



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-10-07

SUBJECT: Eligibility for Title IV Aid for “Battered Immigrants-Qualified Aliens” as provided for in the Violence Against Women Act

SUMMARY: This letter describes the process by which a person who has documentation provided by the Department of Homeland Security’s United States Citizenship and Immigration Service that supports a finding that the person is a “Battered Immigrant” and meets the definition of a “qualified alien” can qualify for Title IV, HEA program assistance.

Dear Colleague:

Background:

Under certain conditions and with the documentation described below, some non-U.S. citizens who are “Battered Immigrants-Qualified Aliens” and their designated children may receive federal student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA).

Normally, when a U.S. citizen (or lawful permanent resident) marries an alien and wishes to bring his or her spouse to the U.S., the U.S. citizen petitions the Department of Homeland Security’s (DHS’s) United States Citizenship and Immigration Service (USCIS) office so the alien spouse may legally reside in the U.S. However, sometimes in the case of domestic violence, the abusing citizen-spouse threatens the alien-spouse and/or controls the petitioning process. Immigrants who are spouses of U.S. citizens or spouses of lawful permanent residents, and who are victims of domestic violence, as determined by the USCIS, may be deemed “qualified aliens,” which under the Violence Against Women Act (VAWA) makes them and their designated children eligible for “federal public benefits,” including federal student financial assistance under Title IV of the HEA. The VAWA allows the battered immigrant to self-petition the USCIS for such a determination without the cooperation or knowledge of the abuser.

Due to confidentiality concerns,¹ information about such battered immigrants is not maintained in the Department of Homeland Security’s Systematic Alien Verification for Entitlements system that is generally used for computer matching between the Department of Education (ED) and DHS. Instead, DHS has a unit separate from its central or regional offices that maintains information on VAWA Battered Immigrants.

¹ 8 USC 1367(a)(2) prohibits DHS from using or disclosing to anyone, other than a sworn officer of DHS, any information related to the beneficiary of a protected application, which includes all applications under VAWA.

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As a result, the submission of a Free Application for Federal Student Aid (FAFSA) by a Battered Immigrant-Qualified Alien will not yield a positive match with DHS. Also, the collection from the applicant by a postsecondary educational institution of USCIS-provided documentation and its submission to the local USCIS office with a G-845S Document Verification Request form, as provided for other types of eligible noncitizens, will not provide verification of the applicant's status as a qualified alien.²

The guidance in this letter describes the documentation process that must be used for a person who requests Title IV eligibility based upon his or her status as a "Battered Immigrant-Qualified Alien."

Generally, a Battered Immigrant-Qualified Alien receives an Alien Registration Number (A-Number) upon arrival to the U.S. When completing the FAFSA, the Battered Immigrant will indicate on the FAFSA that they are an eligible noncitizen and provide their "A-Number." While Battered Immigrants are not "eligible noncitizens" for the purpose of the ED/DHS computer match, as indicated above, they are noncitizens who, as determined by DHS-USCIS, are eligible for federal benefits, including Title IV student assistance.

Documentation Requirements:

The documentation that must be provided depends on the applicant's DHS-USCIS Case Type, as described below.

1. Type of Case: Self-petitioning cases under VAWA

Description – When an immigrant self-petitions DHS-USCIS for a status of Battered Immigrant-Qualified Alien (by filing an I-360 form), the USCIS will make an initial determination to:

- (1) deny the petition,
- (2) approve the petition, or
- (3) find that a "prima facie" case has been established.

Either the approval of the self-petition or a finding of a "prima facie" case establishes an otherwise eligible applicant's eligibility for Title IV, HEA program assistance. However, a finding of a "prima facie" case will have an expiration date. As a result, for "prima facie" cases, Title IV eligibility will end the day after the expiration date, unless the USCIS has changed the applicant's status to "approved," or has extended the expiration date of the "prima facie" case.

Documentation – The USCIS will respond to an applicant's self-petition by issuing to the applicant an I-797, Notice of Action form.

² ED has developed this guidance in conjunction with DHS-USCIS to establish these special procedures for an institution to verify a student's Battered Immigrant-Qualified Alien status. Due to the confidential and sensitive nature of this information, if an institution requires that the applicant information be verified, the institution must send such verification inquiries to the specific office address at the end of this guidance, rather than to its local DHS-USCIS office. Local DHS-USCIS offices will not be able to verify Battered Immigrant-Qualified Alien status.

NOTE: The I-797 form is used by the USCIS for many purposes, so it is critical that it be carefully reviewed.

Approval - USCIS will provide a DHS-USCIS Form I-797, Notice of Action form, indicating the applicant's status. When a self-petitioning spouse is approved, the I-797 will indicate "Notice Type: Approval Notice" and the Section reference will read, "Self-Petitioning Spouse of U.S.C. or L.P.R." In the narrative below, there will be a statement such as, "The above petition has been approved." When the I-797 has the above designations, an otherwise eligible applicant can be awarded and disbursed Title IV, HEA program assistance and no verification with DHS-USCIS is required.

In cases where the self-petitioning spouse's application has been approved, a separate I-797 form will be issued by USCIS with the names and dates of birth of any children listed by the applicant. That I-797 form will read, "Notice Type: Notice of Dependent Child (ren), Section: Self-Petitioning Spouse of U.S.C. or L.P.R." In the narrative it will state, "The following derivative children are named on the approved Petition" and then the names and birth dates of the child (ren) will be provided. These children, if otherwise eligible, may receive Title IV, HEA program assistance and no verification with DHS-USCIS is required.

The status of a child listed on a self-petitioner's notice of action when the petition has been approved by DHS-USCIS continues even after the child has reached the age of majority.

In some cases, a dependent child can be the self-petitioner and therefore the I-797 form would read, "Notice Type: Approval Notice, Section: Self-Petitioning Child of U.S.C. or L.P.R." in a case where the U.S. citizen or lawful permanent resident is abusing the child.

When the I-797 form has the above designations, an otherwise eligible applicant can be awarded and disbursed Title IV, HEA program assistance and no verification with DHS-USCIS is required.

"Prima Facie" Case - The I-797, Notice of Action will sometimes indicate "Section: Self-Petitioning Spouse of U.S.C. or L.P.R. ESTABLISHMENT OF PRIMA FACIE CASE." This status is usually provided for a period of up to 180 days (as indicated on the I-797, Notice of Action form). As long as the I-797 form has not expired, an otherwise eligible applicant can be awarded and disbursed Title IV, HEA program assistance and no verification with DHS-USCIS is required. Also, at times, DHS-USCIS will extend the "prima facie" case for a specific period of time until the case is either approved or denied. As long as the expiration date has not occurred, an otherwise eligible Title IV, HEA applicant is eligible to receive Title IV, HEA program assistance. It is our understanding that a self-petitioner can submit a written request for an extension up to 15 days prior to the expiration date and receive an extension. Unless the I-360 application has been denied, the petitioner should receive an extension of the "prima facie" case on a subsequent I-797 form.

The I-797 may include a section with the names and dates of birth of any children of the self-petitioning spouse. These children are also eligible to receive Federal Title IV student aid under the “prima facie” determination of the parent with the same expiration date limitation. The child’s eligibility continues even after the child has reached the age of majority, as long as the I-797 has not expired.

Other General Notes:

- a. While the dependent children may be listed on the parent’s self-petition approval, each of the eligible children must individually make a separate request for deferred action to DHS-USCIS.
- b. If the self-petitioning spouse is ultimately denied approval, then the dependent children initially listed on the petitioner’s I-797 would also be denied and therefore not be eligible for Title IV, HEA program assistance.
- c. In some cases, the USCIS will initially acknowledge the receipt of the self-petition. An acknowledgment does not make the applicant (or his/her named dependent children) eligible for Title IV, HEA program assistance.
- d. The USCIS may also issue a Notice of Deferred Action. This is an administrative choice to give lower priority for removal of the immigrant from the U.S. Again, because the I-797 Notice of Action can be used for a wide variety of purposes (beyond the scope of Title IV, HEA program eligibility), and as the “Case Type” heading on the form indicates, this notice of deferred action could be applicable to cases unrelated to a self-petitioning case under VAWA; therefore, the Notice of Deferred Action alone cannot be used as documentation of a self-petitioner. Instead, the self-petitioner must provide either a copy of the self-petitioner approval notice or a notice of action that establishes a “prima facie” case (that has not expired). Generally, a Notice of Deferred Action has a termination date, therefore prior to the termination date, an otherwise eligible applicant also providing a copy of the self-petitioner’s approval status or that of the establishment of a “prima facie” case may be awarded and disbursed Title IV, HEA program assistance. However, after the termination date of the Notice of Deferred Action, the applicant is no longer eligible to receive Title IV, HEA funds. The applicant may request and receive a supplemental notice extending the termination date and therefore regain Title IV eligibility.

2. Type of Case: Suspension of deportation cases under VAWA

Description - An immigration judge can issue an order to suspend the deportation of the abused spouse, parent, or child under VAWA. An otherwise eligible applicant whose immigration court order has not expired may be awarded and disbursed Title IV, HEA program assistance and no verification is required with DHS-USCIS.

Documentation – The applicant receives a copy of the Immigration Court Order. If the court order clearly indicates suspension of deportation by the immigration judge, an otherwise eligible applicant may be awarded and disbursed Title IV, HEA program assistance and no verification is required with DHS-USCIS. Often, the institution may be unclear about the court's order; we suggest that the institution follow the instructions below to obtain verification from USCIS.

3. Type of Case - Cancellation of removal cases under VAWA

Description – An immigration judge can issue an order to cancel the removal of the abused spouse, parent, or child under VAWA. An otherwise eligible applicant whose immigration court order has not expired may be awarded and disbursed Title IV, HEA program assistance and no verification is required with DHS-USCIS.

Documentation – The applicant receives a copy of the Immigration Court Order. If the court order clearly indicates cancellation of removal by the immigration judge, an otherwise eligible applicant may be awarded and disbursed Title IV, HEA program assistance and no verification is required with DHS-USCIS. Often, the institution may be unclear about the court's order; we suggest that the institution follow the instructions below to obtain verification from USCIS.

Financial Aid Administrator Action:

Since the applicants above will not successfully pass the computer match conducted between ED and DHS, the financial aid administrator must collect and examine a copy of the USCIS-provided documents described above and retain a copy of the documents in the student's financial assistance file. If the documents support the applicant's status under VAWA and have not expired, an otherwise eligible student can be awarded and disbursed Title IV, HEA program assistance and verification with DHS-USCIS is not required. It is important for financial aid administrators and others at the institution to bear in mind the confidential and sensitive nature of the documents establishing the student's Battered Immigrant-Qualified Alien status, and the institution's obligation to comply with the privacy requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99.

The financial aid administrator must also check the student's response to the citizenship question on the FAFSA. Most of the affected students will indicate that they are eligible noncitizens. By following the guidance in this letter, the financial aid administrator will resolve the fact that the student did not successfully pass the computer match. However, it is also possible that the student may indicate that he or she is neither a citizen, nor an eligible noncitizen. In this case, the student should correct the FAFSA and indicate that the student is an eligible noncitizen. This is an important correction needed to allow for the calculation of an Expected Family Contribution (EFC). Indicating that the student is neither a citizen, nor an eligible noncitizen, will cause the FAFSA to be rejected.

Students who apply for Title IV, HEA program assistance in a subsequent year may rely upon the original DHS-USCIS documentation provided, as long as that documentation has not expired. If the documentation has expired, the applicant is required to obtain new DHS-USCIS documentation. When the documentation has not expired, but was provided in a prior award year, the institution must have the student provide a written and dated statement indicating that their DHS-USCIS immigration status as provided under VAWA remains in effect without change. This documentation must remain in the applicant's financial assistance file at the institution.

Procedures when the documentation is lost, the institution is unclear about the documentation, or the documentation has expired:

In the event that:

- The student has lost or cannot provide a copy of his or her USCIS-provided documentation,
- The institution has reservations about the documentation provided by the applicant or is unclear about the outcome reflected in the documentation, or
- The documentation has expired,

the financial aid administrator must submit a completed G-845S form and attach copies of any documentation provided by the applicant. When completing the G-845S form, check "Box 8 – Other" and write-in "VAWA verification" and submit the information to DHS-USCIS for a VAWA verification determination at the following address (NOTE: This is not the Buffalo Field Office address.).

DHS-USCIS
186 Exchange Street
Buffalo, NY 14204

Eligibility for Title IV, HEA program assistance as a Battered Immigrant – Qualified Alien will be based on the results of the G-845S submission to the Buffalo office of DHS-USCIS.

For further information or to contact the Department of Education on this topic:

If you have any questions regarding this letter, please contact Dan Klock via e-mail at dan.klock@ed.gov or Carney McCullough via e-mail at carney.mccullough@ed.gov.

We appreciate your cooperation and assistance in helping these applicants as we work to implement this new process.

Sincerely,



Daniel T. Madzellan
Delegated the Authority to Perform
the Functions and Duties of the
Assistant Secretary for
Postsecondary Education.