life saving public benefits that Congress wanted these battered immigrants to have.

We have been receiving calls from across the country from battered women's advocates working in shelter programs and attorneys representing battered immigrant women and children in VAWA self-petitioning, cancellation of removal and suspension of deportation cases. Advocates and attorneys are reporting that battered immigrants are refusing to apply for welfare benefits they desperately need because they fear that accessing those benefits will result in being denied adjustment of status on public charge grounds. Some battered immigrants are returning to their abusers and waiting out the period of time until they can attain their lawful permanent residency under VAWA while suffering ongoing additional abuse. Other battered immigrants have been forced to trade the dangers of their home with the abuser for the dangers of the streets living in substandard housing and trying to feed, cloth and care for their children however they can.

We are also receiving calls from advocates and attorneys working with battered immigrant women and children VAWA self-petitioners who have accessed public benefits under Section 431(c). Many of these women have been able to successfully separate from their abusers. The public benefits available to them as VAWA battered immigrants has provided economic resources that enabled them to secure safe housing, needed food and clothing for themselves and their children. These women and their advocates are now afraid to file for adjustment of status once their VAWA application has been approved or in the case of self-

petitioners married to lawful permanent residents once their visa becomes current because they fear being denied adjustment on public charge grounds. We understand that there are currently no regulations or guidance to assure battered immigrants that they should be able to access benefits under 431(c) and still be able to adjust their status without being subject to a public charge inadmissibility determination.

The group of battered immigrants that VAWA and IIRAIRA sought to protect are currently caught in a dangerous predicament. They can file for relief under VAWA and be granted access to the same welfare safety net that for years has saved the lives of battered women in the United States. However, if they access these life saving benefits they cannot be assured that accessing benefits will not ultimately lead to INS denying them adjustment of status based on public charge. When Congress included three sections in IIRAIRA specifically crafted to grant welfare access to battered immigrants, this is clearly not the result they intended.

Section 501 of IIRAIRA grants welfare access to qualified alien battered immigrants.

Section 552 of IIRAIRA provides an exception to deeming rules for qualified alien battered immigrants.

Section 531(c) of IIRAIRA exempts battered immigrants from the affidavit of support requirement and from being subject to public charge inadmissibility.

Congressional intent was to provide public benefits access for battered immigrant qualified aliens. Battered immigrants will have no meaningful access to public benefits unless INS assures them that accessing benefits will not result in denial of adjustment based on public charge. We are seeking clarification and confirmation that battered immigrant qualified aliens will be exempt from public charge inadmissibility. The current silence on this issue has had a chilling effect and is placing needy victims at risk. It is also hampering the efforts of law enforcement personnel and prosecutors to attain cooperation from VAWA eligible battered immigrants in the criminal prosecution of their abusers as battered immigrants who cannot survive living separate from their abusers are forced to return.

Our analysis of the law and these provisions is discussed more fully below. We are seeking your assistance and advise in this matter and encourage you to address this problem in any manner that will work best for both the Service and battered immigrants. Our goal is a practical one. Any battered immigrant who has received an approved self-petition in which she has already proven to the Service's satisfaction that she is married in good faith to a U.S. citizen or lawful permanent resident, that she or her children have been battered or subjected to extreme cruelty, that she is a person of good moral character and that her deportation would cause extreme hardship to herself or her children, should be not be denied adjustment of status because she relied on public benefits. Battered spouses of U.S. citizens who wish to proceed to adjustment on an I-130 petition filed by their abusive citizen spouse should receive the same

protection as they were also covered as undocumented aliens who were deemed qualified aliens in IIRAIRA.

All battered immigrants who are granted access to benefits under Section 431(c) (IIRAIRA Section 501) should be exempt from public charge inadmissibility. Any other outcome would undermine VAWA and IIRAIRA's provisions that protect battered immigrants, rendering these provisions meaningless to many battered immigrants Congress sought to help.

Discussion:

I. Applicability of INA §212(a)(4)(A) and (C) and Receipt of Public Benefits

INA §212(a)(4)(A) renders a person inadmissible if, at the time of their application for admission or adjustment of status, the consular officer or the Attorney General believe they are likely at any time to become a public charge. The current or prior receipt of public benefits may be deemed relevant to this determination and may render an applicant inadmissible as likely to become a public charge.

INA §212(a)(4)(C) lists exceptions to the public charge ground of inadmissibility. Included in the exceptions are battered women and children³ and persons with an affidavit of support.⁴ Section 212(a)(4)(C) provides:

“(C) Family-Sponsored Immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is excludable (emphasis added) under this paragraph unless (emphasis added)-

- (i) the alien has obtained-
 - (I) status as a spouse or child of a United States citizen pursuant to 204(a)(1)(A)(ii), (iii) or (iv); or
 - (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or (emphasis added)
- (ii) the person petitioning for the alien's admission (including any additional sponsor required under section 213A(f)) has executed an affidavit of support described in section 213A with respect to such alien.”

II. Interpreting INA §212(a)(4)(C) and VAWA Congressional Intent

³ §212(a)(4)(C)(I)(I) refers to §204(a)(1)(A)(iii) and (iv) for battered self petitioners, spouse and child of a U.S. citizen and §204(a)(1)(B)(ii) and (iii) battered self petitioners, spouse and child of a lawful permanent resident.

⁴ §212(a)(4)(C)(ii).

§212(a)(4)(C) applies to any person seeking admission or adjustment of status under §201(b)(2) or 203(a). §201(b)(2) persons include immediate relatives of U.S. citizens. §203(a) persons are spouses, children, and unmarried sons or daughters of lawful permanent residents, married or unmarried sons or daughters of U.S. citizens, and siblings of U.S. citizens. The language of the statute indicates that these persons seeking admission or adjustment of status are excludable under public charge unless the person (1) is a battered immigrant with an INS approved self-petition⁵ or (2) has an affidavit of support executed by the petitioner on behalf of the person seeking admission or adjustment of status.⁶

To be consistent with the purpose and intent of VAWA's immigration provisions §212(a)(4) can only be interpreted to mean that battered immigrants with an INS approved self-petition are exempt from the public charge ground of inadmissibility. We believe that this interpretation is the correct interpretation of the statute, and is consistent with what Congress had intended when it enacted VAWA and the IIRAIRA welfare provisions. The plain reading of the public charge section of the INA indicates that battered immigrants with an approved self-petition are not only exempt from filing an affidavit of support, but are wholly exempt from the public charge provision. Any other interpretation of the public charge provision would undermine Congress' intent to protect immigrant women and children from domestic abuse by providing them with the means to escape the violence.

First, VAWA's immigration provisions provide battered immigrants with a means to escape their U.S. citizen or lawful permanent resident spouse's control over their immigration status, which he has used to hold them hostage in an abusive relationship. Second, IIRAIRA's welfare provisions provide these needy battered immigrants with critical access to the welfare safety net, and a means to survive economically, when they flee and sever financial dependence on their abusers. Public assistance is only available to battered immigrant self-petitioners if there is a substantial connection between the need for benefits and the abuse.⁷ Many battered immigrant women need this public assistance safety net to remove themselves and their children from abuse. Battered women will only be able to safely access critical public benefits if INS makes it clear that battered women who use public assistance for help will not later be punished for it when they apply for lawful permanent resident status.

III. Legislative History of VAWA's Battered Immigrant Spouse Provisions

⁵§212(a)(4)(C)(i)(I) and (II).

⁶§212(a)(4)(C)(ii).

⁷6 Pub. L. No. 104-208 §384, 110 Stat. 3009-546, and the Attorney General giving guidance in defining substantial connection. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Department of Justice. Federal Register, November 17, 1997, Volume 62, Number 221. Pages 61344-61416.

When VAWA was enacted in 1994, Congress viewed it as "an essential step in forging a national consensus that our society will not tolerate violence against women"⁸ and the terror it spawns.⁹ Domestic violence threatens the lives, safety and welfare of millions of women and children in the U.S. every year. An estimated 16 to 36 % of women are physically abused by a male partner at some point in their lives¹⁰ and battering is the single largest cause of injury for women, causing more injuries than auto accidents, muggings and rapes combined.¹¹

Congress found that spouse abuse is serious, chronic and national in scope.¹² Congressional reports noted that in 1991 at least 21,000 domestic crimes against women were reported to police every week,¹³ and that unreported domestic crimes were estimated to more than three times the level of reported crimes.¹⁴ According to Congressional reports 3 to 4 million women in the U.S. are abused by their husband each year.¹⁵ Surgeon Generals have repeatedly warned that family violence posed the single largest threat to adult women.¹⁶ One million women each year seek medical attention for injuries committed by male partners.¹⁷ One-fifth of all reported aggravated assaults involving bodily injury occurred in domestic situations.¹⁸ According to a U.S. Department of Justice report, one-third of domestic attacks are felony rapes, robberies, or aggravated assault. Of the remaining two-thirds, which were simple assaults, almost one-half involved serious bodily injury.¹⁹ Between 20 and 35% of women

⁸ S. Rep. No. 138, 103d Cong., 1st Sess., at 41-42. (1993)

⁹ Staff on the Senate Comm. on the Judiciary, 102d Cong., 2d Sess., *VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA* (Comm. Print 1992) at 26.

¹⁰ Avis, Judith, Where are All the Family Therapists? Abuse and Violence Within Families and Family Therapy's response, J. Of Marital and Family Therapy (July 1992).

¹¹ Horn, Patricia, Beating Back the Revolution: Domestic Violence's Economic Toll on Women, Dollars and Sense (Dec. 1992).

¹² S. Rep. No. 545, 101st Cong., 2d Sess., at 37 (1990). See also Nat'l Crime Survey Statistics, showing 32% of battered women are re-victimized within 6 months after involving the law (Lanagan and Innis, 1986).

¹³ S. Rep. No. 138, 103d Cong., 1st Sess., at 37 (1993). Every 15 seconds a women is battered by her boyfriend, husband, or spouse in this country. "Five Issues in American Health," AMA, Chicago, 1991.

¹⁴ Id.

¹⁵ S. Rep. 545, 101st Cong., 2d Sess., at 30 (1990); H.R. Rep. No. 395 103rd Cong., 1st Sess., at 26 (1993). See also Klein, Catherine F. and Leslye E. Orloff, "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law," Hofstra Law Review, v. 21 no. 4, 1993.

¹⁶ S. Rep. No. 138, 103d Cong., 1st Sess., at 41-42 (1993),

¹⁷ Id. at 41; S. Rep. No. 545, 101st Cong., 2d Sess., at 37 (1990).

¹⁸ Staff on the Senate Comm. on the Judiciary, 102d Cong., 2d Sess., *VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA* (Comm. Print 1992) at 32. Despite this police routinely classify domestic assaults as misdemeanors even when it is as serious as felony cases. (Lanagan and Innis, 1986).

¹⁹ S. Rep. No. 138, 103d cong., 1st Sess., at 41 (1993).

seeking medical care in emergency rooms in America are there because of domestic violence. Finally, family violence accounts for a significant number of murders: one-third of all women who are murdered die at the hands of husbands or boyfriends.²⁰

Congress also saw the immigration laws as one part of a larger failure to confront the domestic violence issue. The House of Representatives Committee on the Judiciary found that domestic battery problems are "terribly exacerbated in marriages where one spouse is not a citizen and the non-citizens' legal status depends on his or her marriage to the abuser,"²¹ because it places full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen or legal permanent resident.²² A battered spouse may be deterred from taking action to protect herself, such as filing for civil protection order, filing criminal charges or calling the police because of the threat or fear of deportation.²³ As a result, many immigrant women live trapped and isolated in violent homes, afraid to turn for anyone for help. They fear continued abuse if they stay and deportation if they attempt to leave.²⁴

Moreover, when battered immigrant women were locked by immigration laws in abusive marriages to U.S. citizens and lawful permanent residents they were forced to raise their children in an environment where they will learn that perpetrating violence is an appropriate means of addressing anger and frustration.²⁵ The impact of domestic abuse on children was a major concern to Congress. Children are the victims of direct and indirect violence.²⁶ A child may be the direct victim of violence such as in a sexual assault of a child by a parent.²⁷ A child may also suffer the harm of being an indirect victim of violence between parents, such as when the child is present when one spouse abuses the other,²⁸ or when the child views a rape or beating of their mother by their father.²⁹ These children will likely grow up to be abusers or

²⁰ S. Rep. No. 138, 103d Cong., 1st Sess., at 41 (1993).

²¹ H.R. rep. No 395, 103d Cong., 1st Sess., at 26-27 (1993).

²² Id.

²³ Id.

²⁴ Id.

²⁵ In 60% of domestic violence homes where women are abused so are the children. Children were involved or present during 53% of all domestic violence offenses in 1990. Reports by battered mothers show 87% of children witness abuse of mothers. Children from violent homes have higher rates of alcohol and drug abuse. As violence against mother becomes more severe and more frequent, children experience 300% increase in physical violence by male batterer. (New Jersey Division on Women Report 1990).

²⁶ Staff of the Senate Comm. on the Judiciary, 102d Cong., 2d Sess., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA (Comm. Print 1992) at 6.

²⁷ Id. at 7.

²⁸ Id. at 5.

²⁹ Id. At 7

victims of abuse themselves.³⁰ Additionally, Congress was concerned about the impact of the immigration laws on child abuse. It recognized that an abuser's control of the immigration status of the parent of the abused child would inhibit the reporting of child abuse and the removal of the child from the abuser.³¹

By adopting the VAWA immigration provisions, Congress intended to provide battered immigrant women abused by their U.S. citizen and lawful permanent resident spouses with a way to attain lawful immigrant status without their abuser's cooperation. By amending the immigration laws Congress intended to provide battered women and children with a means of escape. VAWA was also designed to enhance the ability of battered immigrants to help in the prosecution of their abusers. Abusers of immigrant women would use control over immigration status and threats of deportation to make themselves be immune from any risk of punishment because they could assure that their victims remain forever undocumented and could have them deported if they cooperated with authorities..

IV. Fleeing the Abuser and Severing Economic Dependence on the Abuser

For both citizens and immigrant victims of domestic abuse, escaping a violent relationship is not easy. First, they face the danger of violent recrimination from the batterer when they attempt to flee³². Women attempting to leave violent spouses are twice as likely to become victims of homicide than are abused women who continue to cohabit with their abuser.³³ Second, they also have to find a way to survive economically apart from the abuser. Economic dependence of women upon their abusive partners is one of the *primary* reasons they remain in violent relationships.³⁴ If battered immigrant women are to flee their United States citizen or lawful permanent resident abusers, they must be able to secure a means of economic survival.

Battered women in the U.S. typically make 2.4 to 5 attempts to leave their abusers before they ultimately succeed.³⁵ They are often forced to return to their abusers because the inability to work or the impairment of their employment opportunities as a direct consequence of

³⁰ N.J. Division on Women Report, 1990.

³¹ H.R. Rep. No. 395, 103d Cong., 1st Sess., at 38 (1993).

³² Harlow, Caroline, *U.S. DEP'T OF JUSTICE FEMALE VICTIMS OF VIOLENT CRIME 5* (1991); Ganley, Anne, *Domestic Violence: the What, Why and Who, as Relevant to Civil Court Cases*, in *DOMESTIC VIOLENCE IN CIVIL COURT CASES: A NATIONAL MODEL FOR JUDICIAL EDUCATION* 24 (J. Agtuca, et al. eds. 1992).

³³ Wilson, Margo and Martin Daly, *Spousal Homicide Risk and Estrangement*, 8 *Violence and Victims* (1993).

³⁴ See Murray Strauss and Richard Gelles, *PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8145 FAMILIES* 1990

³⁵ Okun, Lewis, *Termination or Resumption of Cohabitation of Women in Battering Relationships: A Statistical Study*, in *COPING WITH FAMILY VIOLENCE: RESEARCH AND POLICY PERSPECTIVES* 107, 113 (Gerard T. Hotaling et. al. eds., 1988).

domestic violence has undermined their ability to survive economically apart from their abusers. A survey conducted by Ayuda on 304 Latina women revealed that the main reason immigrant women remain in abusive relationships is because of money, and that the main barrier these women face after leaving their abusers is money.³⁶ The level of economic resources available to an abused women is the best indicator of whether or not she will permanently separate from the abuser.³⁷ Women with greater economic dependence on their abusers experience a greater severity of abuse compared to employed women who are abused.³⁸ In another survey, more than half of the women stated that they stayed with their abusers because they did not feel they could support themselves and their children if they left.³⁹

For battered immigrant self-petitioners, the inability to work legally further exacerbates these problems. Self-petitioners are only granted work authorization after their VAWA self-petition has been approved. From the time their VAWA self-petition has been filed through approval, receipt of deferred action status, application and receipt of work authorization can take anywhere from four months to significantly longer. During that time period, many self-petitioners' only option for economic survival may be reliance on the welfare safety net. In some situations, government services provide a critical bridge to abused women and children as they attempt to escape abuse and prepare to move on with their lives. Battered immigrant women and children need to access social services and public benefits (as part of a package of relief which includes, for example, safe shelter/housing, food and clothes, medical care, work authorization, the ability to obtain lawful immigration status...) as a means to support themselves and their children during difficult periods of transition. Some battered immigrants who work, may only be able to obtain part-time employment or low-wage employment and may need to rely partially on public benefits to support her U.S. citizen children, particularly in cases where the abuser is not paying court-ordered child support.

V. The Passage of IIRAIRA

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996⁴⁰ although preserving VAWA access to battered immigrant women, contained several other provisions that dramatically affected battered immigrant women. One of the most significant changes is that IIRAIRA restored some public benefits to some battered immigrants who were denied benefits

³⁶ Leslye E. Orloff and Nomi Dave, Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area. *Poverty & Race*, July/August 1997, Vol 6. No. 4, p 10. Almost 50% of homeless women and children are fleeing domestic violence. (*Juvenile and Family Justice Today*, 1993).

³⁷ Horn, Patricia, Beating Back the revolution: Domestic Violence's Economic Toll on Dollars and Sense (Dec. 1992).

³⁸ Strube, Michael J. and Linda S. Barbour, The Decision to Leave and Abusive Relationship: Economic Dependence and Psychological Commitment, 1983 *J. of Marriage and the Family* 837.

³⁹ Sullivan, Chris, et al., After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter, 7 *Violence and Victims* 267 (1992).

⁴⁰ Pub. L. No. 104-208 § 384, 110 Stat. 3009-546

by the Personal Responsibility and Work Opportunity Reconciliation Act⁴¹ (PRWORA). Under IIRAIRA “qualified aliens” including VAWA self-petitioners, suspension and cancellation applicants are eligible for public benefits. IIRAIRA allowed battered immigrant women to become “qualified aliens” eligible for public benefits only after filing of their VAWA applications which contained prima facie evidence of eligibility.

The Interim Guidance published by⁴² the Attorney General recognized that battered immigrant women need access to public benefits to be able to survive economically apart from their abuser. Battered immigrants, however, can only receive public benefits if the need for benefits is substantially related to abuse. In order to be classified as a “qualified alien” for purposes of the PRWORA, the benefit provider must determine whether there is a “substantial connection” between the battery and the need for public benefits. The Attorney General has developed a list of circumstances that demonstrate “substantial connection” where the benefits are needed⁴³:

- to enable the applicant to become self-sufficient following separation from the abuser;
- to enable the applicant to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant;
- due to a loss of financial support resulting from the applicant’s separation from the abuser;
- because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty cause the applicant to lose his or her job for safety reasons;
- because the applicant requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;
- because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the applicant’s ability to care for her children;
- to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;
- to provide medical care during a pregnancy resulting from the abuser’s sexual assault or abuse;
- where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant had when living with the abuser.

⁴¹ Pub. L. No. 104-193, 110 Stat. 2105

⁴² Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Department of Justice. Federal Register, November 17, 1997, Volume 62, Number 221. Pages 61344-61416.

⁴³Id. at 61370.

Giving access to public benefits to battered immigrant women is the only way to give them a concrete means to escape, to receive treatment, and to stop the cycle of violence. Absent intervention, it is almost guaranteed that the same woman will be assaulted again and again by the same man.⁴⁴ Not only is domestic violence repetitive, it also escalates over time. Research has indicated that police had been called five times previously in over half murders of wives by husbands.⁴⁵ IIRAIRA recognized this need and provided battered immigrant self-petitioners access to the public benefits they need immediately to escape abuse. However, the access to public benefits was limited to circumstances in which there was a substantial connection between the abuse and the need for benefits and as with all welfare recipients, access to benefits is now temporary. Access to the welfare safety net for the purposes set forth by the Attorney General will not help battered self-petitioners unless they can be assured that seeking the help afforded to them by Congress and the Attorney General will not cut them off from access to lawful permanent residency through VAWA. By accessing welfare, battered self-petitioners risk making themselves ineligible to receive lawful permanent residency status. The access to the safety net created by Congress becomes meaningless.

VI. A Public Charge Exemption for Battered Immigrants is Consistent with VAWA and IIRAIRA's Goals

Giving access to public benefits to battered immigrant women is a vital step in helping them escape violent relationships. For this reason Congress provided access to the welfare safety net for battered immigrant women and children who are the abused spouses and children of United States citizens and lawful permanent residents. Providing this group of battered immigrants access to benefits was understood to be essential to fulfill VAWA's original intent. Battered immigrant spouses and children will only be free to cooperate in their abuser's prosecution and take action to support themselves if they can survive independently apart from their abuser's economic control once they flee.⁴⁶

Because Congress expressly included provisions in IIRAIRA that make battered immigrant women eligible as potential recipients of public benefits, domestic violence victims should not be at the same time inadmissible from the United States on public charge grounds for using the very benefits Congress provided them access to. If battered women self-petitioners need to rely temporarily on public benefits to escape abuse, when they adjust their status or seek admission to the U.S., self-petitioners must not be penalized for the benefits that were necessary to protect their health and safety and that Congress expressly provided them. Therefore, §212(a)(4) must be clearly interpreted to ensure that battered immigrants with an approved INS self-petition are entirely exempt from the public charge ground of inadmissibility. Any other interpretation would be inconsistent with Congressional intent and would frustrate VAWA

⁴⁴ S. Rep. No. 545 101st Cong., 2d Sess at 36 (1990).

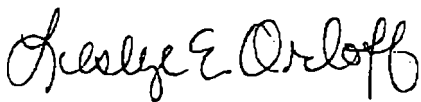
⁴⁵ *Id.*

⁴⁶ H.R. rep. No 395, 103d Cong., 1st Sess., at 2627 (1993).

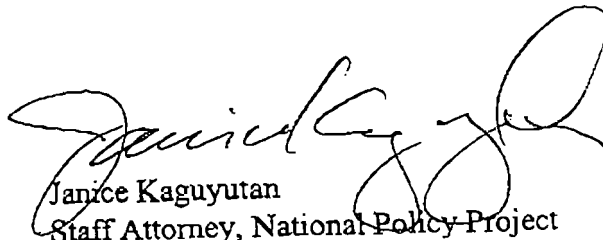
interpretation would be inconsistent with Congressional intent and would frustrate VAWA immigration provisions' and IIRAIRA welfare provisions' goals.

Based on the foregoing, we urge INS to adopt a statutory interpretation of §212(a)(4) that exempts battered immigrants from the public charge of ground of inadmissibility and to issue this interpretation in regulations and field guidelines. Should you have any questions about this issue or should you wish to obtain additional clarification of any issue raised, please do not hesitate to contact our office. Thank you for your time and consideration in this matter.

Sincerely,



Leslye Orloff
Director, National Policy Project
Ayuda



Janice Kaguyutan
Staff Attorney, National Policy Project
Ayuda

cc: Bonnie Campbell

cc: *[Handwritten signature]*
July 28, 1998



Ms. Stacie Spector
Deputy Assistant to the President
Deputy Director of Communications
Old Executive Office Building
17th St. and Pennsylvania Avenue, N.W.
Washington, D.C. 20520
FAX: 202-456-5154

217-R
OEOB

(DPC)
Julie Fernandez
What is the status of this Memo?
Thanks
[Signature]

Re: Public Charge Exemption for Violence Against Women Act Self-Petitioners

Dear Ms. Spector:

It was really wonderful meeting with you on Friday morning as part of the group of Kellogg Fellows. Hearing about women's leadership and collaboration within the White House was encouraging and enlightening. I would love to be of assistance to any of you working on issues of domestic violence or immigrant women's issues in the future. As I mentioned during the session, I have been working closely on these issues with members of Congress, Bonnie Campbell, INS and the Office of Policy Development at the Justice Department.

I mentioned an issue that we are currently working on that is being decided by the Domestic Policy Council at this time. Anything you can do to help on this issue would be greatly appreciated. I am forwarding to you a memo that we sent to Julie Fernandez and Diana Fortuna at the Domestic Policy Council. It is our understanding that the Domestic Policy Council is looking broadly at the issue of public charge in immigration cases. We understand that this issue has been sent to the Domestic Policy Council along with other public charge issues and are concerned that battered immigrant women are specifically and separately addressed. We hope to ensure that whatever policy decisions are made with respect to public charge, that a separate determination is made with respect to battered immigrant self-petitioners under the Violence Against Women Act. Deciding that battered immigrant self-petitioners will be subject to public charge determinations that deny them access to permanent residency will greatly undermine the ability of battered immigrant women abused by U.S. citizen and lawful permanent resident spouses to escape abuse, to secure protection, and to cooperate in the prosecution of their abusers.

We are writing these comments on behalf of Ayuda Inc. and the National Network on Behalf of Battered Immigrant Women. Ayuda and the Network are the national voice for issues affecting the legal rights of battered immigrant women and abused immigrant children. As you are aware, the INS has not published regulations that clarify the inapplicability of the public

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charge ground of inadmissibility §212(a)(4) of the Immigration and Nationality Act (INA) to battered immigrant women and children who qualify for relief under the Violence Against Women Act (VAWA). The following comments urge the INS to adopt a statutory interpretation of §212(a)(4) that exempts battered immigrant self petitions from the public charge ground of inadmissibility. To do otherwise would undermine access to public benefits granted by Congress to battered immigrant self petitioners and once again increase the risk of ongoing harm from domestic violence.

VAWA self-petitioners who were granted access to the welfare safety net under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) § 501¹ to facilitate their escape from abusive husbands, may risk being denied lawful permanent residency based on public charge for using the very benefits IIRAIRA afforded them. Unless INS makes it clear that battered immigrant women and children will not be punished for relying on public benefits to survive economically when they flee their US citizen or lawful permanent resident abusers, Congress' provision of access to benefits for these needy victims will be undermined and meaningless.

I. Applicability of INA §212(a)(4)(A) and (C) and Receipt of Public Benefits

INA §212(a)(4)(A) renders a person inadmissible if, at the time of their application for admission or adjustment of status, the consular officer or the Attorney General believe they are likely at any time to become a public charge. The current or prior receipt of public benefits may be deemed relevant to this determination and may render an applicant inadmissible as likely to become a public charge.

INA §212(a)(4)(C) lists exceptions to the public charge ground of inadmissibility. Included in the exceptions are battered women and children² and persons with an affidavit of support.³ Section 212(a)(4)(C) provides:

“(C) Family-Sponsored Immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is excludable (emphasis added) under this paragraph unless (emphasis added)-

- (i) the alien has obtained-
- (I) status as a spouse or child of a United States citizen pursuant to 204(a)(1)(A)(ii), (iii) or (iv); or

¹Pub. L. No. 104-208 §384, 110 Stat. 3009-546.

²§212(a)(4)(C)(i)(I) refers to §204(a)(1)(A)(iii) and (iv) for battered self petitioners, spouse and child of a U.S. citizen and §204(a)(1)(B)(ii) and (iii) battered self petitioners, spouse and child of a lawful permanent resident.

³§212(a)(4)(C)(ii).

- (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or (emphasis added)
- (ii) the person petitioning for the alien's admission (including any additional sponsor required under section 213A(f)) has executed an affidavit of support described in section 213A with respect to such alien."

II. Interpreting INA §212(a)(4)(C) and VAWA Congressional Intent

§212(a)(4)(C) applies to any person seeking admission or adjustment of status under §201(b)(2) or 203(a). §201(b)(2) persons include immediate relatives of U.S. citizens. §203(a) persons are spouses, children, and unmarried sons or daughters of lawful permanent residents, married or unmarried sons or daughters of U.S. citizens, and siblings of U.S. citizens. The language of the statute indicates that these persons seeking admission or adjustment of status are excludable under public charge unless the person (1) is a battered immigrant with an INS approved self-petition⁴ or (2) has an affidavit of support executed by the petitioner on behalf of the person seeking admission or adjustment of status.⁵

To be consistent with the purpose and intent of VAWA's immigration provisions §212(a)(4) can only be interpreted to mean that battered immigrants with an INS approved self-petition are exempt from the public charge ground of inadmissibility. We believe that this interpretation is the correct interpretation of the statute, and is consistent with what Congress had intended when it enacted VAWA and the IIRAIRA welfare provisions. The plain reading of the public charge section of the INA indicates that battered immigrants with an approved self-petition are not only exempt from filing an affidavit of support, but are wholly exempt from the public charge provision. Any other interpretation of the public charge provision would undermine Congress' intent to protect immigrant women and children from domestic abuse by providing them with the means to escape the violence.

First, VAWA's immigration provisions provide battered immigrants with a means to escape their U.S. citizen or lawful permanent resident spouse's control over their immigration status, which he has used to hold them hostage in an abusive relationship. Second, IIRAIRA's welfare provisions provide these needy battered immigrants with critical access to the welfare safety net, and a means to survive economically, when they flee and sever financial dependence on their abusers. Public assistance is only available to battered immigrant self-petitioners if there is a substantial connection between the need for benefits and the abuse.⁶ Many battered

⁴§212(a)(4)(C)(i)(I) and (II).

⁵§212(a)(4)(C)(ii).

⁶ Pub. L. No. 104-208 §384, 110 Stat. 3009-546. and the Attorney General giving guidance in defining substantial connection. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Department of Justice. Federal Register, November 17, 1997, Volume 62, Number 221. Pages 61344-61416.

immigrant women need this public assistance safety net to remove themselves and their children from abuse. Battered women will only be able to safely access critical public benefits if INS makes it clear that battered women who use public assistance for help will not later be punished for it when they apply for lawful permanent resident status.

III. Legislative History of VAWA's Battered Immigrant Spouse Provisions

When VAWA was enacted in 1994, Congress viewed it as "an essential step in forging a national consensus that our society will not tolerate violence against women"⁷ and the terror it spawns.⁸ Domestic violence threatens the lives, safety and welfare of millions of women and children in the U.S. every year. An estimated 16 to 36 % of women are physically abused by a male partner at some point in their lives⁹ and battering is the single largest cause of injury for women, causing more injuries than auto accidents, muggings and rapes combined.¹⁰

Congress found that spouse abuse is serious, chronic and national in scope.¹¹ Congressional reports noted that in 1991 at least 21,000 domestic crimes against women were reported to police every week,¹² and that unreported domestic crimes were estimated to more than three times the level of reported crimes.¹³ According to Congressional reports 3 to 4 million women in the U.S. are abused by their husband each year.¹⁴ Surgeon Generals have repeatedly warned that family violence posed the single largest threat to adult women.¹⁵ One

⁷ S. Rep. No. 138, 103d Cong., 1st Sess., at 41-42. (1993)

⁸ Staff on the Senate Comm. on the Judiciary, 102d Cong., 2d Sess., *VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA* (Comm. Print 1992) at 26.

⁹ Avis, Judith, Where are All the Family Therapists? Abuse and Violence Within Families and Family Therapy's response, J. Of Marital and Family Therapy (July 1992).

¹⁰ Horn, Patricia, Beating Back the Revolution: Domestic Violence's Economic Toll on Women, Dollars and Sense (Dec. 1992).

¹¹ S. Rep. No. 545, 101st Cong. 2nd Sess., at 37 (1990). See also Nat'l Crime Survey ststs. showing 32% of battered women are re-victimized within 6 months after involving the law (Lanagan and Innis, 1986).

¹² S. Rep. No. 138, 103d Cong., 1st Sess., at 37 (1993). Every 15 seconds a women is battered by her boyfriend, husband, or spouse in this country. " Five Issues in American Health," AMA, Chicago, 1991.

¹³ *Id.*

¹⁴ S. Rep. 545. 101st Cong., 2d Sess., at 30 (1990); H.R. Rep. No. 395 103rd Cong., 1st Sess., at 26 (1993). See also Klein, Catherine F. and Leslye E. Orloff, "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law." Hofstra Law Review. v. 21 no. 4, 1993.

¹⁵ S. Rep. No. 138. 103d Cong., 1st Sess., at 41-42 (1993),

million women each year seek medical attention for injuries committed by male partners.¹⁶ One-fifth of all reported aggravated assaults involving bodily injury occurred in domestic situations.¹⁷ According to a U.S. Department of Justice report, one-third of domestic attacks are felony rapes, robberies, or aggravated assault. Of the remaining two-thirds, which were simple assaults, almost one-half involved serious bodily injury.¹⁸ Between 20 and 35% of women seeking medical care in emergency rooms in America are there because of domestic violence. Finally, family violence accounts for a significant number of murders: one-third of all women who are murdered die at the hands of husbands or boyfriends.¹⁹

Congress also saw the immigration laws as one part of a larger failure to confront the domestic violence issue. The House of Representatives Committee on the Judiciary found that domestic battery problems are “terribly exacerbated in marriages where one spouse is not a citizen and the non-citizens’ legal status depends on his or her marriage to the abuser,”²⁰ because it places full and complete control of the alien spouse’s ability to gain permanent legal status in the hands of the citizen or legal permanent resident.²¹ A battered spouse may be deterred from taking action to protect herself, such as filing for civil protection order, filing criminal charges or calling the police because of the threat or fear of deportation.²² As a result, many immigrant women live trapped and isolated in violent homes, afraid to turn for anyone for help. They fear continued abuse if they stay and deportation if they attempt to leave.²³

Moreover, when battered immigrant women were locked by immigration laws in abusive marriages to U.S. citizens and lawful permanent residents they were forced to raise their children in an environment where they will learn that perpetrating violence is an appropriate means of addressing anger and frustration.²⁴ The impact of domestic abuse on children was a

¹⁶ Id. at 41; S. Rep. No. 545. 101st Cong., 2d Sess., at 37 (1990).

¹⁷ Staff on the Senate Comm. on the Judiciary, 102d Cong., 2d Sess., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA (Comm. Print 1992) at 32. Despite this police routinely classify domestic assaults as misdemeanors even when it is as serious as felony cases. (Lanagan and Innis, 1986).

¹⁸ S. Rep. No. 138. 103d Cong., 1st Sess., at 41 (1993).

¹⁹ S. Rep. No. 138. 103d Cong., 1st Sess., at 41 (1993).

²⁰ H.R. rep. No 395, 103d Cong., 1st Sess., at 26-27 (1993).

²¹ Id.

²² Id.

²³ Id.

²⁴ In 60% of domestic violence homes where women are abused so are the children. Children were involved or present during 53% of all domestic violence offenses in 1990. Reports by battered mothers show 87% of

major concern to Congress. Children are the victims of direct and indirect violence.²⁵ A child may be the direct victim of violence such as in a sexual assault of a child by a parent.²⁶ A child may also suffer the harm of being an indirect victim of violence between parents, such as when the child is present when one spouse abuses the other,²⁷ or when the child views a rape or beating of their mother by their father.²⁸ These children will likely grow up to be abusers or victims of abuse themselves.²⁹ Additionally, Congress was concerned about the impact of the immigration laws on child abuse. It recognized that an abuser's control of the immigration status of the parent of the abused child would inhibit the reporting of child abuse and the removal of the child from the abuser.³⁰

By adopting the VAWA immigration provisions, Congress intended to provide battered immigrant women abused by their U.S. citizen and lawful permanent resident spouses with a way to attain lawful immigrant status without their abuser's cooperation. By amending the immigration laws Congress intended to provide battered women and children with a means of escape. VAWA was also designed to enhance the ability of battered immigrants to help in the prosecution of their abusers. Abusers of immigrant women would use control over immigration status and threats of deportation to make themselves be immune from any risk of punishment because they could assure that their victims remain forever undocumented and could have them deported if they cooperated with authorities..

IV. Fleeing the Abuser and Severing Economic Dependence on the Abuser

For both citizens and immigrant victims of domestic abuse, escaping a violent relationship is not easy. First, they face the danger of violent recrimination from the batterer

children witness abuse of mothers. Children from violent homes have higher rates of alcohol and drug abuse. As violence against mother becomes more severe and more frequent, children experience 300% increase in physical violence by male batterer. (New Jersey Division on Women Report 1990).

²⁵ Staff of the Senate Comm. on the Judiciary, 102d Cong., 2d Sess., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA (Comm. Print 1992) at 6.

²⁶ *Id.* at 7.

²⁷ *Id.* at 5.

²⁸ *Id.* At 7

²⁹ N.J. Division on Women Report, 1990.

³⁰ H.R. Rep. No. 395, 103d Cong., 1st Sess., at 38 (1993).

when they attempt to flee³¹. Women attempting to leave violent spouses are twice as likely to become victims of homicide than are abused women who continue to cohabit with their abuser.³² Second, they also have to find a way to survive economically apart from the abuser. Economic dependence of women upon their abusive partners is one of the *primary* reasons they remain in violent relationships.³³ If battered immigrant women are to flee their United States citizen or lawful permanent resident abusers, they must be able to secure a means of economic survival.

Battered women in the U.S. typically make 2.4 to 5 attempts to leave their abusers before they ultimately succeed.³⁴ They are often forced to return to their abusers because the inability to work or the impairment of their employment opportunities as a direct consequence of domestic violence has undermined their ability to survive economically apart from their abusers. A survey conducted by Ayuda on 304 Latina women revealed that the main reason immigrant women remain in abusive relationships is because of money, and that the main barrier these women face after leaving their abusers is money.³⁵ The level of economic resources available to an abused women is the best indicator of whether or not she will permanently separate from the abuser.³⁶ Women with greater economic dependence on their abusers experience a greater severity of abuse compared to employed women who are abused.³⁷ In another survey, more than half of the women stated that they stayed with their abusers because they did not feel they could support themselves and their children if they left.³⁸

³¹ Harlow, Caroline, *U.S. DEP'T OF JUSTICE FEMALE VICTIMS OF VIOLENT CRIME 5 (1991)*; Ganley, Anne, Domestic Violence: the What, Why and Who, as Relevant to Civil Court Cases, in *DOMESTIC VIOLENCE IN CIVIL COURT CASES: A NATIONAL MODEL FOR JUDICIAL EDUCATION* 24 (J. Agtuca, et al. eds. 1992).

³² Wilson, Margo and Martin Daly, Spousal Homicide Risk and Estrangement, 8 *Violence and Victims* (1993).

³³ See Murray Strauss and Richard Gelles, *PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8145 FAMILIES 1990*

³⁴ Okun, Lewis, Termination or Resumption of Cohabitation of Women in Battering Relationships: A Statistical Study, in *COPING WITH FAMILY VIOLENCE: RESEARCH AND POLICY PERSPECTIVES* 107, 113 (Gerard T. Hotaling et. al. eds., 1988).

³⁵ Leslye E. Orloff and Nomi Dave, Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area. *Poverty & Race*, July/August 1997, Vol 6. No. 4, p 10. Almost 50% of homeless women and children are fleeing domestic violence. (Juvenile and Family Justice Today, 1993).

³⁶ Horn, Patricia, Beating Back the revolution: Domestic Violence's Economic Toll on Dollars and Sense (Dec. 1992).

³⁷ Strube, Michael J. and Linda S. Barbour, The Decision to Leave and Abusive Relationship: Economic Dependence and Psychological Commitment, 1983 *J. of Marriage and the Family* 837.

³⁸ Sullivan, Chris, et al., After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter, 7 *Violence and Victims* 267 (1992).

For battered immigrant self-petitioners, the inability to work legally further exacerbates these problems. Self-petitioners are only granted work authorization after their VAWA self-petition has been approved. From the time their VAWA self-petition has been filed through approval, receipt of deferred action status, application and receipt of work authorization can take anywhere from four months to significantly longer. During that time period, many self-petitioners' only option for economic survival may be reliance on the welfare safety net. In some situations, government services provide a critical bridge to abused women and children as they attempt to escape abuse and prepare to move on with their lives. Battered immigrant women and children need to access social services and public benefits (as part of a package of relief which includes, for example, safe shelter/housing, food and clothes, medical care, work authorization, the ability to obtain lawful immigration status...) as a means to support themselves and their children during difficult periods of transition. Some battered immigrants who work, may only be able to obtain part-time employment or low-wage employment and may need to rely partially on public benefits to support her U.S. citizen children, particularly in cases where the abuser is not paying court-ordered child support.

V. The Passage of IIRAIRA

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996³⁹ although preserving VAWA access to battered immigrant women, contained several other provisions that dramatically affected battered immigrant women. One of the most significant changes is that IIRAIRA restored some public benefits to some battered immigrants who were denied benefits by the Personal Responsibility and Work Opportunity Reconciliation Act⁴⁰ (PRWORA). Under IIRAIRA "qualified aliens" including VAWA self-petitioners, suspension and cancellation applicants are eligible for public benefits. IIRAIRA allowed battered immigrant women to become "qualified aliens" eligible for public benefits only after filing of their VAWA applications which contained prima facie evidence of eligibility.

The Interim Guidance published by⁴¹ the Attorney General recognized that battered immigrant women need access to public benefits to be able to survive economically apart from their abuser. Battered immigrants, however, can only receive public benefits if the need for benefits is substantially related to abuse. In order to be classified as a "qualified alien" for purposes of the PRWORA, the benefit provider must determine whether there is a "substantial connection" between the battery and the need for public benefits. The Attorney General has developed a list of circumstances that demonstrate "substantial connection" where the benefits

³⁹ Pub. L. No. 104-208 § 384, 110 Stat. 3009-546

⁴⁰ Pub. L. No. 104-193, 110 Stat. 2105

⁴¹ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Department of Justice. Federal Register, November 17, 1997, Volume 62, Number 221. Pages 61344-61416.

are needed⁴²:

- to enable the applicant to become self-sufficient following separation from the abuser;
- to enable the applicant to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant;
- due to a loss of financial support resulting from the applicant's separation from the abuser;
- because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty cause the applicant to lose his or her job for safety reasons;
- because the applicant requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;
- because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the applicant's ability to care for her children;
- to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;
- to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse;
- where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant had when living with the abuser.

Giving access to public benefits to battered immigrant women is the only way to give them a concrete means to escape, to receive treatment, and to stop the cycle of violence. Absent intervention, it is almost guaranteed that the same woman will be assaulted again and again by the same man.⁴³ Not only is domestic violence repetitive, it also escalates over time. Research has indicated that police had been called five times previously in over half murders of wives by husbands.⁴⁴ IIRAIRA recognized this need and provided battered immigrant self-petitioners access to the public benefits they need immediately to escape abuse. However, the access to public benefits was limited to circumstances in which there was a substantial connection between the abuse and the need for benefits and as with all welfare recipients, access to benefits is now temporary. Access to the welfare safety net for the purposes set forth by the Attorney General will not help battered self-petitioners unless they can be assured that seeking the help afforded to them by Congress and the Attorney General will not cut them off from access to lawful permanent residency through VAWA. By accessing welfare, battered self-petitioners risk making themselves ineligible to receive lawful permanent residency status. The access to

⁴²Id. at 61370.

⁴³ S. Rep. No. 545 101st Cong., 2d Sess at 36 (1990).

⁴⁴ Id.

the safety net created by Congress becomes meaningless.

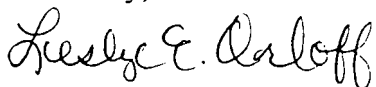
VI. A Public Charge Exemption for Battered Immigrants is Consistent with VAWA and IIRAIRA's Goals

Giving access to public benefits to battered immigrant women is a vital step in helping them escape violent relationships. For this reason Congress provided access to the welfare safety net for battered immigrant women and children who are the abused spouses and children of United States citizens and lawful permanent residents. Providing this group of battered immigrants access to benefits was understood to be essential to fulfill VAWA's original intent. Battered immigrant spouses and children will only be free to cooperate in their abuser's prosecution and take action to support themselves if they can survive independently apart from their abuser's economic control once they flee.⁴⁵

Because Congress expressly included provisions in IIRAIRA that make battered immigrant women eligible as potential recipients of public benefits, domestic violence victims should not be at the same time inadmissible from the United States on public charge grounds for using the very benefits Congress provided them access to. If battered women self-petitioners need to rely temporarily on public benefits to escape abuse, when they adjust their status or seek admission to the U.S., self-petitioners must not be penalized for the benefits that were necessary to protect their health and safety and that Congress expressly provided them. Therefore, §212(a)(4) must be clearly interpreted to ensure that battered immigrants with an approved INS self-petition are entirely exempt from the public charge ground of inadmissibility. Any other interpretation would be inconsistent with Congressional intent and would frustrate VAWA immigration provisions' and IIRAIRA welfare provisions' goals.

Based on the foregoing, we urge INS and the Domestic Policy Council to adopt a statutory interpretation of §212(a)(4) that exempts battered immigrants from the public charge of ground of inadmissibility and to issue this interpretation in regulations and field guidelines. Should you have any questions about this issue or should you wish to obtain additional clarification of any issue raised, please do not hesitate to contact our office. Thank you for your time and consideration in this matter.

Sincerely,



Leslye Orloff

Director, National Policy Project
Ayuda

⁴⁵H.R. rep. No 395, 103d Cong., 1st Sess., at 2627 (1993).