When completed, the interim operations plan will supersede the annual operations plans/advisories and will guide Project operations until completion of the adjudication. At that time, the interim plan will be revised as necessary and additional NEPA documentation may be required.

Dated: November 5, 1997.

John F. Davis,

Acting Regional Director.

[FR Doc. 97–30096 Filed 11–14–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Westland Irrigation District Boundary Adjustment, Hermiston, OR

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare an environmental impact statement (EIS) for a proposed boundary adjustment to include additional lands into the Westland Irrigation District. Westland Irrigation District (WID) proposes the addition of 21,100 acres, of which 9,912 acres are currently irrigated, into their boundaries.

The NEPA process was initiated in late 1993 and, as a result of comments received then, has been on hold until additional information was obtained. This notice is to inform the public of the resumption of the NEPA process and the preparation of an EIS.

FOR FURTHER INFORMATION CONTACT: Mr. John Tiedeman, UCA–1607, Upper Columbia Area Office, Bureau of Reclamation, PO Box 1749, Yakima WA 98907–1749; Telephone (509) 575–5848 extension 238.

SUPPLEMENTARY INFORMATION: WID is one of several districts in the Umatilla basin either served by federally owned facilities or receiving federally controlled water. A Federal repayment contract with WID requires that changes to district boundaries must be approved by the Secretary of the Interior. During studies undertaken to implement the Umatilla Basin Project Act, it became apparent that WID was providing federally supplied water to lands outside of the district boundaries. In 1993, to address this problem, WID requested that Reclamation allow a change in their boundaries so that they may provide irrigation water to lands outside the current boundaries. In the interim Reclamation entered into a series of annual water service contracts with WID so irrigation of lands outside of the district boundaries with federally supplied water could continue while issues surrounding the boundary expansion were resolved.

Reclamation and the Natural Resources Department of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) held public meetings on November 4 and December 17, 1993, to gather comments from the public concerning the ''Proposed Boundary Changes for Irrigation Districts in the Umatilla Project, Oregon.'' Key issues identified in the scoping effort included Umatilla River hydrology and passage conditions for anadromous fish, Native American trust resources, and continued viability of irrigated agriculture. Based on the complex and often controversial nature of the issues involved, the high level of public and agency interest, and Reclamation's Native American trust responsibilities, Reclamation concluded that an EIS should be prepared. Since then, a hydrologic model of the Umatilla basin, necessary to complete the assessment of the proposed boundary adjustment, has been developed. Completion of the hydrologic model is anticipated for February 1998.

Four alternatives are proposed, including the no action alternative. Under the no action alternative all deliveries of federally supplied water by WID to lands outside of the current district boundaries would cease. Under the action alternatives some, or all, of these deliveries could continue. The draft EIS is expected to be completed in March of 1999.

At this time, no additional scoping meetings are planned. A summary of scoping issues identified through previous meetings is available upon request. Anyone interested in more information concerning the proposed action or who has information concerning significant environmental issues, should contact Mr. Tiedeman as provided under the **FOR FURTHER INFORMATION CONTACT** section.

Dated: October 17, 1997.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 97–30062 Filed 11–14–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

[AG Order No. 2129–97]

Interim Guidance on Verficiation of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Department of Justice.

ACTION: Notice of interim guidance with request for comments.

SUMMARY: Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (''PRWORA'') requires the Attorney General, by February 1998, to promulgate regulations requiring verification that an applicant for federal public benefits is a qualified alien eligible to receive federal public benefits under the Act. Amendments to the PRWORA by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 also require the Attorney General, within the same time period, to establish fair and nondiscriminatory procedures for applicants to provide proof of citizenship. Amendments to the PRWORA by the Balanced Budget Act of 1997 require the Attorney General, by November 3, 1997, to issue interim verification guidance that sets forth procedures that benefit providers can use to verify citizenship, qualified alien status, and eligibility under Title IV of the PRWORA prior to issuance of the final regulations. In accordance with this last statutory requirement, the Attorney General, in consultation with federal benefit-granting agencies, has developed this interim guidance.

DATES: This Interim Guidance is effective October 29, 1997.

ADDRESSES: Comments should be submitted to: John E. Nahan, Immigration and Naturalization Service, 425 I St., N.W., ULLICO Building, 4th Floor, Washington, D.C. 20536, (202) 514–2317.

FOR FURTHER INFORMATION CONTACT: John E. Nahan, Immigration and Naturalization Service, 425 I St., N.W., ULLICO Building, 4th Floor, Washington, D.C. 20536, (202) 514–2317.

SUPPLEMENTARY INFORMATION: By the authority vested in me as Attorney General by law, including section 432(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as amended), I hereby issue the following Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and

I–94 ARRIVAL/DEPARTURE RECORD

Proof of entry is signified by U.S. immigration stamp. Date of entry is stamped. *Non-immigrant visa classification* (letter or letter and number) is printed or stamped on ''Admitted'' line. Valid status expires on date enumerated at ''Until'' section of stamp.

Refugees and asylees each receive a separate INS stamp. Asylum seekers have ''valid to'' date, while refugees have a date of admission.

''RED'' I–688B ''EMPLOYMENT AUTHORIZATION''

FRONT: White background, read header bar and yellow interlocking wavy lines, gold INS seal becomes visible when tilted under normal light. Expiration date is on front, month, day, and year.

BACK: Red outline of U.S., Alaska, and Hawaii. The word ''Void'' is capitalized and underlined.

''RED'' I–766 ''EMPLOYMENT AUTHORIZATION''

FRONT: White background, red header bar. Statue of Liberty, USA, and Immigration and Naturalization Service symbols become visible when tilted under normal light. Expiration date is at bottom, right corner. Non-immigrant category listed over justice seal by a letter and number abbreviation of the 274A.12 immigration law citation.

BACK: White background, black magnetic strip and bar code.

DECISION GRANTING ASYLUM

Documents issued to aliens, granted asylum vary.

REFUGEE TRAVEL DOCUMENT FORM I–571

Form I–571 is issued by the INS to aliens who have been granted refugee status.

ORDER GRANTING WITHHOLDING OF DEPORTATION

The documents used by immigration judges to grant withholding of deportation vary.

EXHIBIT B TO ATTACHMENT 5—ALIENS WHO HAVE BEEN BATTERED OR SUBJECTED TO EXTREME CRUELTY WITHIN THE MEANING OF SECTION 431 OF THE ACT

INTRODUCTION

Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the ''Act''), as amended by section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the ''Immigration Act'') and sections 5571–72 and 5581 of the Balanced Budget Act of 1997 (''the Budget Act''), provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States by a family member with whom they resided are ''qualified aliens'' eligible for public benefits under the Act. An alien whose child or an alien child whose parent has been abused is also a ''qualified alien.'' Additionally, section 421 of the Act, as amended by section 552 of the Immigration Act and section 5571 of the Budget Act, exempts this group of battered aliens from the Act's new deeming requirements for a period of one year, and for longer if the battery or cruelty has been recognized in an order of a judicial officer or an administrative law judge or in an Immigration and Naturalization Service (''INS'') determination.

CONSIDERATIONS AFFECTING ALL APPLICANTS

Benfit providers should observe the following protocol with regard to all applicants who seek qualified alien status under section 431(c) of the Act:

(1) This Exhibit should be interpreted consistently with the principles set forth in the Interim Guidance, including, but not limited to, its standards for acceptance of documents demonstrating status, its nondiscrimination advisory and its provisions regarding whether to grant or withhold benefits pending verification of qualified alien status. In addition, as specified in the Interim Guidance, a provider should determine whether an applicant otherwise meets specific program requirements for benefit eligibility before initiating the verification process described below, unless determining program eligibility would be considerably more complex and time-consuming than verifying immigration status. (In the case of providers who are considering referring individual applicants to the Social Security Administration for issuance of a Social Security number, the provider should first determine that the applicant is otherwise eligible for program benefits.)

(2) Many of the applicants seeking assistance pursuant to this provision will need assistance on various matters relating to both their immigration status and their domestic violence-related concerns. You should therefore direct applicants to the INS forms request line (1–800–870–3676) so that applicants who are eligible to self-petition under the Violence Against Women Act, 8 U.S.C. 1154(a)(1), but have yet to do so, may request an INS Form I–360 and filing instructions. You should also refer them to the National Domestic Violence Hotline (1–800–799–7233) so that applicants may obtain assistance from a local domestic violence service provider and referrals to immigration attorneys. (A copy of INS Form I–360 is attached to this Exhibit).

(3) Except where this attachment directs otherwise, when asking the INS or the Executive Office for Immigration Review (''EOIR'') to verify an applicant's immigration status, a benefit provider should submit a verification request form. Sample INS and EOIR verification forms (hereinafter ''the INS Request Form'' and ''the EOIR Request Form'' respectively) are attached hereto. These samples must be replicated and submitted on your agency's letterhead in order for INS or EOIR to provide verification information. The INS Request Form should be faxed to the INS Vermont Service Center (fax: (802) 527–3159; tel: (802) 527–3160); the EOIR Request Form should be faxed to the office of the appropriate immigration court (a list of the immigration courts and their addresses, fax numbers and telephone numbers is also attached to this Exhibit). In certain limited circumstances described below, the benefit provider should submit its verification request by filing INS Form G–845 and the G–845 Supplement with the local INS office. Attachment 1 to the Interim Guidance includes a copy of INS Form G–845 and the G–845 Supplement to be used as indicated below, as well as a list of local INS offices.

(4) You should not share any information that you receive from or regarding the applicant with any member of his or her family or any other third party, without the express written permission of the applicant.

I. PROCEDURES FOR DETERMINING QUALIFIED ALIEN STATUS

An alien is a ''qualified alien'' eligible for public benefits under section 431(c) of the Act if he or she meets the following four requirements:

(1) the INS or the EOIR has granted a petition or application filed by or on behalf of the alien, the alien's child, or the alien child's parent under one of several subsections of the Immigration and Nationality Act (''INA'') described below or has found that a pending petition sets forth a prima facie case;

(2) the alien, the alien's child, or the alien child's parent has been abused in the United States [1] as detailed below:

(a) in the case of the abused alien: the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien, if the spouse or parent consents to or acquiesces in such battery or cruelty;

(b) in the case of an alien whose child is abused: the alien's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty, and the alien did not actively participate in the batter or cruelty;

(c) in the case of an alien child whose parent is abused: the alien child's parent has been battered or subjected to extreme cruelty in the United States by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent, if the spouse consents to or acquiesces in such battery or cruelty;

(3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought; and

(4) the battered alien, child, or parent no longer resides in the same household as the abuser.

Each of these four requirements, and processes for assuring that an applicant meets these requirements, are discussed in detail below. (In addition to these four requirements, the alien must of course meet the eligibility criteria of the particular

[1] Some applicants may possess documents demonstrating that they have been admitted to the United States because of battery or extreme cruelty that occurred *outside* of the United States, but this is insufficient by itself to make them eligible for benefits under section 431(c). Section 431(c) does not apply unless some battery or extreme cruelty occurred in the United States.

program from which benefits are sought.) A benefit provider must determine that an applicant satisfies all four requirements. If an applicant presents documentation indicating that an INS I–130 petition has been filed on the applicant's behalf under the INA provisions listed in subparagraph (a) of requirement one below, or that the applicant has filed an INS I–360 petition under the INA provisions listed in subparagraph (b) of requirement one below, the benefit provider should determine whether the applicant meets the other three requirements for qualified alien status (including battery or extreme cruelty) before verifying his or her immigration status with the INS. If an applicant presents documentation indicating that he or she has filed an INS I–360 petition based on one of the INA provisions listed in subparagraph (c) or (d) of requirement one below, or has sought suspension of deportation or cancellation of removal from the EOIR under one of the INA provisions listed in subparagraph (e) of requirement one below, INS or EOIR will make the determination as to battery or extreme cruelty. In such cases, the benefit provider may contact the INS or the EOIR as applicable to initiate the verification process prior to determining if the applicant meets the other two requirements for qualified alien status. After contacting the INS or the EOIR, the benefit provider should continue reviewing the applicant's eligibility for qualified alien status under requirements three and four below, and should not delay this evaluation while awaiting a response from the INS or the EOIR.

Requirement 1: *Appropriate INS Status.* You must determine that the INS or the EOIR, as applicable, has approved an applicant's petition or application or has found that the applicant's pending petition or application sets forth a prima facie case, under one of the following provisions of the INA:

(a) Section 204(a)(1)(A)(i) and 204(a)(1)(B)(i) of the INA (governing eligibility to receive law permanent resident (''LPR'') status as a spouse or child of a U.S. citizen, or as a spouse, child or unmarried son or daughter of an LPR, based on the petition of a spouse or parent);

(b) Section 204(a)(1)(A)(ii) of the INA (governing eligibility to apply for LPR status as an alien who is the widow or widower of a U.S. citizen to whom the alien had been married for at least two years at the time of such citizen's death);

(c) Sections 204(a)(1)(A)(iii) and 204(a)(1)(B)(ii) of the INA (governing eligibility to apply for LPR status as an alien who is the spouse of a U.S. citizen or LPR, who has resided with the spouse in the United States, and who (or whose child) has been subjected to battery or cruelty in the United States by his or her spouse);

(d) Sections 204(a)(1)(A)(iv) and 204(a)(1)(B)(iii) of the INA (governing eligibility to apply LPR status as an alien who is the child of a U.S. citizen or LPR, and who has resided with that parent in the United States and been subjected to battery or cruelty in the United States by his or her citizen or LPR parent); or

Section 244(a)(3) of the INA as in effect prior to April 1, 1997, or section 204A(b)(2) of the INA (governing the Attorney General's authority to suspend deportation or cancel the removal and adjust the status of an alien if the alien or the alien's child has been subjected to battery or extreme cruelty in the United States by a spouse or parent who is a U.S. citizen or LPR).[2] Note: Only this provision of the INA allows the alien parent of a battered child to obtain relief from deportation or removal even if he or she is not married to the U.S. citizen or LPR parent. This includes aliens who were never married to the U.S. citizen or LPR parent, aliens who are divorced from the U.S. citizen or LPR. Under the provisions described in (a)–(d) above, the alien must have been married to the U.S. citizen or LPR spouse at the time the petition was filed. Unmarried children of U.S. citizen or LPRs less than 21 years of age may petition for admission as a battered child under the provision described in (a) or (d) at any time, regardless of their parents' marital status.

Documentation

As set forth in Step 3 of the Interim Guidance regarding verification of qualified alien status, you should ask the alien to present documentation demonstrating his or her immigration status. As described in the Interim Guidance, if the documentation indicates that the applicant fall into one of the categories listed in (a)–(e) above and reasonably appears on its face to be genuine (or, if your program already has existing guidance or procedures mandating a higher standard of proof for acceptance of documentary evidence of immigration status, the document satisfies that higher standard) and to relate to the individual presenting it, you should accept the documentation as conclusive evidence that the applicant satisfies requirement one and should not verify immigration status with the INS or the EOIR. If, based on your review of the documents presented, you are considering determining that an applicant does not have the requisite immigration status and thus is not eligible for the benefits requested based on his or her immigration status—*e.g.,* because the documents does not on its face reasonably appear to be genuine (or to satisfy a higher applicable standard), to demonstrate that the applicant falls into any of the categories listed in (a)–(e) above, or to relate to the person presenting it—you should check with the INS or the EOIR as applicable to verify the information presented by the applicant. To verify status with the INS, in most cases, your should fax the INS Request Form, on your agency letterhead, as well as a copy of the document(s) provided by the applicant, to the INS Vermont Service Center. In some cases, as detailed in footnote three below, request for INS verification should be submitted to the local INS office using from G–845 and its supplement. To verify status with the EOIR, you should fax the EOIR Request Form on your agency letterhead, as well as a copy of the document(s) provided by the applicant, to the court administrator of the appropriate immigration court.

Applicants who have filed a petition or application or had a petition or application filed on their behalf, as applicable, under any of the above-described provisions of the INA will apply to a benefit provider in one of seven possible situations described below.

(1) With documentation evidencing an approved petition or application under one of the provisions listed in (a)–(e) above:

(a) INS Form I–551 (''Resident Alien Card'' or ''Alien Registration Receipt Card'', commonly known as a ''green card'') with one of the following INS class of admission (''COA'') codes printed on the front of a white card or the back of a pink card demonstrates approval of a petition under paragraphs (a)–(b) above:[3] AR1, AR6, C20 through C29, CF1, CF2, CR1, CR2, CR6, CR7, CX1 through CX3, CX6 through CX8, F20 through F29, FX1 through FX3, FX6 through FX8, IF1, IF2, IR1 through IR4, IR6 through IR9, IW1, IW2, IW6, IW7, MR6, MR7, P21 through P23, or P26 through P28;

(b) INS Form I–551 with one of the following COA codes stamped on the lower left side of the back of a pink card demonstrates approval of a petition under paragraphs (c)–(d) above: IB1 through IB3, IB6 through IB8, B11, B12, B16, B17, B20 through B29, B31 through B33, B36 through B38, BX1 through BX3, or BX6 through BX8;

(c) INS Form I–551 with COA code Z13 *may* demonstrate approval of a petition under paragraph (e) above; if an alien claiming approved status presents a card bearing the code Z13, determine where the card was issued by asking the alien where he or she received the grant of suspension of deportation, and then fax the EOIR Request Form on your agency letterhead, as well as a copy of the card and any other document(s) presented by the alien, to the EOIR court that granted the alien's suspension. If the alien does not recall where the grant of suspension of deportation was received, compare the city code on the card to the list of city codes attached to this Exhibit, and fax the EOIR Request Form on your agency letterhead, as well as a copy of the card and any other document(s) presented by the alien, to the Court Administrator of the EOIR court closest to the city where the green card was issued;

(d) Unexpired Temporary I–551 stamp in foreign passport or on INS Form I–94 with one of the COA codes specified in the preceding three paragraphs (if the temporary stamp or the INS Form I–94 bears the code

[2] While this provision includes unabused alien parents of battered children, it does not include unabused alien children of battered parents. This rule stands in contrast to the self-petitioning provisions described in (c) above, which battered spouses of U.S. citizen or LPRs can include their alien children in their petitions for status.

[3] The green card codes, green card types, and stamps in foreign passports or on INS Form I–94 that demonstrate an approved petition or application under one of the provisions listed in (a)–(b) above are too numerous to describe here. If an alien claiming approved status presents a code different than those enumerated, or if you cannot determine the class of admission from the I–551 stamp, you should file INS Form G–845, and the G–845 Supplement (mark item six on the Supplement) along with a copy of the document(s) presented, with the local INS office in order to determine whether the applicant gained his or her status because he or she was the spouse, widow, or child of a U.S. citizen or the spouse, child, or unmarried son or daughter of an LPR. (See Attachment 1 to Interim Guidance.)

Z13, follow the process described immediately above); if it bears another code or you cannot determine what the COA code is, follow the process outlined in footnote three; [4]

(e) INS Form I–797 indicating approval of an INS I–130 petition (only I–130 petitions describing the following relationships may be accepted: husbands or wives of U.S. citizens or LPRs, unmarried children under 21 years old of U.S. citizens or LPRs, or unmarried children 21 or older of LPRs), or approval of an I–360 petition (only I–360 approvals based on status as a widow/widower of a U.S. citizen or as a self-petitioning spouse or child of an abusive U.S. citizen or LPR may be accepted); [5] or

(f) A final order of an Immigration Judge or the Board of Immigration Appeals granting suspension of deportation under section 244(a)(3) of the INA as in effect prior to April 1, 1997, or cancellation of removal under section 240A(b)(2) of the INA. If the court or Board order does not indicate that suspension of deportation or cancellation of removal was granted under section 244(a)(3) or 240A(b)(2), you should fax the EOIR Request Form on your agency letterhead, as well as a copy of the order, to the court administrator of the EOIR court issuing the order, and ask the court to notify you of the INA provision under which the applicant was granted relief.

(2) With documentation demonstrating that the applicant has established a prima facie case [6] under one of the provisions described in (c), (d) or (e) above:

(a) INS Form I–797 indicating that the applicant has established a prima facie case; or

(b) An immigration court or Board of Immigration Appeals order indicating that the applicant has established a prima facie case for suspension of deportation under INA section 244(a)(3) as in effect prior to April 1, 1997, or cancellation of removal under section 240A(b)(2) of the INA.

(3) With documentation indicating that the applicant has filed a petition or that a petition has been filed on the applicant's behalf, as applicable, under one of the provisions listed in (c) or (d) above, but with no evidence of approval of the petition or establishment of a prima facie case, in which case the benefit provider should determine from the documentation when the petition was filed and take the actions set forth below:

(a) Applicants with petitions filed before June 7, 1997 should have an INS Form I–797 indicating filing of the I–360 petition by ''self-petitioning spouse [or child] of abusive U.S.C. or LPR,'' a file-stamped copy of the petition, or another document demonstrating filing (including a cash register or computer-generated receipt indicating filing of Form I–360), but the INS will not have determined whether the applicant's petition sets forth a prima facie case. (If the applicant has no proof of filing, you should follow the instructions in paragraph 6.) You should request that the INS expedite adjudication of the petition or that a prima facie determination be made by faxing the INS Request Form on your agency letterhead, to the INS Vermont Service Center. Inquires about these cases may also be submitted in the same manner to the INS Vermont Service Center.

(b) Applicants with petitions filed after June 7, 1997 should have an INS Form I–797 indicating filing of the I–360 petition, but may have only a copy of the petition and proof of mailing. Within three weeks of filing, INS will send to the applicant either an approval notice, a notice of prima facie case, or a request for additional documentation. In some cases, the applicant will receive both a notice of prima facie case and a request for additional documentation. Upon publication of an interim prima facie rule, INS will begin the process of determining whether an applicant's petition sets forth a prima facie case. If three weeks have elapsed since the filing of the petition, you may determine the status of the case by faxing the INS Request Form, on your letterhead, to the Vermont Service Center.

Please not that the prima facie determination is an interim determination. An INS notice of prima facie case will expire upon issuance of a final decision by the INS or 150 days after issuance, whichever is earlier. An EOIR prima facie determination will expire upon the date of the applicant's hearing on the merits of his or her case, or if made by the Board of Immigration Appeals, upon issuance of the Board's decision on the appeal. In order to remain eligible for benefits after the expiration of a notice of prima facie case an applicant must either request and obtain a renewal of the prima facie determination from the INS or the EOIR, as applicable, or must present the benefit provider with a copy of one of the documents listed in paragraph one above indicating that his or her petition or application has been approved.

(4) With documentation indicating that the applicant has filed a petition or that a petition was filed on his or her behalf, as applicable, under one of the provisions listed in (a) or (b) above (the documentation must indicate that the applicant is the widow/widower of a U.S. citizen, the husband or wife of a U.S. Citizen or LPR, the unmarried child under age 21 of a U.S. citizen or LPR, or the unmarried child age 21 or older of an LPR):

- For aliens on whose behalf a petition has been filed: INS Form I–797 indicating filing of an INS I–130 petition, a file-stamped copy of the petition, or another document demonstrating filing (including a cash register or computer-generated receipt indicating filing of Form I–130) (a sample copy of Form I–130 is attached to this Exhibit).
- For self-petitioning widows or widowers: a file-stamped copy of the INS I–360 petition, or another document demonstrating filing (including a cash register or computer-generated receipt indicating filing of Form I–360).

A prima facie determination will not have been made with regard to these petitions. You should request that the INS expedite adjudication of the petition or that a prima facie determination be made by faxing the INS Request Form on your agency letterhead, to the INS Vermont Service Center. Inquires about these cases may also be submitted in the same manner to the INS Vermont Service Center.

Applicants who are beneficiaries of I–130 petitions will have had a petition filed on their behalf. The petition process gives the spouse or parent of the applicant ultimate control over the disposition of the petition. If the spouse or parent is the abuser, he or she can nullify the petition either by withdrawing it or by divorcing the alien before the alien is able to obtain a green card. Because the most current information regarding the status of a pending I–130 petition will reside with the batterer until an applicant has received his or her green card, you should query INS regarding the applicant's continued eligibility each time you recertify the applicant for eleigiblity under general program guidelines. For these reasons, and because a self-petitioning applicant may be able to obtain employment authorization, an alien who is eligible to self-petition under the Violence Against Women Act should be strongly encouraged to do so. (Note: The alien must be the spouse or child of the abuser and, in the case of a spousal petition, still be married to the abuser when the petition is filed.) The applicant should also be directed to the INS forms request line and the National Domestic Violence Hotline as set forth on page one.

(5) Documentation indicating that the INS has initiated deportation or removal proceedings in which relief under the provision(s) listed in section (e) above may be available (copies of the documents listed below are attached to this Exhibit):

- an ''Order to Show Cause'';
- a ''Notice to Appear''; or
- a ''Notice of Hearing in Deportation Proceedings.''

You should inform the applicant that, if the applicant or the applicant's child has been battered or subjected to extreme cruelty

[4] If an applicant possesses the documents listed in items (a) through (d), the applicant has established that he or she is a lawful permanent resident and therefore is a qualified alien. You should nonetheless proceed with the analysis of requirements 2 through 4 to determine if the applicant qualifies for the battered exception to the deeming provisions (see Part IIA below).

[5] INS Form I–797 is used for numerous categories of petitions, and is used to indicate both receipt of a petition *and* approval or denial of a petition. It will also be used to indicate that an applicant has set forth a prima facie case. Thus, it is important to read the language on the Form I–797 presented by an applicant to ensure that it is more than a receipt, and specifically that it (a) denotes filing under one of the provisions specified above, and (b) denotes approval of the petition or a finding that a prima facie case has been demonstrated. Sample copies of Form I–797 are attached to this Exhibit.

[6] Because the INS has not previously been required to conduct prima facie assessments, it is implementing procedures (which will become effective upon publication of an interim rule) to expedite the review of I–360 petitions under the provisions described in (c) and (d) above and to notify the applicant within three weeks of INS' receipt of the petition if he or she has set forth a prima facie case. Similarly, the EOIR has not previously been required to conduct the prima facie assessment which is required under the provisions described in (e) above. The EOIR is currently working to implement a process for determining whether an applicant has set forth a prima facie case. Applicants in deportation or removal proceedings who are in need of a prima facie determination should contact the appropriate immigration court.

in the United States by a spouse or parent who is a U.S. citizen or LPR, and the applicant has been present in the United States for at least three years, he or she may file an application with the EOIR requesting suspension of deportation or cancellation of removal as applicable. You should also notify the applicant that, upon filing the application, he or she may ask the court to make a prima facie evaluation of the application and that, if the court indicates that the applicant has set forth a prima facie case for relief, he or she should return to your agency to complete the benefit eligibility evaluation process (see also footnote six). You should also refer the applicant to the National Domestic Violence Hotline as set forth on page one so that he or she may obtain assistance from a local domestic violence service provider and referrals to immigration attorneys. (Some of these applicants will also have sought the relief described in (a)–(d) above. Thus the applicant may have an I–797 indicating that his or her petition has been granted or that the petition sets forth a prima facie case, or an I–797 receipt indicating that a petition has recently been filed. You should only follow the procedures described in this paragraph if the applicant does not have such a petition pending with the INS.)

(6) With minimal or no documentation regarding the claimed filing: Because of the nature of abusive relationships, applicants may not have copies of the documents that have been filed by them or on their behalf. If the applicant has some documentation, but it is insufficient to demonstrate filing, establishment of prima facie case or approval of a petition, you should fax the INS Request Form on your agency letterhead, as well as a copy of any document(s) provided by the applicant, to the INS Vermont Service Center in order to determine the applicant's status. If the applicant has no documentation, but is certain that a petition has been filed by his or her spouse or parent, you should fax the INS Request Form to the INS Vermont Service Center. If the applicant has no documentation and is uncertain whether a petition has been filed on his or her behalf, you should refer the applicant to the National Domestic Violence Hotline as set forth on page one.

(7) Without having filed one of the above petitions, but with facts indicating a basis to file such a petition: You should refer such applicants to the INS forms request line and to the National Domestic Violence Hotline as set forth on page one.

Requirement 2: *Battered or Subjected to Extreme Cruelty.* You must also determine whether an applicant, his or her child, or, in the case of an alien child, his or her parent, has been battered or subjected to extreme cruelty (as defined below) as follows:

- in the case of an abused alien: the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty;
- in the case of an alien whose child is abused: the alien's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty, and the alien did not actively participate in the battery or cruelty;
- in the case of an alien child whose parent is abused: the alien child's parent has been battered or subjected to extreme cruelty in the United States by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent if the spouse consents to or acquiesces in such battery or cruelty.

(a) *Definitions of Battery, Extreme Cruelty and Family Member*

For purposes of this Guidance, the phrase ''battered or subjected to extreme cruelty'' has the meaning set forth below. This definition is drawn, with slight modification, from the INS interim rule, ''Petition to Classify Alien as Immediate Relative of a United States Citizen or as Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children,'' 61 Fed. Reg. 13,061, 13074 (1996) (8 C.F.R. 204.2(c)(vi)).

The phrase ''battered or subjected to extreme cruelty'' includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatneded acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.

This is a broad, flexible definition that encompasses all types of battery and extreme cruelty. The acts mentioned in the above definition should be regarded by benefit providers as acts of violence whenever they occur, so long as one or more of the acts takes place in the United States and while the family relationship between the abuser and the victim exists. It is not possible, however, to identify all behaviors that could be acts of violence under certain circumstances, and this definition does not contain an exhaustive list of the acts of violence that will constitute battery or extreme cruelty. Many other nonenumerated abusive actions will also constitute an act or threatened act of violence under this definition.

For purposes of this Guidance, the phrase ''member of the spouse or parent's family'' means any person related by blood, marriage, or adoption to the spouse or parent of the alien, or any person having a relationship to the spouse or parent that is covered by the civil or criminal domestic violence statutes of the state or Indian country where the alien resides, or the state or Indian country in which the alien, the alien's child, or the alien child's parent received a protection order.

(b) *Applicant With EOIR Order or Approved INS Petition or Other Court Order Based on Battery*

Applicants with approved petitions or orders granted under one of the provisions enumerated in paragraphs (c), (d) or (e) of requirement one above have already met the requirement of demonstrating battery or extreme cruelty pursuant to the INS rule. Thus, the benefit provider should not make a new determination of battery or cruelty, and should instead proceed directly to the determination of substantial connection under requirement three. Similarly, a protection order or record of criminal conviction satisfies the battery or extreme cruelty requirement for applicants in the following situations:

- any applicant who has or has had a protection order issued against his or her spouse, parent, or family member of the spouse or parent with whom the applicant was living;
- any applicant whose child has or has had a protection order issued against the applicant's spouse, parent, or family member of the spouse or parent with whom the applicant was living (including protection orders issued to the applicant on behalf of the applicant's abused minor child);
- any applicant who is an alien child and whose parent has or has had a protection order issued against the parent's spouse, or family member of the spouse with whom his or her parent was living;
- any applicant who has a record of criminal conviction of his or her spouse, parent, or family member of the spouse or parent with whom the applicant was living, for committing an act of violence against the applicant or his or her child; or
- any applicant who is an alien child and who has a record of criminal conviction of his or her parent's spouse, or family member of the spouse with whom the parent was living , for committing an act of violence against the applicant's parent.

In the above situations, the applicant has established battery or extreme cruelty for purposes of this Guidance, and you should immediately proceed to requirement three.[7]

(c) *All Other Applicants*

Except for applicants addressed in (b) immediately above, an applicant must provide evidence of abuse. The benefit provider should consider *any credible evidence proffered by the applicant.* Evidence of battery or extreme cruelty (and in the case of a petition on behalf of a child, evidence that the applicant did not actively participate in the abuse) includes, but is not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, and other social service agency personnel; legal documentation, such as an order of protection against the abuser or an order convicting the abuser of committing an act of domestic violence that chronicles the existence of abuse; evidence that indicates

[7] In cases where INS is making the determination regarding battery and extreme cruelty, INS will follow its regulations as set forth in 8 C.F.R. 204.2(c)(2). Under these regulations, INS will consider protection orders and criminal convictions along with any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence rests within the sole discretion of INS. See 8 C.F.R. 204(c)(2)(l).

that the applicant sought safe-haven in a battered women's shelter or similar refuge because of the battery against the applicant or his or her child; or photographs of the visibly injured applicant, child, or (in the case of an alien child) parent supported by affidavits. An applicant may also submit sworn affidavits from family members, friends or other third parties who have personal knowledge of the battery or cruelty. Additionally, an applicant may submit his or her own affidavit, under penalty of perjury (it does not have to be notarized), describing the circumstances of the abuse, and the benefit provider has the discretion to conclude that the affidavit is credible, and, by itself or in conjunction with other evidence, provides relevant evidence of sufficient weight to demonstrate battery or extreme cruelty. The benefit provider should keep a copy of all evidence presented by the applicant.

The benefit provider should bear in mind that, due to the nature of the control and fear dynamics inherent in domestic violence, some applicants will lack the best evidence to support their allegations (*e.g.*, a civil protection order or a police report). Thus, the benefit provider will need to be flexible in working with the applicant as he or she attempts to assemble adequate documentation. In determining the existence of battery or cruelty, it is important that the benefit provider understand both the experience of intimate violence and the applicant's cultural context. The dynamics of domestic violence may have inhibited the applicant from seeking public or professional responses to the abuse prior to applying for benefits needed to enable the applicant to leave the abuser. For many cultural groups, going to outsiders for help is viewed as disloyalty to the community and an embarrassment to the family. In some cultures, for example, women have been conditioned to accept the authority and control of their husbands. Thus, there may be little independent documentary evidence of the abuse; the benefit provider should be sensitive to the needs and situation of the abused applicant when reviewing allegations and evidence of abuse.

Many applicants will have had an I–130 petition filed on their behalf by their spouse or parent, in which case the spouse or parent will have ultimate control over the disposition of the petition. If the spouse or parent is the abuser, he or she can nullify the petition either by withdrawing it or by divorcing the alien before the alien is able to obtain a green card. For these reasons, and because a self-petitioning applicant may be able to obtain employment authorization, an alien who is eligible to self-petition (the alien must be married to the abuser when the petition is filed) should be strongly encouraged to do so. The applicant should also be directed to the INS forms request line and the National Domestic Violence Hotline as set forth on page one.

Requirement 3: *Substantial Connection Between Battery and the Need for Benefits.* You must determine whether there is a substantial connection between the battery or extreme cruelty to which the applicant, his or her child, or (in the case of an alien child) his or her parent has been subjected and the need for the benefits sought. This requirement will not be satisfied simply by a determination that an applicant has been subjected to battery or extreme cruelty. To assist benefit providers in making substantial connection determinations, and as required by the Budget Act, the Attorney General has developed a list of circumstances, set forth below, that demonstrate a substantial connection between the battery or extreme cruelty suffered by an applicant, the applicant's child, or (in the case of an alien child) the applicant's parent, and the need for the benefit sought. You may refer to this list as a guide in making substantial connection determinations.

Note: The Attorney General's Order No. 2097–97, Determination of Situations that Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits, 62 FR 39874 (July 24, 1997), has been superseded by amendments in the Budget Act. Revised substantial connection guidance will be issued shortly. In the meantime, benefit providers should look to the information contained in this document for guidance in making substantial connection determinations.

- Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child), the applicant's parent to become self-sufficient following separation from the abuser;
- Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant, the applicant's child, or (in the case of an alien child) the applicant's parent from the abuser;
- Where the benefits are needed due to a loss of financial support resulting from the applicant's, his or her child's, and/or (in the case of an alien child) his or her parent's separation from the abuser;
- Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to lose his or her job or to earn less or to require the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to leave his or her job for safety reasons;
- Where the benefits are needed because the applicant, the applicant's child, or (in the case of an alien child) the applicant's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;
- Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the applicant's or (in the case of an alien child) the parent's ability to care for his or her children (*e.g.*, inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser);
- Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;
- Where the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent and/or to care for any resulting children; or
- Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant, the applicant's child, or (in the case of an alien child) the applicant's parent had when living with the abuser.

Requirement 4: *Battered Applicant No Longer Resides in the Same Household with Batterer.* Before providing benefits, you must determine that the battered applicant, child or parent no longer resides in the same household or family eligibility unit as the batterer. Although an applicant is not a qualified alien eligible for benefits until the battered applicant or child, or parent ceases residing with the batterer, applicants will generally need the assurance of the availability of benefits in order to be able to leave their batterer and survive independently. Wherever possible in this situation, the benefit provider should complete the eligibility determination process and approve the applicant for receipt of benefits pending the applicant's demonstration that the applicant, his or her child, and/or (in the case of an alien child) his or her parent have separated from the batterer. The applicant can then make arrangements to leave the batterer's residence secure in the knowledge that benefits will be provided as soon as he or she leaves.

You should consider any relevant credible evidence supporting the claim of non-residency with the batterer, including, but not limited to, any of the following: A civil protection order requiring the batterer to stay away from the applicant or the applicant's children or parent, or evicting the batterer from the applicant's residence; employment records; utility receipts; school records; hospital or medical records; rental records or records from a building or property manager; an affidavit from a staff member at a shelter for battered women or homeless persons, family members, friends or other third parties with personal knowledge, or from the battered applicant himself or herself; or any other records establishing that the applicant or his or her child or parent no longer resides with the abusive spouse, parent, or family member.

Note: While qualified alien status will make the battered applicant, the battered applicant's children, or the parent of a battered child eligible for certain federal public benefits, it will not make them eligible for all federal public benefits. See Interim Guidance and Attachments 6 and 7 thereto for the factors that determine a qualified alien's eligibility for particular benefits.

II. EXEMPTION FROM DEEMING REQUIREMENTS

A. *Battered Aliens*

Section 421 of the Act (as amended by the Immigration Act and the Budget Act) requires

that, upon the effective date of the newly required affidavit of support and subject to the exceptions described below, when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien applicant is entitled, agencies must include as income and resources of the alien, the income and resources of the spouse of the alien and any other person executing an affidavit of support on behalf of the alien. An alien is exempt from these ''deeming'' requirements for a period of one year, however, if

(1) in the case of an abused alien,

(a) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty; (b) there is, in the opinion of the agency providing such benefits, a substantial connection between the battery or extreme cruelty and the need for the benefit sought; and (c) the battered alien no longer resides in the same household as the abuser;

(2) in the case of an alien whose child is abused:

(a) the alien's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty, and the alien did not actively participate in the battery or cruelty; (b) there is, in the opinion of the agency providing such benefits, a substantial connection between the battery or extreme cruelty and the need for the benefit sought; and (c) the battered child no longer resides in the same household as the abuser;

(3) in the case of an alien child whose parent is abused:

(a) the alien child's parent has been battered or subjected to extreme cruelty in the United States by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent if the spouse consents to or acquiesces in such battery or cruelty; (b) there is, in the opinion of the agency providing such benefits, a substantial connection between the battery or extreme cruelty and the need for the benefit sought; and (c) the battered parent no longer resides in the same household as the abuser.

See Part I, requirements two and four, above, for the definition and proof of battery/extreme cruelty and non-residency with the abuser; the agency may also want to consult the Attorney General's guidance regarding substantial connection (see part I, requirement three above) when making its own substantial connection determination.

After expiration of the one year period, alien applicants continue to be exempt from the deeming requirements with regard to the resources and income of the *batterer only*, if (a) the applicant demonstrates that the battery or cruelty has been recognized in an order of a judge or administrative law judge or a prior determination of the INS, and (b) in the opinion of the agency, there is a substantial connection between the abuse or battery suffered by the applicant, the applicant's child, or (in the case of an alien child) the applicant's parent and the need for the benefit sought.

B. *Indigent Aliens*

In addition to the exemption for battered aliens, the Act's deeming provision contains a separate exemption for indigent aliens. If, after taking into account the alien's own income plus any cash, food, housing or other assistance provided by other individuals (including the sponsor), an agency determines that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, the amount of income and resources of the sponsor or the sponsor's spouse that shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period of one year after the date such agency determination is made.

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