U.S. Citizenship and Immigration Services

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23.11 Cuban Adjustment Act Cases.

(a) General.

The Cuban Adjustment Act (Public Law 89-732) (CAA) became law on November 2, 1966. Section 1 of the Act was designed to permit thousands of Cuban refugees to adjust to lawful permanent residence. Most of these Cubans were parolees or nonimmigrants who could not return to Cuba for political reasons, but could not seek residence through other means. Similar laws have been passed over the years for other nationalities as well, e.g., Public Law 101-167 (for former nationals of the Soviet Union, Laotians, Cambod ians, and Vietnamese).

The Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386) (VAWA 2000) and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162) (VAWA 2005), amended the CAA to provide continued eligibility for adjustment of status as the battered or abused spouse or child under section 1 of the CAA. Under certain circumstances, abused spouses or children may remain eligible for adjustment of status even where the:

- Spouse or child is not currently residing with the qualifying Cuban principal; [1]
- Marital relationship was terminated (by divorce, annulment, etc.) not more than 2 years ago; or
- Qualifying Cuban principal died not more than 2 years ago.

A spouse or child must demonstrate by providing any credible evidence that he or she was the subject of abuse or extreme cruelty by the qualifying Cuban principal, during the relationship, to qualify for the VAWA eligibility provisions for adjustment of status under the CAA.

[1] A qualifying Cuban principal is one who: 1) Was inspected and admitted or paroled into the United States after January 1, 1959; 2) Was physically present in the United States for at least 1 year; 3) Is eligible to receive an immigrant visa; 4) Is admissible to the United States for lawful permanent residency; and 5) Has applied for, and is eligible for, adjustment of status; or

(b) Eligibility.

In order to be granted adjustment under the CAA, an applicant must:

(1) Be a native or citizen of Cuba. An applicant could meet this requirement through any one of several different means. He or she could be:

· A person who was born in Cuba, and is still a citizen of Cuba;

· A person who was born in Cuba, but later became a citizen of some other country or became stateless;

· A person who was born on the U.S. Navy Base at Guantanamo Bay, Cuba. Whether this person is or ever was considered to be a citizen of Cuba by the Cuban government, and regardless of any claims to other nationalities he or she might have through his or her parents, he or she is a native of Cuba simply by being born there. (For example, there were a number of pregnant women among those persons who fled Haiti in the 1990s and were subsequently intercepted at sea by the Coast Guard and transported to the Navy B ase at Guantanamo Bay to await immigration processing. The babies born of those women at Guantanamo Bay meet this requirement.)

· A person who was born outside of Cuba but has become a naturalized citizen of Cuba.

· A person who was born outside of Cuba to a Cuban parent, and who has satisfied all Cuban legal requirements for the acquisition of Cuban citizenship.

Principal applicants must submit evidence of Cuban citizenship. The following are examples of acceptable documents to prove citizenship:

- A valid Cuban passport.
- A Cuban Civil Registry document issued in Havana.

A Cuban consular certificate documenting an individual's birth outside of Cuba to at least one Cuban parent is not sufficient to establish Cuban citizenship. This remains true even if the consular certificate states that the individual to whom the certificate was issued is a Cuban citizen.

(2) Have been inspected and admitted or paroled into the U.S. after January 1, 1959. Any inspection

(3) Have at least one year of aggregate physical presence in the U.S. before applying for benefits under section 1 of the CAA (amended from two years by the Refugee Act of 1980). However, if an applicant was admitted or paroled and later departed from the U.S. temporarily with no intention of abandoning his or her residence, and was readmitted or reparoled upon return, the temporary absence shall be disregarded for purposes of the applicant's "last arrival" into the U.S. See **8 CFR 245.2(a)(4)(iii)** and **Matter of Riva**, 12 I. & N. Dec. 56 (R.C. 1967). Factors to consider in determining whether the applicant did in fact have an unabandoned residence in the U.S. are: the duration of the trip abroad; the purpose of the trip; how long the applicant was in the U.S. before departure; and the applicant's family or employment ties in the U.S. Bear in mind, of course, that a subsequent reentry on a nonimmigrant visa to an "unabandoned residence" may have been accomplished by fraud.

Principal applicants must submit evidence of Cuban citizenship. The following are examples of acceptable documents to prove citizenship:

(c) Discretion.

An application for adjustment under the CAA may be denied as a matter of discretion if there are sufficient negative factors to overcome the positive ones (see the discussion on discretion in **subchapter 23.2(d)** and **Chapter 10.15** of this *field manual*). However, in weighing the discretionary factors, keep in mind the nature of the CAA and the political situation in that country (see **Matter of Mesa**, 12 I. & N. Dec. 432 (Dep. Asst. Comm'r, 1967)).

(d) Bars to Adjustment.

The bars to adjustment enumerated in section 245(c) of the Act are inapplicable. Thus, the following aliens may seek adjustment under the CAA:

- Crewmen (see **Matter of Sanabria**, 12 I. & N. Dec. 396 (R.C. 1967));
- Transit without visa passengers;
- Nonimmigrant overstays;
- Aliens who have worked without authorization; and

(e) Dependents.

(1) General requirements for spouse or child.

The spouse or child of a qualifying Cuban applicant may also seek adjustment under section 1 of the Act regardless of his or her nationality or place of birth. He or she must, however, meet of all the other eligibility criteria stated above, and must reside with the principal applicant. See Matter of Bellido, 12 I. & N. Dec. 369 (R.C. 1967). It is important to note that this is a very different standard from the one relating to spousal visa petition proceedings, where a petitioner need not prove marital viability, but rather that the marriage was valid at its inception.

The adjustment of the spouse or child cannot precede the adjustment of the principal applicant; the adjustment must be completed at the same time as, or subsequent to, the principal's adjustment. *Matter of Quijada-Coto*, 13 I. & N. 740 (BIA 1971). In addition, the qualifying relationship may have been created before or after the principal's adjustment. Matter of Milian, 13 I. & N. 480 (A.R.C. 1970).

While the principal applicant must have adjusted to lawful permanent resident (LPR) status in order for the non-Cuban spouse or child to qualify under the CAA, it is not necessary for the principal applicant to have adjusted under the CAA itself. Adjustment of a Cuban native or citizen to LPR status under any other adjustment provision will also make it possible for the non-Cuban spouse or child to seek adjustment under the CAA.

Finally, the spouse or child of a Cuban applicant is adjusted as an unconditional permanent resident, regardless of the duration of the qualifying marriage. The restrictions of section 216 of the Act do not apply.

(2) Continued eligibility provisions for abused spouse or child (VAWA).

The spouse or child of a qualifying Cuban principal, subjected to battery or extreme cruelty by the qualifying Cuban principal, may seek adjustment of status under section 1 of the CAA without having to demonstrate current residency with the qualifying Cuban principal. The abused spouse or child must have resided with the qualifying Cuban principal at some point during the relationship as spouse or child of the qualifying Cuban principal.

As with all CAA derivatives, a qualifying Cuban principal is an individual who is eligible for and has applied for adjustment of status or has adjusted status to a lawful permanent resident, whether under the CAA or another adjustment of status provision.

An abused spouse or child may adjust status under certain circumstances when the qualifying Cuban principal is not a lawful permanent resident.

spouse or child has filed an immigrant visa petition, the petition remains valid even if the LPR loses his or her LPR status. INA 204(a)(1)(B)(v). The abused spouse may file an immigrant visa petition even *after* the LPR loses status, as long as the spouse files within 2 years of the date the LPR lost status and the LPR lost status "due to an incident of domestic violence." INA 204(a)(1)(B)(ii)(II)(CC)(aaa). Given the ameliorative purpose of the various VAWA provisions, and the lack of a petition requirement for CAA cases, these INA provisions reasonably modify the ordinary rules for CAA adjustment in the case of abused spouses and children of a Cuban principal. For this reason:

- If the Cuban principal loses LPR status at any time *after* the abused spouse or child applied for CAA adjustment, the spouse or child remains eligible for CAA adjustment; and

- If the Cuban principal loses LPR status *before* the spouse or child applies for CAA adjustment, the spouse or child can still apply if the Cuban principal lost LPR status due to an incident of domestic violence *and* the spouse or child applies within 2 years of the date the Cuban principal lost status.

- Divorce. If, at the time of filing, the spousal relationship has been legally terminated (ex. divorce, annulment, etc.) within the past 2 years, the abused spouse remains eligible for adjustment of status under section 1 of CAA provided that:

  - There is a demonstrated connection between the legal termination of marriage within the past 2 years and the battery or extreme cruelty perpetrated by the qualifying Cuban principal;

  - The abused spouse files an application for adjustment of status under section 1 of the CAA within 2 years of the legal termination of the marriage; and

  - The abused spouse resided, at some point during the spousal relationship, with the qualifying Cuban principal.

- Death. As noted, the Cuban principal's death *after* the abused spouse or child has applied for CAA adjustment does not end the applicant's eligibility. Also, if the abused spouse of a Cuban principal lived with the Cuban principal at some point during the spousal relationship, but did not file an application before the Cuban principal's death, the abused spouse will remain eligible for adjustment of status under section 1 of the CAA if the abused spouse applies within 2 years after the death of the *qualifying Cuban principal*.

The provisions in this chapter 23.11(e)(2) concerning the effect of the Cuban principal's loss of status, and of divorce or death apply only to CAA applications filed by abused spouses and children of a Cuban principal.

(f) Admissibility .

The inadmissibility grounds of section 212 of the Act apply, with the exception of section 212(a)(4) of the Act (see Matter of Mesa , 12 I. & N. Dec. 432 (Dep. Assoc. Comm'r, 1967)

accordance with this policy. So long as the applicant meets all other CAA eligibility requirements, it is contrary to this policy to find the alien ineligible for CAA adjustment on the basis of the alien's having arrived in the U.S. at a place other than a designated port of entry." (The entire memorandum is reproduced in Appendix 23-4 .)

(g) Procedure for Applying .

An applicant must submit:

(1) Form I-485, Application to Register Permanent Residence or Adjust Status.

· The current Form I-485 (Rev. 06/20/13) does not provide an application type for an abused spouse or child of a qualifying Cuban principal. An abused spouse or child must apply for adjustment of status under section 1 of the CAA using Form I-485 and selecting the application type utilized by non-abused spouses and children of a Cuban applicant ("I am the husband, wife, or minor unmarried child of a Cuban…"). Abused spouses and children may select this application type even if they are no longer residing with the qualifying Cuban principal at the time of filing. A VAWA self-petition is not required

(2) The fee for Form I-485, as specified in 8 CFR 103.7(b) , or a request for fee waiver in accordance with 8 CFR 103.7(c) . Fee waiver requests are to be adjudicated in accordance with October 1998 guidance issued by the Executive Associate Commissioner for Field Operations (see Appendix 10-5).

(3) Form G-325A, Biographic Information.

(4) Form FD-258, Fingerprint Chart.

(5) 2 Passport-style Photos.

(6) Form I-693, Medical Report.

(7) Form I-643, Health and Human Services Statistical Data Sheet.

lived for six months or longer since his or her 14th birthday. See 8 CFR 245.2(a)(3)(i) .

(h) Proof of Eligibility .

The documentation which must be submitted in support of the application depends, in part, on whether the applicant is a Cuban native or national, or a non-Cuban spouse or child of such applicant:

· A qualifying Cuban applicant must present:

– Evidence of lawful admission or parole into the U.S., e.g., a passport and I-94;

– Evidence of Cuban nationality or birth in Cuba. This evidence should include at least one of the following: a Cuban passport; a Cuban birth certificate; or a Cuban naturalization certificate or certificate of citizenship.

· A non-Cuban spouse or child must present:

– A passport and I-94 reflecting lawful admission or an I-94 reflecting parole;

– A marriage certificate for the present marriage;

– Evidence of termination of all previous marriages; and

– Evidence that the marriage has not been entered into solely to convey immigration benefits (i.e., with fraudulent intent).

· A non-Cuban child must present:

– If the principal applicant is the child's father, evidence that the child meets the definition of child contained in section 101(b) of the Act (e.g., marriage certificate of the parents, evidence of legitimation, etc.)

· An individual seeking CAA adjustment as the abused spouse or child of a qualifying Cuban principal must present the same evidence of the relationship to the Cuban principal listed above. The individual must also present evidence that the individual has been battered or subjected to extreme cruelty by the Cuban principal.

– USCIS applies the "any credible evidence" provision in INA 204(a)(1)(J) of the Act to VAWA CAA cases.

– A VAWA CAA applicant does *not* need to file a Form I-360.

– But the evidence that could support a VAWA Form I-360 would also be relevant to a VAWA CAA claim.

– In weighing the evidence the following issues would be most salient:

· Whether the abuse occurred in the relationship;

· Whether the applicant resided with the qualifying Cuban principal at some point during the relationship;

· Whether, if the marriage terminated other than by death, the termination was connected to the claimed abuse;

· Whether, if the principal has died, the applicant filed the Form I-485 within 2 years of the principal's death; or

· Whether, if the principal has lost LPR status, the loss of status was due to an incident of domestic violence.

The VAWA confidentiality requirements of 8 U.S.C. 1367 apply to VAWA CAA applicants just as they do to all VAWA cases.

The adjudicator in his or her sole discretion will determine whether the evidence is credible and the weight to give it.

The VAWA amendments to the CAA do not alter other existing evidentiary standards or requirements applicable to adjustment of status applications (e.g., evidence demonstrating that the spouse or child is the spouse or child of the qualifying Cuban principal, was inspected and admitted or paroled, physically

· A non-Cuban abused spouse or child does not need to provide a copy of the qualifying Cuban principal's adjustment of status application. However, the abused spouse or child must provide sufficient information to enable USCIS to verify the qualifying Cuban principal's status or a pending application for adjustment of status under the CAA. Such information may include the following: abuser's full name, date of birth, place of birth, parents' names, alien registration number, Form I-94s, social security number, or other identifying information.

· The burden rests with the applicant to demonstrate by a preponderance of the evidence that he or she is eligible for the benefit sought.

(i) Jurisdiction .

All applications for adjustment of status under the CAA must be filed in accordance with the current Form I-485 instructions. Abused spouses and children do not need to file a separate VAWA self-petition.

The Vermont Service Center's (VSC) VAWA Unit will adjudicate applications for adjustment of status under section 1 of CAA for an abused spouse or child. The VSC may refer the application to the appropriate field office for interview. If the VSC decides to relocate the application for interview, the adjudicating officer will first render an opinion on the abuse determination, and then relocate the individual's A-file to the appropriate field office for a final decision on the adjustment of status application.

(j) Processing Instructions .

(1) Procedures.

Follow the procedural instructions outlined in subchapter 23.4 of this *field manual*.

(2) Class of Admission Updates: "384" For VAWA CAA.

An officer adjudicating an application for adjustment of status under section 1 of the CAA filed pursuant to the VAWA amendments will ensure that the Central Index System (CIS) is properly updated with the appropriate class of admission (COA) 384, used to identify these specially protected cases. If the officer is unable to update the CIS, then the officer must contact the local records office with write access to the CIS to request the update to the COA. The 384 COA is entered in advance of

(3) Previously filed VAWA self-petition, approved, denied, or pending.

If there is evidence of a previously filed VAWA self-petition, the adjudicating officer must review the entire record prior to making a decision on the application for adjustment of status under section 1 of the CAA.

- A previously approved VAWA self-petition based on the same relationship may be considered persuasive evidence of the existence of abuse in the relationship. Nevertheless, the adjudicating officer should not assume that the alleged abuser and the basis for the claim in the VAWA self-petition is the same as the basis for the application for section 1 CAA adjustment of status as an abused spouse or child.

- Similarly, a previously denied VAWA self-petition is not necessarily proof that the claim of abuse in the application for section 1 CAA adjustment of status as an abused spouse or child is unfounded. The VAWA self-petition may have been denied because the abuser was not an LPR at the time of filing or for other reasons unrelated to the abuse or the relationship between abuser and the abused spouse or child. In the case of a denied VAWA self-petition, the adjudicating officer must request the complete A-file and review the evidence provided in support of the VAWA self-petition and reason for denial in advance of a final decision on the section 1 CAA adjustment of status application.

- If the VAWA self-petition is pending, it is within the discretion of the adjudicating officer to wait for a final decision on the VAWA self-petition prior to rendering a decision on the application for section 1 CAA adjustment of status as an abused spouse or child. The adjudicating officer may contact the VSC to request a possible expedite of the VAWA self-petition.

(k) Interview.

At the discretion of USCIS, the application may be referred to the appropriate field office for an interview. The interviewing procedures and techniques are essentially the same as those on a section 245 interview (see subchapter 23.4). However, three areas of potential difficulty should be addressed:

- • When an applicant indicates the existence of possible ineligibility under 212(a)(3)(D)(i) of the INA, as a member of the Communist party, a detailed sworn statement should be taken. The areas which should be covered include: (1) the organization joined; (2) the date and place of joining; (3) an explanation of why the applicant joined; (4) the nature of the organization; (5) the duties and responsibilities of the applicant within the organization; (6) whether the applicant held an official title or

· When an applicant reveals that he or she has a criminal conviction in Cuba, a sworn statement should be taken, and must address these matters: (1) the date and place of the arrest; (2) the specific charges lodged against him or her; (3) the date and place of any judicial proceedings; (4) the outcome of these proceedings; and (5) if the applicant was imprisoned, the place and length of incarceration. It is important to remember that a finding of inadmissibility need not be supported by a record of conviction if there is reason to believe -by the alien's own admission- that there has been a conviction and that the underlying crime involved moral turpitude under prevailing U.S. standards. See **Matter of B-** , 3 I. & N. Dec. 1 (BIA 1947) ; **Matter of McNaughton** , 16 I. & N. Dec. 569 (BIA 1978) ; and **Matter of Doural** , 18 I. & N. Dec. 37 (BIA 1981) .

· When an applicant has made a claim of abuse and is seeking adjustment of status as an abused spouse or child, the confidentiality provisions of 8 U.S.C. 1367 apply.

– An abused spouse or child with a pending or approved application for adjustment of status to that of an LPR under section 1 of the CAA is by definition a “VAWA self-petitioner” as defined at section 101(a)(51)(D) of the Act (even if a VAWA self-petition is never filed). If the application for adjustment of status under section 1 of the CAA is denied, the confidentiality provisions will continue to apply to the applicant until all final appeal rights are exhausted. Please refer to the December 15, 2010 guidance memo entitled "Revocation of VAWA-Based Self-Petitions (Forms I-360) (AFM Update AD10-49)" for information on how to comply with the VAWA confidentiality provisions.

(l) Waivers .

An applicant under the CAA who is inadmissible to the U.S. must seek a waiver under section 212(g), (h), or (i) of the Act. The waiver application is made on Form I-601, not on Form I-602. The I-602 may only be filed by an applicant who is a refugee or asylee who was admitted under section 207 or section 208 of the Act. The only exception is an alien who was paroled into the U.S. as a refugee before April 1, 1980.

(m) Approval Procedures .

(1) General.

With the exception of rollback provisions discussed in paragraphs (2) and (3), the general procedures for approval of an adjustment of status application set forth in subchapter 23.2 of this field manual apply to all CAA cases (including VAWA CAA cases). The COA codes pertaining to CAA cases are:

· CU-7: Adjustment class for non-Cuban spouses and children adjusting under the Act (to include battered or abused spouses and children of a qualifying Cuban principal or CU-6).

(2) General Rollback Provisions .

When adjudicating an I-485 under section 245 of the INA, the date of admission for lawful permanent residence is the date on which the case is completed, i.e., when the I-181 is signed off. This is not the case with an application under the CAA. When an I-485 is to be approved for a Cuban applicant, the alien's admission for permanent residence is thirty months prior to the filing of his or her application, or the date of his or her last arrival in the U.S., whichever date is later. Consider these examples:

· A Cuban national is paroled into the U.S. on March 1, 1986. On June 3, 1992, he files an I-485. When his application for adjustment is approved, his date of admission for permanent residence will be December 3, 1989. In this case, the applicant can be granted rollback of a full thirty months, as he was paroled into the U.S. over thirty months before filing for adjustment.

· A Cuban national is admitted to the U.S. as a nonimmigrant visitor for pleasure on January 10, 1990. On April 3, 1992, he files an I-485. When his application for adjustment is approved, his date of admission for permanent residence will be January 10, 1990. In this case, rollback of thirty months is impermissible, as the date of adjustment would precede the applicant's entry into the U.S.

The non-Cuban spouse and children of a qualifying Cuban applicant are entitled to the same rollback provision as the qualifying Cuban principal. The non-Cuban spouse or child receives the full 30-month rollback, even if that means the individual becomes an LPR before the date on which the individual became the Cuban applicant's spouse or child. See *Silva-Hernandez v. USCIS*, 701 F.3d 356 (11th Cir. 2012).

This same rule applies to VAWA CAA cases.

(3) Special Rollback Provisions Pertaining to "Mariel" Entrants .

Between April 1, 1980 and October 10, 1980, approximately 125,000 Cuban nationals were paroled into the U.S. as a part of what is commonly referred to as the "Mariel boatlift." These aliens were given I-94s bearing the designation "Cuban-Haitian Entrant." A Mariel entrant is eligible to apply for the benefits of the CAA, and will generally receive thirty months of rollback as described above. However, a Mariel entrant who filed his or her application for adjustment of status before February 1, 1987, should be granted "rollback" to his initial parole date in 1980.

A denial of an application under the CAA should be prepared on an I-290C, and certified to the Office of Administrative Appeals (AAO), when the applicant is in a lawful status or when deportation proceedings should not be instituted because of humanitarian factors. However, an I-485 which is denied for lack of prosecution should not be certified to the AAO.

(o) Rescission Proceedings .

As with any other lawful permanent resident, an alien adjusted under section 1 of the CAA may have his or her residence rescinded under section 246 of the Act if it is determined within five years of adjustment that he or she was ineligible. Moreover, the five-year period of statutory limitations begins to run from the actual date the application for adjustment was approved, and not from the retroactive date of permanent residence (the rollback date). **Matter of Carrillo-Gutierrez** , 16 I. & N. Dec. 429 (BIA 1977) .
