Marketing Order Administration Branch within two days of receipt of the exempt lot, that such lot has been received and will be utilized in the exempt outlet.

(c) It is the responsibility of the importer to notify the Marketing Order Administration Branch of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, exported, or otherwise disposed of. In such cases, a second ''Importer's Exempt Commodity Form'' must be filed by the importer providing sufficient information to determine ultimate disposition of the exempt lot and such disposition shall be so certified by the final receiver.

(d) All FV–6 forms and other correspondence regarding entry of 8e commodities must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone (202) 720–4607. FV–6 forms submitted by fax must be followed by a mailed, original copy of the FV–6. Fax transmissions may be sent to the MOAB at (202) 720–5698.

Dated: February 23, 1996.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–7192 Filed 3–25–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1280

[No. LS–96–002]

Sheep Promotion, Research, and Information Program

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Notice of Referendum Results

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that sheep producers, sheep feeders, and importers of sheep and sheep products voting in a national referendum on February 6, 1996, have approved the Sheep and Wool Promotion, Research, Education, and Information Order (Order).

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456.

SUPPLEMENTARY INFORMATION: Pursuant to the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101 *et seq.* (Act), the Department of Agriculture conducted a referendum on February 6, 1996, among eligible sheep producers, sheep feeders, and importers of sheep and sheep products to determine if an Order would become effective.

Of the 19,801 valid ballots cast, 10,707 (54.1 percent) favored and 9,094 (45.9 percent) opposed the implementation of the Order. Additionally, of those persons who cast valid ballots in the referendum, those who favored the Order account for 40 percent of the total production voted, and those opposed account for 60 percent of the total production voted. The Order could have been approved by either a majority of the producers, feeders, and importers voting in the referendum or by those voting in the referendum who accounted for at least two-thirds of the production represented.

Therefore, based on the referendum results, the Secretary of Agriculture has determined that the required majority of eligible producers, feeders, and importers who voted absentee or in person in the February 6, 1996, national referendum voted to implement the Order. As a result, a promotion, research, education, and information program will be funded by a mandatory assessment on domestic sheep producers, lamb feeders, and exporters of live sheep and greasy wool of 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers will be assessed (1) 1 cent per pound on live sheep; (2) the equivalent of 1 cent per pound of live sheep for sheep products; and (3) 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products, will be assessed the equivalent of 1 cent per pound of live sheep sold or 2 cents per pound of greasy wool sold. All assessments may be adjusted in accordance with applicable provisions of the Act. The date when assessments will begin will be announced at a later date.

Dated: March 20, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–7191 Filed 3–25–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 204, 205 and 216

[INS No. 1705–95]

RIN 1115–AE04

Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (''the Service'') regulations to allow a spouse or child to seek immigrant classification if he or she has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident spouse or parent. It also permits a spouse to seek classification if his or her child has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident spouse. A qualified spouse or child who is living in the United States but is not a permanent resident may use the procedures established by this rule to self-petition for immigrant classification. The self-petition may be filed without the abuser's knowledge or consent, and may include the children of a self-petitioning spouse. A person who is granted immigrant classification under this provision may become eligible for lawful permanent resident status. A lawful permanent resident of the United States has legal permission to live and work in this country, and may later qualify for U.S. citizenship through naturalization.

DATES: This interim rule is effective March 26, 1996. Written comments must be received on or before May 28, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference the INS number 1705–95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT:

Rita A. Arthur, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

The Immigration and Nationality Act (''the Act'') allows certain relatives of a citizen or lawful permanent resident of the United States to be classified for immigration. These relatives are not automatically entitled to immigrate; the Service must approve a visa petition filed by the citizen or lawful permanent resident for the family member, and the relative must qualify for immigrant visa issuance abroad or adjustment of status in the United States.

Citizens and lawful permanent residents may choose whether and when to petition for a relative. Most citizens and lawful permanent residents seek permission to bring their family members to the United States as soon as possible. They file for all their qualified relatives, except family members who do not want to live in the United States and those with whom they do not care to be reunited.

Some abusive citizens or lawful permanent residents, however, misuse their control over the petitioning process. Instead of helping close family members to legally immigrate, they use this discretionary power to perpetuate domestic abuse of their spouses and minor children who have been living with them in the United States. Abusers generally refuse to file relative petitions for their closest family members because they find it easier to control relatives who do not have lawful immigration status. These family members are less likely to report the abuse or leave the abusive environment because they fear deportation or believe that only citizens and authorized immigrants can obtain legal and social services. An abuser may also coerce family members' compliance in other areas by threatening deportation or by promising to file a relative petition in the future.

Crime Bill

The plight of these domestic abuse victims, who are unable to leave the United States for financial, social, cultural, or other reasons, was addressed by the Violent Crime Control and Law Enforcement Act of 1994 (''the Crime Bill''), Public Law 103–322, dated September 13, 1994. Title IV of the Crime Bill, The Violence Against Women Act of 1994 (''the VAWA''), contains several provisions that limit the ability of an abusive citizen or lawful permanent resident to use the immigration laws to further violence against a spouse or child in the United States. Although the title of this portion of the Crime Bill reflects the fact that many abuse victims are women, abused spouses and children of either sex may benefit from these provisions. Section 40701 of the Crime Bill allows a qualified spouse or child to self-petition for immigrant classification based on the relationship to the abusive citizen or lawful permanent resident of the United States, without the abuser's participation or consent. This section also permits an eligible abused spouse to include his or her children in the petition, if the children have not petitioned separately. Section 40702 of the Crime Bill, which will be the subject of a separate rulemaking, provides guidelines for the acceptance and evaluation of credible evidence of abuse submitted with certain requests for removal of conditions on residency under section 216 of the Act. Section 40703 of the Crime Bill, which will also be addressed separately, allows certain abused spouses and children who have been continuously physically present in the United States for the past 3 years to apply for suspension of deportation.

Basic Self-Petitioning Eligibility Requirements

A spouse who is self-petitioning under section 40701 of the Crime Bill must show that he or she: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship; (3) is residing in the United States; (4) has resided in the United States with the citizen or lawful permanent resident spouse; (5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; (6) is a person of good moral character; (7) is a person whose deportation would result in extreme hardship to himself, herself, or his or her child; and (8) entered into the marriage to the citizen or lawful permanent resident in good faith.

A child who is self-petitioning under section 40701 of the Crime Bill must show that he or she: (1) is the child of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship; (3) is residing in the United States; (4) has resided in the United States with the citizen or lawful permanent resident parent; (5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent; (6) is a person of good moral character; and (7) is a person whose deportation would result in extreme hardship to himself or herself.

Spouse of a Citizen or Lawful Permanent Resident

The Crime Bill's changes to section 204(a)(1) of the Act, which allow a self-petition to be filed, describe the spousal relationship between the self-petitioner and the abuser in the present tense. They characterize a self-petitioning spouse as a person who is the spouse of a citizen or lawful permanent resident of the United States, and include no provisions for filing a self-petition based on a former spousal relationship. This rule, therefore, requires the self-petitioning spouse to be legally married to the abuser when the petition is filed. It specifies that a spousal self-petition must be denied if the petitioner's marriage to the abuser legally ended by annulment, death, or divorce before that time. The rule also stipulates that the abuser be a citizen or lawful permanent resident of the United States when the self-petition is filed.

Although it does not allow a self-petition to be filed based on a former spousal relationship, section 40701 of the Crime Bill directs the Service not to revoke the approval of a self-petition solely because the marriage has legally ended. This statutory provision protects the self-petitioner against an abuser's attempt to regain control over the petitioning process through legal termination of the marriage. It also allows a qualified self-petitioner to make decisions concerning the abusive relationship without regard to immigration considerations. This rule reflects the legislative provision safeguarding the self-petitioner's control over the immigration classification process.

While section 40701 of the Crime Bill requires the marriage to be legally valid at the time of filing and specifies that its termination after approval will not be the sole basis for revocation, it does not address the effect of a legal termination occurring between the filing and the approval of the self-petition. In the absence of explicit legislative guidelines, the Service has determined that protections for spouses whose self-

petitions have been approved should be extended to cover the entire period after the self-petition is filed. This rule, therefore, allows an otherwise approvable self-petition to be granted despite the legal termination of the marriage through annulment, divorce, or death while the self-petition was pending before the Service. It provides that the legal termination of the marriage after the self-petition has been properly filed with the Service will have not effect on the Service's decision concerning the self-petition.

The rule further provides, however, that a pending spousal self-petition will be denied or an approved spousal self-petition will be revoked if the self-petitioner chooses to remarry before becoming a lawful permanent resident. By remarrying, the self-petitioner has established a new spousal relationship and has shown that he or she no longer needs the protections of section 40701 of the Crime Bill to equalize the balance of power in the relationship with the abuser. If the new husband or wife is a citizen or lawful permanent resident of the United States, he or she may file for the former self-petitioner's classification as an immigrant. The self-petitioner also would not be precluded from filing a self-petition based on the new family relationship if the new spouse is an abusive citizen or lawful permanent resident of the United States. A self-petition filed on the basis of a new marriage will be assigned a priority date based on the date it was properly filed with the Service or based on the date a visa petition filed by the current abusive spouse was properly filed with the Service. This rule does not allow a priority date to be transferred from a self-petition or visa petition based on a prior marriage.

It also provides that changes in the abuser's citizenship or lawful permanent resident status will not affect the validity of an approved self-petition. This provision eliminates the possibility that an abuser could recapture control over the immigration classification process by changing his or her own immigration status. An approved self-petition will not be revoked solely because the abuser subsequently abandons lawful permanent resident status, renounces United States Citizenship, is deported, or otherwise changes immigration status. Similarly, a self-petition approved on the basis of a relationship to a lawful permanent resident will not be automatically upgraded to a petition for immediate relative classification if the abuser becomes a naturalized citizen of the United States. A spouse would not be precluded from filing a new self-petition for classification as an immediate relative after the abuser naturalizes, provided he or she continues to meet the self-petitioning requirements.

This rule requires a self-petitioning spouse to provide documentary evidence of his or her legal relationship to the abuser and evidence of the abuser's immigration or citizenship status. Self-petitioners are encouraged to submit primary evidence whenever possible, although the Service will consider any relevant credible evidence. The Service's regulations at 8 CFR 204.1 and 204.2 provide detailed information concerning primary and secondary supporting documentation of a spousal relationship to a citizen or lawful permanent resident.

Primary evidence of a marital relationship is a marriage certificate issued by civil authorities and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. Primary evidence of the abuser's U.S. citizenship or lawful permanent residence is: (1) a birth certificate issued by a civil authority establishing the abuser's birth in the United States; (2) the abuser's unexpired full-validity United States passports; (3) a statement issued by a U.S. consular officer certifying the abuser to be a U.S. citizen and the bearer of a currently valid U.S. passport; (4) the abuser's Certificate of Naturalization or Certificate of Citizenship; (5) a Department of State Form FS–240, Report of Birth Abroad of a Citizen of the United States, relating to the abuser; or (6) the abuser's Form I–151 or Form I–551 Alien Registration Receipt Card, or other proof given by the Service as evidence of lawful permanent residence.

If primary or secondary evidence of an abuser's immigration or citizenship status is not available, this rule provides that the Service will attempt to electronically verify the abuser's status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

Child of a Citizen or Lawful Permanent Resident

Section 40701 of the Crime Bill describes a self-petitioning child as a person who is the child of a citizen or lawful permanent resident of the United States. By again characterizing the relationship between the self-petitioner and the abuser in the present tense, these amendments to the Act clearly show that the required relationship must exist when the petition is filed.

The term ''child'' is defined in section 101(b)(1) of the Act as including certain children born in or out of wedlock, and certain legitimated, adopted, and stepchildren. This definition also requires a child to be unmarried and less than 21 years of age. The rule, therefore, requires a self-petitioning child to be unmarried, less than 21 years of age, and to otherwise qualify as the abuser's ''child'' when the self-petition is filed and when it is approved. It also requires the self-petitioning child's abusive parent to be a U.S. citizen or lawful permanent resident when the self-petition is filed and when it is approved.

This rule specifies that an approved self-petition for a child of a United States citizen, however, will be automatically converted to an approved petition for classification as the unmarried or married adult son or daughter of a United States citizen when the self-petitioner reaches 21 years of age or marries. Similarly, an approved self-petition for a child of a lawful permanent resident of the United States will be automatically converted to an approved petition for classification as the unmarried adult son or daughter of a lawful permanent resident when the unmarried self-petitioner reaches 21 years of age. The approval of a self-petition for the child of an abusive lawful permanent resident must be automatically revoked, however, when the son or daughter marries. There is no immigration category for a married son or daughter of a lawful permanent resident. An automatically converted self-petition will retain the self-petition's original priority date.

Under the provisions of this rule, a self-petitioning child must be the child of the abusive citizen or lawful permanent resident but need not be the child of a self-petitioning spouse. A self-petition may be approved although the child's other parent is unable or unwilling to self-petition. The rule also does not require the self-petitioning child to be in the abuser's legal custody. Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship, provided the self-petitioner meets the definition of ''child'' contained in section 101(b)(1) of the Act when the self-petition is approved, or met that definition at the time of approval.

As discussed previously under ''Spouse of a citizen or lawful permanent resident,'' changes in the

abuser's citizenship or lawful permanent resident status will not affect the validity of an approved self-petition. This regulatory provision eliminates the possibility that an abuser could recapture control over the abused child's immigration classification by changing his or her own immigration status. An approved self-petition for a child will not be revoked solely because the abuser subsequently abandons lawful permanent resident status, renounces United States citizenship, is deported, or otherwise changes immigration status. Similarly, a self-petition approved on the basis of a parent-child relationship to a lawful permanent resident will not be automatically upgraded to a petition for immediate relative classification if the abuser becomes a naturalized citizen of the United States. The abused child would not be precluded from filing a new self-petition for classification as an immediate relative after the abuser naturalizes, provided the child continues to meet the self-petitioning requirements.

This rule requires a self-petitioning child to provide documentary evidence of his or her relationship to the abuser and evidence of the abuser's immigration or citizenship status. Self-petitioners are encouraged to submit primary evidence whenever possible, although the Service will consider any relevant credible evidence. The Service's regulations at 8 CFR 204.1 and 204.2 provide detailed information concerning primary or secondary supporting documentation of a parent-child relationship to a citizen or lawful permanent resident.

Primary evidence of the relationship between: (1) a child and an abusive biological mother is the child's birth certificate issued by civil authorities; (2) a child born in wedlock and an abusive biological father is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parents, and evidence of legal termination of all prior marriages, if any; (3) a legitimated child and an abusive biological father is the child's birth certificate issued by civil authorities, and evidence of the child's legitimation; (4) a child born out of wedlock and an abusive biological father is the child's birth certificate issued by civil authorities showing the father's name, and evidence that a bona fide parent-child relationship has been established between the child and the parent; (5) a stepchild and a stepparent is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parent and the stepparent showing marriage before the stepchild reached 18 years of age, and evidence of legal termination of all prior marriages of either parent, if any; (6) an adopted child and an abusive adoptive parent is an adoption decree showing that the adoption took place before the child reached 16 years of age, and evidence that the child has been residing with and in the legal custody of the abusive adoptive parent for at least 2 years.

Primary evidence of the abuser's U.S. citizenship or lawful permanent residence is: (1) a birth certificate issued by a civil authority establishing the abuser's birth in the United States; (2) the abuser's unexpired full-validity United States passport; (3) a statement issued by a U.S. consular officer certifying the abuser to be a U.S. citizen and the bearer of a currently valid U.S. passport; (4) the abuser's Certificate of Naturalization or Certificate of Citizenship; (5) a Department of State Form FS–240, Report of Birth Abroad of a Citizen of the United States, relating to the abuser; and (6) the abuser's Form I–151 or Form I–551 Alien Registration Receipt Card, or other proof given by the Service as evidence of lawful permanent residence.

If primary or secondary evidence of an abuser's immigration or citizenship status is not available, this rule provides that the Service will attempt to electronically verify the abuser's status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

Eligible for Immigrant Classification

Section 40701 of the Crime Bill requires a self-petitioning spouse or child to be eligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act or for preference classification under section 203(a)(2)(A) of the Act. Eligibility as an immediate relative or for preference classification requires more than a mere showing of a legal relationship to a citizen or lawful permanent resident of the United States; other conditions must also be met. Section 40701 of the Crime Bill amended the Act to ensure that self-petitioners would be subject to certain provisions of the Immigration Marriage Fraud Amendments of 1986 (IMFA), Public Law 99–639, November 10, 1986, which were enacted by Congress to detect and deter immigration-related marriage fraud. This rule reflects these statutory requirements.

A petition must be denied under the provisions of section 204(c) of the Act if there is substantial and probative evidence that the self-petitioner has ever attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The self-petitioner does not need to have received a benefit through the attempt or conspiracy. He or she also need not have been convicted of, or even prosecuted for, the attempt or conspiracy. Evidence of the attempt or conspiracy, however, must be contained in the self-petitioner's immigration file.

Section 204(g) of the Act may also apply to a self-petition. It prohibits the approval of a self-petition if the marriage creating the relationship to the citizen or permanent resident took place while the self-petitioner was in deportation, exclusion, or related proceedings, unless the self-petitioner provides clear and convincing evidence that the marriage was not entered into for the purpose of obtaining immigration benefits. This limitation will not apply if the self-petitioner has lived outside the United States for at least 2 years after the marriage. The ''clear and convincing'' standard places a heavier burden on the petitioner than the ''preponderance of evidence'' criteria generally applicable to visa petitions and self-petitions. Although there may be no proof that the marriage was fraudulent, a self-petition subject to this restriction must be denied if the petitioner does not provide ''clear and convincing'' evidence that the marriage was entered into in good faith.

The provisions of section 204(a)(2) of the Act, which were amended by section 40701(b) of the Crime Bill to encompass certain self-petitions, may also preclude the approval of a self-petition. A self-petition must be denied if the lawful permanent resident abuser acquired permanent residence within the past 5 years based on a marriage to a citizen or lawful permanent resident, unless the petition is supported by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading any provision of the immigration laws. This restriction will not apply if the earlier marriage ended because of the death of the spouse. As explained in the previous paragraph, the ''clear and convincing'' standard imposes a heavier burden of proof on the self-petitioner. Although there may be no proof that the marriage was fraudulent, a self-petition subject to this restriction must be denied if the petitioner does not provide ''clear and

convincing'' evidence that the earlier marriage was bona fide.

Before determining that a self-petition must be denied under section 204(c), 204(g), or 204(a)(2) of the Act, the Service will allow a self-petitioner the opportunity to provide additional evidence or arguments concerning the case. A denial under section 204(g) or 204(a)(2) of the Act is without prejudice to the filing of a new self-petition when the spouse or child is able to comply with these requirements.

The Service has previously determined that a variety of evidence may be used to establish a good-faith marriage, and a self-petitioner should submit the best evidence available. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. *Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983). Other types of readily available evidence might include the birth certificates of children born to the relationship; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. Self-petitioners who submit affidavits are encouraged to submit affidavits from more than one person. Other types of evidence may also be submitted; the Service will consider any relevant credible evidence.

Residence in the United States and Residence With the Abuser

Section 40701 of the Crime Bill requires the self-petitioner to be residing in the United States and to have resided in the United States with the abuser. A self-petition will not be approved if the self-petitioner is not living in the United States or has never lived with the abuser in the United States. Under the provisions of this rule, however, the self-petitioner is not required to be residing with the abuser when the petition is filed. The rule also does not limit the time that may have elapsed since the self-petitioner last resided with the abuser.

''Residence'' is defined in section 101(a)(33) of the Act as a person's general place of abode. It is also described as a person's principal, actual dwelling place in fact, without regard to intent. A self-petitioner cannot meet the residency requirements by merely visiting the United States or visiting the abuser's home in the United States while continuing to maintain a general place of abode or principal dwelling place elsewhere. This rule, however, does not require the self-petitioner to have lived in the United States or with the abuser in the United States for any specific length of time. It also does not mandate continuous physical presence in the United States. A qualified self-petitioner may have moved to the United States only recently, made any number of trips abroad, or resided with the abuser in the United States for only a short time.

Evidence of residency with the abuser in the United States may take many forms. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born to the spouses in the United States, deeds, mortgages, rental records, insurance policies, or similar documents have been accepted as evidence of residency. This rule allows the submission of one or more documents showing the self-petitioner and the abuser residing together. It also allows the submission of two or more documents that, when considered together, establish that the self-petitioner and the abuser were residing at the same location concurrently. A self-petitioner may also submit affidavits to establish residency with the abuser. Self-petitioners who file affidavits are encouraged to provide the affidavits of more than one person. Other types of evidence may also be submitted; the Service will consider any relevant credible evidence.

Battery or Extreme Cruelty

Section 40701 of the Crime Bill requires a self-petitioning spouse to have been battered by, or been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident spouse; or to be the parent of a child who was battered by, or who was the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage. It requires a self-petitioning child to have been battered by, or to have been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while the child was residing with that parent. This rule reflects the statutory requirements by specifying that only certain types of abuse will qualify a spouse or child to self-petition. ''Qualifying abuse'' under this rule is abuse that meets the criteria of section 40701 of the Crime Bill concerning when, by whom, to whom, and to what degree the domestic abuse occurred.

The qualifying abuse must have taken place during the statutorily specified time. A spousal self-petitioner must show that the abuse took place during the marriage to the abuser. A self-petitioning child must show that he or she was abused while residing with the abuser. Battery or extreme cruelty that happened at other times is not qualifying abuse. There is no limit on the time that may have elapsed since the last incident of qualifying abuse occurred.

The qualifying abuse also must have been committed by the abusive citizen or lawful permanent resident spouse or parent. Battery or extreme cruelty by any other person is not qualifying abuse, unless it can be shown that the citizen or lawful permanent resident willfully condoned or participated in the abusive act(s).

Only abuse perpetrated against the self-petitioning spouse, the self-petitioning child, or the self-petitioning spouse's child will be considered qualifying. Acts ostensibly aimed at some other person or thing may be considered qualifying only if it can be established that these acts were deliberately used to perpetrate extreme cruelty against the self-petitioner or the self-petitioning spouse's child. Battery or extreme cruelty committed solely against a third party and in no way directed at or used against the spouse or child is not qualifying abuse.

The qualifying abuse also must have been sufficiently aggravated to have reached the level of battery or extreme cruelty. Service regulations at 8 CFR 216.5(e)(3)(i) currently define the phrase ''was battered by or was the subject of extreme cruelty.'' This definition was initially developed to facilitate the filing and adjudication of requests to waive certain requirements for removal of conditions on residency. These waivers are based on the applicant's claim of battery or extreme cruelty perpetrated by the citizen or lawful permanent resident spouse or parent. Since the regulatory definition has proven to be flexible and sufficiently broad to encompass all types of domestic battery and extreme cruelty, this rule adopts an identical definition for evaluating claims of battering or extreme cruelty under section 40701 of the Crime Bill. The definition reads as follows:

> For the purpose of this chapter, the phrase ''was battered by or was the subject of 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.

The acts mentioned in this definition—rape, molestation, incest if the victim is a minor, and forced prostitution—will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions, however, may also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. It is not possible to cite all perpetrations that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase ''was battered by or was the subject of extreme cruelty.''

This rule requires a self-petitioner to provide evidence of qualifying abuse. If the self-petition is based on a claim that the self-petitioning spouse's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, this rule requires the self-petition to be accompanied by evidence of the abuse and evidence of the relationship between the self-petitioner and the abused child. Available relevant evidence will vary, and self-petitioners are encouraged to provide the best available evidence of qualifying abuse. A self-petitioner is not precluded from submitting documentary proof of non-qualifying abuse with the self-petition; however, that evidence can only be used to establish a pattern of abuse and violence and to bolster claims that qualifying abuse also occurred.

The rule provides that evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. This rule also provides that other forms of credible evidence will be accepted, although the Service will determine whether documents appear credible and the weight to be given to them.

Self-petitioners who can provide only affidavits are encouraged to submit the affidavits of more than one person. The Service is not precluded from deciding, however, that the self-petitioner's unsupported affidavit is credible and that it provides relevant evidence of sufficient weight to meet the self-petitioner's burden of proof.

Good Moral Character

Section 40701 of the Crime Bill requires all self-petitioners to be persons of good moral character, but does not specify the period for which good moral character must be established. This rule requires self-petitioning spouses and self-petitioning children who are 14 years of age or older to provide evidence showing that they have been persons of good moral character for the 3 years immediately preceding the date the self-petition is filed. It does not preclude the Service from choosing to examine the self-petitioner's conduct and acts prior to that period, however, if there is reason to believe that the self-petitioner may not have been a person of good moral character in the past. The rule provides that self-petitioning children who are less than 14 years of age are not required to submit evidence of good moral character when filing the self-petition. A self-petitioner who is less than 14 years of age will be presumed to be a person of good moral character. This presumption does not preclude the Service from requesting evidence of good moral character, however, if there is reason to believe that the self-petitioning child may lack good moral character. The rule provides that a self-petition filed by a person of any age may be denied or revoked if evidence establishing that the person lacks good moral character is contained in the Service file.

It also provides that the Service will evaluate claims of good moral character on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. Section 101(f) of the Act lists the classes of persons who cannot be found to be persons of good moral character, and specifies that persons not within any of those classes may also be found to be lacking good moral character. The Service cannot find a person to be of good moral character under section 101(f) if he or she: (1) is or was a habitual drunkard; (2) is or was engaged in prostitution during the past 10 years as described in section 212(a)(2)(D) of the Act; (3) is or was involved in the smuggling of a person or persons into the United States as described in section 212(a)(6)(E) of the Act; (4) is or was a practicing polygamist; (5) has been convicted or admits committing acts that constitute a crime involving moral turpitude other than a purely political offense, except for certain petty offenses or offenses committed while the person was less than 18 years of age as described in section 212(a)(2)(A)(ii) of the Act; (6) has committed two or more offenses for which the applicant was convicted and the aggregate sentence actually imposed was 5 years or more, provided that, if an offense was committed outside the United States, it was not a purely political offense; (7) has violated laws relating to a controlled substance, except for simple possession of 30 grams or less of marijuana; (8) earns his or her income principally from illegal gambling activities or has been convicted of two or more gambling offenses; (9) has given false testimony for the purpose of obtaining immigration benefits; (10) has been confined as a result of conviction to a penal institution for an aggregate period of 180 days or more; or (11) has been convicted of an aggravated felony.

The Service must conclude that a person who has been convicted of an offense falling within section 101(f) of the Act lacks good moral character. The Service may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, Int. Dec. 3148 (BIA 1991).

Extenuating circumstances may be taken into account, however, if the person has not been convicted of the offense in a court of law but admits to the commission of an act or acts that could show a lack of good moral character. The Board of Immigration Appeals (BIA) has ruled that a person who admitted to having engaged in prostitution under duress but had no prostitution convictions was not excludable as a prostitute under section 212(a)(12) of the Act (currently section 212(a)(2)(D) of the Act) because she was involuntarily reduced to such a state of mind that she was actually prevented from exercising free will through the use of wrongful, oppressive threats, or unlawful means. *Matter of M–*, 7 I&N Dec. 251 (BIA 1956). A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable, therefore, would not be precluded from being found to be a person of good moral character if the person has not been convicted for the

commission of the offense or offenses in a court of law.

This rule also provides that a person will be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she: (1) willfully failed or refused to support dependents; or (2) committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character.

Under this rule, primary evidence of good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The Service of the Department of State will conduct additional record checks before issuing an immigrant visa or granting a self-petitioner's application for adjustment of status. If the results of these record checks disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a period of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Extreme Hardship

Section 40701 of the Crime Bill also requires a self-petitioning spouse to show that his or her deportation would cause extreme hardship to himself, herself, or his or her child. It similarly requires a self-petitioning child to show that his or her deportation would cause extreme hardship to himself or herself. The self-petitioner has the burden of proof; a self-petition must be denied if the petitioner does not show that his or here deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the child of a self-petitioning spouse, such as extended family members, cannot be the basis for a self-petition under this rule.

The phrase ''extreme hardship'' is not defined in the Act, and sections 40701 and 40703 of the Crime Bill provide no additional guidelines for the interpretation of this requirement. The phrase ''extreme hardship'' has acquired a settled judicial and administrative meaning, however, largely in the context of suspension of deportation cases under section 244 of the Act.

It has been found that the personal deprivation contemplated in a situation characterized by ''extreme hardship'' within the meaning of section 244 of the Act is not a definable term of fixed and inflexible content or meaning; it necessarily depends upon the facts and circumstances peculiar to each case. *Matter of Hwang,* 10 I&N Dec. 448 (BIA 1964). The hardship requirement encompasses more than the mere economic deprivation that might result from an alien's deportation for the United States. *Davidson* v. *INS,* 558 F.2d 1361 (9th Cir. 1977); and *Matter of Sipus,* 14 I&N Dec. 229 (BIA 1972). It has also been found that the loss of a job and the concomitant financial loss incurred is not synonymous with extreme hardship. *Lee* v. *INS,* 550 F.2d 554 (9th Cir. 1977). Similarly, readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. *Matter of Uy,* 11 I&N Dec. 159 (BIA 1965).

''Extreme hardship'' must be evaluated on a case-by-case basis after a review of all the circumstances in the case. This rule, therefore, does not include a list of ''factors'' that would automatically establish an applicant's claim to extreme hardship. Each self-petitioner is encouraged to cite and document all the reasons that he or she believes that deportation would cause extreme hardship.

Some precedent suspension of deportation cases have discussed the reasons why a particular applicant was found to have established that his or her deportation would cause extreme hardship. These reasons include the: (1) age of the person; (2) age and number of the person's children and their ability to speak the native language and adjust to life in another country; (3) serious illness of the person or his or her child which necessitates medical attention not adequately available in the foreign country; (4) person's inability to obtain adequate employment in the foreign country; (5) person's and the person's child's length of residence in the United States; (6) existence of other family members who will be legally residing in the United States; (7) irreparable harm that may arise as a result of disruption of education opportunities; and (8) adverse psychological impact of deportation.

In some self-petitioning cases, the circumstances surrounding domestic abuse and the consequences of the abuse may cause the extreme hardship. These self-petitioners may wish to cite and provide evidence relating to some or all of the following areas, in addition to any other basis for believing that deportation would cause extreme hardship: (1) the nature and extent of the physical and psychological consequences of the battering or extreme cruelty; (2) the impact of the loss of access to the U.S. courts and criminal justice system (including, not limited to, the ability to obtain and enforce: orders of protection; criminal investigations and prosecutions; and family law proceedings or court orders regarding child support, maintenance, child custody and visitation); (3) the self-petitioner's and/or the self-petitioner's child's need for social, medical, mental health, or other supportive services which would not be available or reasonably accessible in the foreign country; (4) the existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the self-petitioner or the self-petitioner's child for having been the victim of abuse, for leaving the abusive situation, or for actions taken to stop the abuse; (5) the abuser's ability to travel to the foreign country and the ability and willingness of foreign authorities to protect the self-petitioner and/or the self-petitioner's child from future abuse; and (6) the likelihood that the abuser's family, friends, or others acting on behalf of the abuser in the foreign country would physically or psychologically harm the self-petitioner and/or the self-petitioner's child.

The Service will develop and provide further interpretive guidance concerning the extreme hardship determination in self-petitioning cases to the Service officers who will adjudicate these self-petitions. This guidance is expected to be in the form of implementing directives, training courses, the field handbook currently under development by the Service, and other policy and procedural directives.

Good Faith Marriage

Section 40701 of the Crime Bill requires a self-petitioning spouse to show that he or she entered into the marriage to the abusive citizen or lawful permanent resident in good faith. This rule provides, therefore, that a self-petition cannot be approved if the self-petitioner married the abuser solely to obtain immigration benefits. A self-petitioning spouse who is not subject to the limitations imposed by IMFA need only provide a ''preponderance'' of evidence showing that he or she married in good faith. Persons who are subject to the IMFA restrictions may be required to meet a heavier burden of proof to establish that a marriage was entered into in good faith, as discussed previously in the section entitled ''Eligibility for Immigrant Classification.''

The Act does not define a ''good-faith'' marriage or provide guidelines for evaluating the bona fides of a marriage; however, persons applying for immigration benefits based on a marriage are generally required to establish that they entered into the marriage in good faith, and a significant body of case law has developed concerning the interpretation of this requirement. It has long been held that a marriage that is entered into for the primary purpose of circumventing the immigration laws, referred to as a fraudulent or sham marriage, cannot be recognized as enabling a spouse to obtain immigration benefits. *Lutwak* v. *United States,* 344 U.S. 604 (1953) and *Matter of Phillis,* 15 I&N Dec. 385 (BIA 1975). A spousal petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable. *Matter of McKee,* 17 I&N Dec. 332 (BIA 1980). The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. The person's conduct after marriage is relevant only to the extent that it bears upon his or her subjective state of mind at the time of the marriage. Separation from the other spouse, even shortly after the marriage took place, does not prove, by itself, that a marriage was not entered into in good faith. *Bark* v. *INS,* 511 F.2d 1200 (9th Cir. 1975).

This rule allows the submission of a variety of evidence to show a good-faith marriage. The self-petitioner should submit the best evidence available. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. *Matter of Laureano, supra.* Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship.

Derivative Child Included in the Self-Petition

Section 40701 of the Crime Bill allows any child of a self-petitioning spouse to be derivatively included in the self-petition, if the child has not been classified as an immigrant based on his or her own self-petition. This rule allows a derivative child who has been included in a parent's petition to later file a self-petition, provided the child meets the self-petitioning requirements. It also allows a child who has been classified as an immigrant based on a petition filed by the abuser or another relative to be derivatively included in a parent's self-petition; including the child in the self-petition will not affect the validity of the petition submitted by the abuser or another relative.

No separate petition is necessary for derivative classification, and the child is not required to have been the victim of abuse. The derivative child also does not need to have lived in the United States or to otherwise satisfy the criteria for filing a self-petition. He or she, however, must meet the requirements for immigrant visa issuance abroad or adjustment of status in the United States. An eligible child, including a child born after the self-petition was approved, may be added to a self-petitioning spouse's petition when the self-petitioner applies for an immigrant visa abroad or adjustment of status in the United States. A new petition will not be required.

This rule further specifies that a derivative child need not be the child of the abuser, but must qualify as the self-petitioning spouse's child under the definition of ''child'' contained in section 101(b)(1) of the Act. The statutory definition includes certain children born in or out of wedlock, and certain legitimated, adopted, and stepchildren. It also requires a child to be unmarried and less than 21 years old. This rule requires a derivative child to continue to be a ''child'' until he or she becomes a lawful permanent resident based on the derivative classification. A derivative son or daughter who is married or more than 21 years old will not be issued an immigrant visa or granted adjustment of status as a derivative child.

Since derivative status is based solely on the relationship to the principal self-petitioner, the rule also provides that the derivative child can be granted lawful permanent residence only if the child is accompanying or following-to-join the self-petitioner. No derivative benefit can be granted if the principal self-petitioner does not become a lawful permanent resident.

This rule does not require the submission of documentary evidence of the derivative relationship with the self-petition. Such documents must be submitted, however, when the child applies for an immigrant visa abroad or adjustment of status to that of a lawful permanent resident of the United States based on the derivative relationship. Primary evidence of a parent-child relationship has been previously discussed under ''Child of a Citizen or Lawful Permanent Resident.'' The Service's regulations at 8 CFR 204.1 and 204.2 provide additional information concerning primary or secondary supporting documentation of a parent-child relationship. Other types of evidence not specifically discussed in this rule or the Service regulations may also be submitted; the Service will consider any relevant credible evidence.

Evidence in General

In accordance with the provisions of section 40701 of the Crime Bill, this rule provides that the Service will consider all credible evidence submitted with the application before reaching a decision. It also states that the Service will determine what evidence is credible and what weight to give to this evidence.

Generally, more weight will be given to primary evidence and evidence provided in court documents, medical reports, police reports, and other official documents. Self-petitioners, therefore, are strongly encouraged to submit this type of evidence whenever possible. Self-petitioners who submit affidavits are urged, but not required, to provide affidavits from more than one person. Other forms of documentary evidence may also be submitted, including evidence that has not been discussed in this rule or identified in the Service regulations.

The Service's regulations at 8 CFR 103.2 and 204.1(f) provide detailed information about the requirements applicable to supporting documentation. An ordinary legible photocopy of any supporting document may be submitted with a petition, although the Service reserves the right to require presentation of the original

document. An original document requested by the Service will be returned to the petitioner when it is no longer needed. Original documents submitted by the petitioner but not requested by the Service will remain a part of the record. Each foreign language document must be accompanied by an English translation that has been certified by a competent translator.

Proper Filing and Priority Dates

This rule requires self-petitioners to complete Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. As directed in 8 CFR 103.2(a)(2), the person filing the self-petition must sign the Form I–360. A parent or guardian, however, may sign the petition for a child who is less than 14 years of age. Any self-petitioner may be represented by an attorney or accredited representative as described in 8 CFR 103.2(a)(3), if he or she so chooses.

Each self-petition must be accompanied by the fee required by 8 CFR 103.7(b)(1). A self-petitioner who is unable to pay the prescribed fee may request a fee waiver under the provisions of 8 CFR 103.7(c). The self-petition should also be accompanied by the documentary evidence specified in this rule.

Under the provisions of this rule, a self-petition filed concurrently with a Form I–485, Application to Register Permanent Residence or Adjust Status, may be filed at the office having jurisdiction over the adjustment of status application. Other self-petitions should be filed at the INS Service Center having jurisdiction over the self-petitioner's place of residence as described in the instructions to Form I–360. Since section 40701 of the Crime Bill requires all self-petitioners to be residing in the United States when the self-petition is filed, a self-petition cannot be filed at a United States consulate or embassy abroad. A self-petition also cannot be filed at a Service office overseas. Consular officials and Service officers overseas have not been delegated the authority to approve a self-petition.

In accordance with standard procedures, a self-petition received in a Service office will be stamped to show the time and date of actual receipt. It will be regarded as properly filed on that date, provided it is properly signed and executed, the required fee is attached or a fee waiver is granted, and it otherwise complies with the provisions of 8 CFR 103.2. This rule provides that the priority date will be the date the self-petition is properly filed. A self-petitioner who has been the beneficiary of a visa petition filed by the abuser to accord the self-petitioner immigrant classification as his or her spouse or child, however, will be allowed to transfer the visa petition priority date to the self-petition. The earlier priority date may be assigned without regard to the current validity of the visa petition. The burden of proof to establish the filing of the visa petition lies with the self-petitioner, although the Service will attempt to verify a claimed filing through a search of the Service's computerized records or other records deemed appropriate by the adjudicating officer.

Decision

If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered. If the preliminary decision is based on derogatory information of which the self-petitioner is unaware, the self-petitioner will also be offered an opportunity to rebut the derogatory information in accordance with the provisions of 8 CFR 103.2(b)(16).

Each self-petitioner will be sent a written notice of the final decision on his or her self-petition. If the petition is denied, he or she will be informed in writing of the basis for the denial and of the right to appeal. This rule allows an adverse decision on a self-petition to be appealed to the Associate Commissioner for Examinations in accordance with the provisions of 8 CFR 103.3.

Eligibility for Immigrant Visa Issuance or Adjustment of Status

Approval of a self-petition does not guarantee immediate eligibility for immigrant visa issuance or adjustment of status to that of a lawful permanent resident of the United States. The beneficiary of an approved self-petition must meet several additional requirements before he or she will be found eligible for lawful permanent residence in the United States.

Neither the Act nor this rule limits the overall number of self-petitions that may be accepted and approved by the Service. Some persons who are the beneficiaries of approved self-petitions, however, will be forced to delay filing their applications for immigrant visa issuance or adjustment of status because sections 201 and 202 of the Act place certain limits on the number of qualified persons who may be granted lawful permanent residence during any single year. Self-petitioners who are subject to these limitations are encouraged to file the self-petition and establish the earliest possible priority date, since the available immigrant visa numbers are allocated to qualified immigrant visa applicants and qualified adjustment of status applicants strictly in priority date order.

Under the provisions of the Crime Bill, any self-petitioner who qualifies for immigrant classification as the spouse or child of an abusive citizen of the Untied States is regarded as an immediate relative of a U.S. citizen under section 201(b) of the Act and is not subject to direct numerical limitations. A qualified derivative child of a self-petitioning spouse of an abusive citizen of the United States is also considered to be an immediate relative under section 201(b) of the Act and is also exempted from these limitations. These self-petitioners may apply for immigrant visa issuance abroad or adjustment of status to that of a lawful permanent resident of the United States without regard to numerical limitations.

A self-petitioner who is the spouse or child of an abusive permanent resident of the United States, however, is subject to immigrant visa number limitations, as are the qualified derivative children of spouses of abusive permanent residents. These self-petitioners and their derivative children are not eligible to apply for immigrant visa issuance or adjustment of status until their immigrant visa numbers have become immediately available. Visa numbers for these self-petitioners and their derivative children are considered immediately available only when the Department of State Bureau of Consular Affairs Visa Office Bulletin shows the priority date for the applicant's country of birth under the family-sponsored 2A second preference classification as ''current'' or lists a date that is earlier than the self-petitioner's priority date.

In addition to meeting requirements concerning visa number availability, a self-petitioner who is applying for an immigrant visa at a U.S. consulate or embassy abroad must prove that he or she is not included in any of the classes of persons who, by law, cannot be admitted to the United States, or that any basis for inadmissibility has been waived. A person seeking immigrant visa issuance abroad may also be subject to the provisions of section 212(o) of the Act. This provision requires a person who was not in lawful nonimmigrant status on the day he or she last left the United States to remain outside the country for at least 90 days before obtaining an immigrant visa. An immigrant may lawfully travel to the

United States immediately after the visa is issued. A qualified immigrant visa holder becomes a lawful permanent resident upon admission to the United States.

A self-petitioner who is seeking immigrant visa issuance abroad will be contacted by the Department of State's National Visa Center (NVC) when that office has received the approved self-petition from the Service and an immigrant visa number is available. Immigrant visa applicants should follow the instructions provided by NVC and the U.S. consulate or embassy processing their requests. Persons wishing further information about immigrant visa issuance abroad should contact the Department of State or a United States embassy or consulate abroad.

The Act also allows certain persons who are physically present in the United States to adjust status to that of a lawful permanent resident of the United States. Like immigrant visa applicants, adjustment of status applicants must prove that they are eligible for immigrant classification. Each applicant must also be exempt from immigrant visa number limitations or show that an immigrant visa number is immediately available for him or her. An applicant must further prove that he or she is not included in any of the classes of persons who, by law, cannot be admitted to the United States, or that any basis for inadmissibility has been waived. Persons seeking adjustment of status must also meet the applicable requirements of section 245 of the Act. A qualified adjustment applicant becomes a lawful permanent resident upon approval of the adjustment of status application.

Section 40701 of the Crime Bill does not provide adjustment of status benefits. Self-petitioners, however, may benefit from certain other provisions of the Act. One such provision is a recently enacted law that temporarily allows many previously ineligible persons to seek adjustment of status in the United States. This law, section 506(b) of the Department of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, 1995, Public Law 103–317, was enacted August 26, 1994. It lifts certain restrictions on adjustment of status under section 245 of the Act on applications granted before October 1, 1997. Persons seeking the adjustment of status benefits of Public Law 103–317 may be subject to a financial penalty, since the law requires most persons seeking adjustment of status under this provision to pay an additional sum in excess of the standard adjustment of status filing fee. Additional information concerning adjustment of status under Public Law 103–317 may be obtained by requesting Supplement A to Form I–485 from a local Service office.

Certain restrictions on adjustment of status have not been waived by section 40701 of the Crime Bill and cannot be waived under Public Law 103–317. These restrictions include those imposed by section 245(d) of the Act, which prohibit the adjustment of status of a person who is a conditional resident under section 216 or 216A of the Act. The adjustment of status of a person last admitted to the United States as a K–1 finance(e) is also barred, unless the person is seeking adjustment as a result of the marriage to the United States citizen who filed the finance(e) petition. Section 245(d) of the Act similarly prohibits the adjustment of status of a person who was last admitted as the K–2 child of a finance(e) parent, unless the person is seeking adjustment as a result of his or her parent's marriage to the citizen who filed the finance(e) petition. A self-petitioner who last entered in K–1 or K–2 nonimmigrant status would be subject to these restrictions, as would his or her derivative children who last entered in K–2 nonimmigrant status, unless the abuser is also the citizen who had filed the finance(e) petition. The statutory language of section 245(d) of the Act does not preclude a conditional resident, a person who last entered the United States with a finance(e) visa, or a person who last entered the country as a dependent child of a finance(e) from filing a self-petition and seeking immigrant visa issuance abroad.

An application for adjustment of status may be filed concurrently with the self-petition, if the self-petitioner is exempt from immigrant visa number limitations or if an immigrant visa number would be immediately available if the self-petition was approved. Other self-petitioners who wish to adjust status in the United States may file the self-petition separately and submit the adjustment of status application when their immigrant visa numbers become available. Self-petitioners who would like more information about the requirements for adjustment of status in the United States may request Form I–485 from the service office serving their local area.

Conditions on Residency Under Section 216 of the Act

Section 216 of the Act was enacted as part of IMFA to detect and deter immigration-related marriage fraud. It imposes conditions on the lawful permanent resident status of certain persons who obtain residency through marriage. A spouse or child may be subject to these restrictions if he or she becomes a lawful permanent resident based on a relationship created by a marriage entered into less than 2 years before residency is granted. The conditions on residency under section 216 of the Act may be removed only upon fulfillment of certain requirements. A conditional resident who does not file a joint petition with the citizen or permanent resident spouse during the 90 days prior to the second anniversary of the date residency was granted may have residency status terminated. Section 216 of the Act also provides three waivers of the joint petitioning requirement. One waiver exempts a conditional resident from filing a joint petition if he or she has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident; or if his or her child has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident. The Service has determined that no useful purpose would be served by imposing the conditional residency requirements of section 216 of the Act on any self-petitioner; all self-petitioners would necessarily be eligible for waivers of the joint petitioning requirement. This rule provides, therefore, that the conditional residence requirements of section 216 of the Act will not apply to a person who obtains lawful permanent resident status based on an approved self-petition, regardless of the date of the marriage.

Employment Authorization

Section 40701 of the Crime Bill does not direct the Service to provide employment authorization based solely on the filing or approval of a self-petition. A self-petitioner, however, may be eligible to apply for employment authorization under the existing provisions of 8 CFR 274a.12. Qualified applicants who wish to request employment authorization should complete and file Form I–765, Application for Employment Authorization, according to the instructions provided with the form. A self-petitioner who substantiates that he or she is unable to pay the Form I–765 application fee may be granted a fee waiver in accordance with the provisions of 8 CFR 103.7(c).

Many self-petitioners will qualify for employment authorization under 8 CFR 274a.12(c)(9). This provision allows a person who has properly filed an adjustment of status application under section 245 of the Act to request

employment authorization while the adjustment application is pending before the Service.

Most other self-petitioners will be eligible to request voluntary departure prior to or after a deportation hearing for the reasons set forth in 8 CFR 242.5(a)(2)(v), (vi), or (viii), and may qualify for employment authorization based on the grant of voluntary departure. Voluntary departure may be granted under 8 CFR 242.5(a)(2)(v) to a person who lost his or her nonimmigrant student or exchange visitor status (F–1, F–2, J–1, or J–2 nonimmigrant classification) solely because a private bill had been introduced in his or her behalf. It may be granted under 8 CFR 242.5(a)(2)(vi) to a person who is admissible to the United States as an immigrant, and: (1) who is an immediate relative of a U.S. citizen; or (2) is otherwise exempt from the numerical limitation on immigrant visa issuance; or (3) has a priority date for an immigrant visa not more than 60 days later than the date shown in the latest Visa Office Bulletin and has applied for an immigrant visa at a United States Consulate which has accepted jurisdiction over the case; or (4) who is the beneficiary of an employment-based petition with a priority date earlier than August 9, 1978, and who meets certain other requirements outlined in 8 CFR 242.5(a)(2)(vi) (D) or (E). Also, voluntary departure may be granted under 8 CFR 242.5(a)(2)(viii) to a person in whose case the district director has determined there are compelling factors warranting a grant of voluntary departure. A person who has been granted voluntary departure for the reasons set forth in 8 CFR 242.5(a)(2) (v), (vi), or (viii) may be granted permission under 8 CFR 274a.12(c)(12) to be employed for the period of time prior to the date set for voluntary departure, if the person shows an economic need to work. Extensions of voluntary departure and employment authorization may also be requested. Requests for voluntary departure under 8 CFR 242.5(a)(2)(v), (vi), or (viii) may be made to the local Service office having jurisdiction over the applicant's place of residence. There is no application form or fee for requesting voluntary departure for these reasons, although a person requesting employment authorization on the basis of the voluntary departure grant will be required to file Form I–765 and to pay the Form I–765 application fee or to establish eligibility for a fee waiver.

A person who has been placed in deferred action status, an act of administrative convenience to the Government that assigns a lower priority to the alien's removal from the United States, may also request employment authorization under 8 CFR 274a.12(c)(14) if the person shows an economic need to work. There is no application process or fee for placement in deferred action status, although a person requesting employment authorization on the basis of deferred action placement will be required to file Form I–765 and to pay the Form I–765 application fee or to establish eligibility for a fee waiver.

Furthermore, a self-petitioner would not be precluded from requesting the employment authorization benefits of any other provision of 8 CFR 274a.12 under which he or she may qualify.

Other Regulatory Changes

In addition to making regulatory changes necessary to implement the provisions of section 40701 of the Crime Bill, this rule makes necessary grammatical and format changes to ensure consistency and clarity. It also makes technical changes by: (1) amending 8 CFR 103.1(f)(3)(iii) to update regulatory and statutory references; (2) amending 8 CFR 103.1(f)(3)(iii) to eliminate provisions concerning the appeal of a denial of a petition for a Replenishment Agricultural Worker (RAW) under part 210a of the Act, since that program expired at the end of fiscal year 1993 without allowing any such petitions to be filed; (3) revising the headings of 8 CFR 204.1 and 8 CFR 204.2 to more accurately reflect the contents of the sections; (4) correcting a typographical error by replacing ''Form I–30'' with ''Form I–130'' in 8 CFR 204.1(a); (5) removing 8 CFR 204.2(d), which discussed a program created by section 112 of the Immigration Act of 1990 to provide additional visa numbers to spouses and children of legalized aliens that ended September 30, 1994; and (6) amending 8 CFR 205.1 to reflect the requirements of 8 CFR 103.2(a)(7)(ii), which provides an automatic revocation of an approved petition when the remitter fails to pay the filing fee and associated service charge after the check or other financial instrument used to pay the filing fee is returned as not payable.

Family Well-Being

This regulation will enhance family well-being by allowing qualified family members of citizens and lawful permanent residents to self-petition for immigrant classification if they are living in this country. These family members were formerly precluded from obtaining this benefit because the abuser refused to file the necessary relative visa petition.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the ''good cause'' exceptions found at 5 U.S.C. 553 (b)(3)(B) and (d)(3). *Methodist Hospital of Sacramento, et al.,* v. *Shalala,* 38 F.3d 1225 (D.C. Cir. 1994). The reasons and necessity for immediate implementation of this interim rule are as follows: The changes to the Act made by section 40701 of the Crime Bill became effective on January 1, 1995. Immediate implementation of this rule will allow a qualified spouse or child of an abusive citizen or lawful permanent resident to immediately self-petition for immigrant classification. Prompt implementation will also allow a spouse or child who is filing based on the relationship to an abusive lawful permanent resident of the United States to establish a more favorable place on the immigrant visa number waiting list. Qualified self-petitioners are all residing in this country and are persons of good moral character. They have been prevented from obtaining immigrant classification in the past solely because their abusive spouse or parent withdrew or refused to file the necessary immigrant visa petition for them.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. By permitting certain spouses and children to self-petition for immigrant classification, the rule will allow some individuals residing in the United States to be classified as immigrants based on the relationship to an abusive citizen or lawful permanent resident spouse or child. It will not affect small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedures, Aliens, Employment, Immigration, Petitions.

8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

8 CFR Part 216

Administrative practice and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 1487, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

2. Section 103.1 is amended by:

a. Revising the reference in paragraph (f)(3)(iii)(C) to ''§ 245.2 (a)(4) and (e) of this chapter'' to read ''section 103 of the Act of October 28, 1977'';

b. Revising the reference in paragraph (f)(3)(iii)(K) to ''§ 223.1 of this chapter'' to read ''8 CFR part 223'';

c. Revising the reference in paragraph (f)(3)(iii)(L) to ''§ 223a.4 of this chapter'' to read ''8 CFR part 223'';

d. Revising the reference in paragraph (f)(3)(iii)(X) to ''§ 204.1(b) of this chapter'' to read ''8 CFR 204.3'';

e. Revising the reference in paragraph (f)(3)(iii)(Y) to ''§ 204.1(b)(3) of this chapter'' to read ''8 CFR 204.3'';

f. Revising the reference in paragraph (f)(3)(iii)(FF) to ''as permanent resident under § 245.6 of this chapter'' to read ''of certain Cuban and Haitian nationals under section 202 of the Immigration Reform and Control Act of 1986''; and

g. Removing paragraph (f)(3)(iii)(GG).

3. Section 103.1 is amended by adding a new paragraph (f)(3)(iii)(GG), to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(GG) A self-petition filed by a spouse or child based on the relationship to an abusive citizen or lawful permanent resident of the United States for classification under section 201(b)(2)(A)(i) of the Act or section 203(a)(2)(A) of the Act;

* * * * *

4. Section 103.2 is amended by adding a new paragraph (b)(2)(iii), to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * *

(2) * * *

(iii) *Evidence provided with a self-petition filed by a spouse or child of abusive citizen or resident.* The Service will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * * * *

5. Section 103.2 is amended by revising the heading of paragraph (b)(17) and by adding three new sentences at the end of paragraph (b)(17), to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * *

(17) *Verifying claimed citizenship or permanent resident status.* * * * If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, the Service will attempt to electronically verify the abuser's citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

* * * * *

PART 204—IMMIGRANT PETITIONS

6. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

7. Section 204.1 is amended by revising the section heading, and by revising paragraph (a), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

(a) *Types of petitions.* Petitions may be filed for an alien's classification as an immediate relative under section 201(b) of the Act or as a preference immigrant under section 203(a) of the Act based on a qualifying relationship to a citizen or lawful permanent resident of the United States, as follows:

(1) A citizen or lawful permanent resident of the United States petitioning under section 204(a)(1)(A)(i) or 204(a)(1)(B)(i) of the Act for a qualifying relative's classification as an immediate relative under section 201(b) of the Act or as a preference immigrant under section 203(a) of the Act must file a Form I–130, Petition for Alien Relative. These petitions are described in § 204.2;

(2) A widow or widower of a United States citizen self-petitioning under section 204(a)(1)(A)(ii) of the Act as an immediate relative under section 201(b) of the Act must file a Form I–360, Petition for Amerasian, Widow, or Special Immigrant. These petitions are described in § 204.2;

(3) A spouse or child of an abusive citizen or lawful permanent resident of the United States self-petitioning under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act for classification as an immediate relative under section 201(b) of the Act or as a preference immigrant under section 203(a) of the Act must file a Form I–360, Petition for Amerasian,

Widow, or Special Immigrant. These petitions are described in § 204.2;

(4) A citizen of the United States seeking advanced processing of an orphan petition must file Form I–600A, Application for Advanced Processing of Orphan Petition. A citizen of the United States petitioning under section 204(a)(1)(A)(i) of the Act for classification of an orphan described in section 101(b)(1)(F) of the Act as an immediate relative under section 201(b) of the Act must file Form I–600, Petition to Classify Orphan as an Immediate Relative. These applications and petitions are described in § 204.3; and

(5) Any person filing a petition under section 204(f) of the Act as, or on behalf of, an Amerasian for classification as an immediate relative under section 201(b) of the Act or as a preference immigrant under section 203(a)(1) or 203(a)(3) of the Act must file a Form I–360, Petition for Amerasian, Widow, or Special Immigrant. These petitions are described in § 204.4.

* * * * *

9. Section 204.1 is amended by revising paragraph (e)(1), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(e) * * *

(1) *Petitioner or self-petitioner residing in the United States.* The petition or self-petition must be filed with the Service office having jurisdiction over the place where the petitioner or self-petitioner is residing. When the petition or self-petition is accompanied by an application for adjustment of status, the petition or self-petition may be filed with the Service office having jurisdiction over the beneficiary's or self-petitioner's place of residence.

* * * * *

9. Section 204.1 is amended by adding two new sentences at the end of paragraph (e)(2), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(e) * * *

(2) * * * An overseas Service officer may not accept or approve a self-petition filed by the spouse or child of an abusive citizen or lawful permanent resident of the United States under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. These self-petitions must be filed with the Service office in the United States having jurisdiction over the self-petitioner's place of residence in the United States.

* * * * *

10. Section 204.1 is amended by adding two new sentences at the end of paragraph (e)(3), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(e) * * *

(3) * * * A consular official may not accept or approve a self-petition filed by the spouse or child of an abusive citizen or lawful permanent resident of the United States under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. These self-petitions must be filed with the Service office in the United States having jurisdiction over the self-petitioner's place of residence in the United States.

* * * * *

11. Section 204.1 is amended by adding three new sentences at the end of paragraph (f)(1), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(f) * * *

(1) * * * The Service will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * * * *

12. Section 204.1 is amended by adding a new paragraph (g)(3), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(g) * * *

(3) *Evidence submitted with a self-petition.* If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, the Service will attempt to electronically verify the abuser's citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

* * * * *

13. Section 204.2 is amended by:

a. Revising the section heading;

b. Removing paragraph (d);

c. Redesignating paragraph (c) as paragraph (d); and by

d. Adding a new paragraph (c), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(c) *Self-petition by spouse of abusive citizen or lawful permanent resident.* (1) *Eligibility.* (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is that parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

(ii) *Legal status of the marriage.* The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-

petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

(iii) *Citizenship or immigration status of the abuser.* The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Changes in the abuser's citizenship or lawful permanent resident status after the approval will have no effect on the self-petition. A self-petition approved on the basis of a relationship to an abusive lawful permanent resident spouse will not be automatically upgraded to immediate relative status. The self-petitioner would not be precluded, however, from filing a new self-petition for immediate relative classification after the abuser's naturalization, provided the self-petitioner continues to meet the self-petitioning requirements.

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase ''was battered by or was the subject of 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 certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

(viii) *Extreme hardship.* The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation would cause extreme hardship.

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

(2) *Evidence for a spousal self-petition.* (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. If the self-petition is based on a claim that the self-petitioner's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, the self-petition should also be accompanied by the child's birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to

establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

(vi) *Extreme hardship.* Evidence of extreme hardship may include affidavits, birth certificates of children, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

(3) *Decision on and disposition of the petition.* (i) *Petition approved.* If the self-petitioning spouse will apply for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the self-petitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center.

(ii) *Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered. If the adverse preliminary decision is based on derogatory information of which the self-petitioner is unaware, the self-petitioner will also be offered an opportunity to rebut the derogatory information in accordance with the provisions of 8 CFR 103.2(b)(16).

(iii) *Petition denied.* If the self-petition is denied, the self-petitioner will be notified in writing of the reasons for the denial and of the right to appeal the decision.

(4) *Derivative beneficiaries.* A child accompanying or following-to-join the self-petitioning spouse may be accorded the same preference and priority date as the self-petitioner without the necessity of a separate petition, if the child has not been classified as an immigrant based on his or her own self-petition. A derivative child who had been included in a parent's self-petition may later file a self-petition, provided the child meets the self-petitioning requirements. A child who has been classified as an immigrant based on a petition filed by the abuser or another relative may also be derivatively included in a parent's self-petition. The derivative child must be unmarried, less than 21 years old, and otherwise qualify as the self-petitioner's child under section 101(b)(1)(F) of the Act until he or she becomes a lawful permanent resident based on the derivative classification.

(5) *Name change.* If the self-petitioner's current name is different than the name shown on the documents, evidence of the name change (such as the petitioner's marriage certificate, legal document showing name change, or other similar evidence) must accompany the self-petition.

* * * * *

14. Section 204.2 is amended by redesignating paragraphs (e), (f), (g), and (h), as paragraphs (f), (g), (h), and (i), respectively; and by adding a new paragraph (e), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(e) *Self-petition by child of abusive citizen or lawful permanent resident.* (1) *Eligibility.* (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

(A) Is the child of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;

(F) Is a person of good moral character; and

(G) Is a person whose deportation would result in extreme hardship to himself or herself.

(ii) *Parent-child relationship to the abuser.* The self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act when the petition is filed and when it is approved. Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship provided the child meets the requirements of section 101(b)(1) of the Act.

(iii) *Citizenship or immigration status of the abuser.* The abusive parent must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Changes in the abuser's citizenship or lawful permanent resident status after the approval will have no effect on the self-petition. A self-petition approved on the basis of a relationship to an abusive lawful permanent resident will not be automatically upgraded to immediate relative status. The self-petitioning child would not be precluded, however, from filing a new self-petition for immediate relative classification after the abuser's naturalization, provided the self-petitioning child continues to meet the self-petitioning requirements.

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase ''was

battered by or was the subject of 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 certain circumstances, including acts that, in and of themselves, may not initially appear violent but are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

(viii) *Extreme hardship.* The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner cannot be considered in determining whether a self-petitioning child's deportation would cause extreme hardship.

(2) *Evidence for a child's self-petition.* (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) *Relationship.* A self-petition filed by a child must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of the relationship between:

(A) The self-petitioning child and an abusive biological mother is the self-petitioner's birth certificate issued by civil authorities;

(B) A self-petitioning child who was born in wedlock and an abusive biological father is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parents, and evidence of legal termination of all prior marriages, if any;

(C) A legitimated self-petitioning child and an abusive biological father is the child's birth certificate issued by civil authorities, and evidence of the child's legitimation;

(D) A self-petitioning child who was born out of wedlock and an abusive biological father is the child's birth certificate issued by civil authorities showing the father's name, and evidence that a bona fide parent-child relationship has been established between the child and the parent;

(E) A self-petitioning stepchild and an abusive stepparent is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parent and the stepparent showing marriage before the stepchild reached 18 years of age, and evidence of legal termination of all prior marriages of either parent, if any; and

(F) An adopted self-petitioning child and an abusive adoptive parent is an adoption decree showing that the adoption took place before the child reached 16 years of age, and evidence that the child has been residing with and in the legal custody of the abusive adoptive parent for at least 2 years.

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other types of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in the foreign country in which he or she resided for six or more

months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character. A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit affidavits of good moral character, police clearances, criminal background checks, or other evidence of good moral character.

(vi) *Extreme hardship.* Evidence of extreme hardship may include affidavits, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

(3) *Decision on and disposition of the petition.* (i) *Petition approved.* If the self-petitioning child will apply for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the self-petitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center.

(ii) *Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered. If the adverse preliminary decision is based on derogatory information of which the self-petitioner is unaware, the self-petitioner will also be offered an opportunity to rebut the derogatory information in accordance with the provisions of 8 CFR 103.2(b)(16).

(iii) *Petition denied.* If the self-petition is denied, the self-petitioner will be notified in writing of the reasons for the denial and of the right to appeal the decision.

(4) *Derivative beneficiaries.* A child of a self-petitioning child is not eligible for derivative classification and must have a petition filed on his or her behalf if seeking immigrant classification.

(5) *Name change.* If the self-petitioner's current name is different than the name shown on the documents, evidence of the name change (such as the petitioner's marriage certificate, legal document showing the name change, or other similar evidence) must accompany the self-petition.

* * * * *

§ 204.2 [Amended]

15. Section 204.2 is amended in newly designated paragraph (g)(2)(iv) by revising the reference to ''paragraphs (f)(2)(ii) and (f)(2)(iii) of this section'' to read ''paragraphs (g)(2)(ii) and (g)(2)(iii) of this section''.

16. Section 204.2 is amended by adding five new sentences at the end of the newly redesignated paragraph (h)(2), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(h) * * *

(2) * * * A self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), 204(a)(1)(B)(iii) of the Act based on the relationship to an abusive citizen or lawful permanent resident of the United States will not be regarded as a reaffirmation or reinstatement of a petition previously filed by the abuser. A self-petitioner who has been the beneficiary of a visa petition filed by the abuser to accord the self-petitioner immigrant classification as his or her spouse or child, however, will be allowed to transfer the visa petition's priority date to the self-petition. The visa petition's priority date may be assigned to the self-petition without regard to the current validity of the visa petition. The burden of proof to establish the existence of and the filing date of the visa petition lies with the self-petitioner, although the Service will attempt to verify a claimed filing through a search of the Service's computerized records or other records deemed appropriate by the adjudicating officer. A new self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act will not be regarded as a reaffirmation or reinstatement of the original self-petition unless the prior and the subsequent self-petitions are based on the relationship to the same abusive citizen or lawful permanent resident of the United States.

* * * * *

17. Section 204.2 is amended by adding a new sentence at the end of the newly redesignated paragraph (i)(3), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(i) * * *

(3) * * * A self-petition filed under section 204(a)(1)(B)(ii) or 204(a)(1)(B)(iii) of the Act based on the relationship to an abusive lawful permanent resident of the United States for classification under section 203(a)(2) of the Act will not be affected by the abuser's naturalization and will not be automatically converted to a petition for immediate relative classification.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

18. The authority citation for part 205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

19. Section 205.1 is revised to read as follows:

§ 205.1 Automatic revocation.

(a) *Reasons for automatic revocation.* The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of this chapter is revoked as of the date of approval:

(1) If the Secretary of State shall terminate the registration of the beneficiary pursuant to the provisions of section 203(e) of the Act before October 1, 1991, or section 203(g) of the Act on or after October 1, 1994;

(2) If the filing fee and associated service charge are not paid within 14 days of the notification to the remitter that his or her check or other financial instrument used to pay the filing fee has been returned as not payable; or

(3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences or, if the beneficiary or self-petitioner is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her adjustment application becomes final:

(i) *Immediate relative and family-sponsored petitions, other than Amerasian petitions.* (A) Upon written notice of withdrawal filed by the petitioner or self-petitioner with any officer of the Service who is authorized to grant or deny petitions.

(B) Upon the death of the beneficiary or the self-petitioner.

(C) Upon the death of the petitioner, unless the Attorney General in his or her discretion determines that for humanitarian reasons revocation would be inappropriate.

(D) Upon the legal termination of the marriage when a citizen or lawful permanent resident of the United States has petitioned to accord his or her spouse immediate relative or family-sponsored preference immigrant classification under section 201(b) or section 203(a)(2) of the Act. The

approval of a spousal self-petition based on the relationship to an abusive citizen or lawful permanent resident of the United States filed under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act, however, will not be revoked solely because of the termination of the marriage to the abuser.

(E) Upon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for immediate relative classification under section 201(b) of the Act or for preference classification under section 203(a)(2) of the Act.

(F) Upon a child reaching the age of 21, when he or she has been accorded immediate relative status under section 201(b) of the Act. A petition filed on behalf of a child under section 204(a)(1)(A)(i) of the Act or a self-petition filed by a child of an abusive United States citizen under section 204(a)(1)(A)(iv) of the Act, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(1) of the Act if the beneficiary remains unmarried, or to accord preference status under section 203(a)(3) of the Act if he or she marries.

(G) Upon the marriage of a child, when he or she has been accorded immediate relative status under section 201(b) of the Act. A petition filed on behalf of the child under section 204(a)(1)(A)(i) of the Act or a self-petition filed by a child of an abusive United States citizen under section 204(a)(1)(A)(iv) of the Act, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(3) of the Act if he or she marries.

(H) Upon the marriage of a person accorded preference status as a son or daughter of a United States citizen under section 203(a)(1) of the Act. A petition filed on behalf of the son or daughter, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(3) of the Act.

(I) Upon the marriage of a person accorded status as a son or daughter of a lawful permanent resident alien under section 203(a)(2) of the Act.

(J) Upon legal termination of the petitioner's status as an alien admitted for lawful permanent residence in the United States unless the petitioner became a United States citizen. The provisions of 8 CFR 204.2(i)(3) shall apply if the petitioner became a United States citizen.

(ii) *Petition for Pub. L. 97–359 Amerasian.* (A) Upon formal notice of withdrawal filed by the petitioner with the officer who approved the petition.

(B) Upon the death of the beneficiary.

(C) Upon the death or bankruptcy of the sponsor who executed Form I–361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Pub. L. 97–359 Amerasian. In that event, a new petition may be filed in the beneficiary's behalf with the documentary evidence relating to sponsorship and, in the case of a beneficiary under 18 years of age, placement. If the new petition is approved, it will be given the priority date of the previously approved petition.

(D) Upon the death or substitution of the petitioner if other than the beneficiary or sponsor. However, if the petitioner dies or no longer desires or is able to proceed with the petition, and another person 18 years of age or older, an emancipated minor, or a corporation incorporated in the United States desires to be substituted for the deceased or original petitioner, a written request may be submitted to the Service or American consular office where the petition is located to reinstate the petition and restore the original priority date.

(E) Upon the beneficiary's reaching the age of 21 when the beneficiary has been accorded classification under section 201(b) of the Act. Provided that all requirements of section 204(f) of the Act continue to be met, however, the petition is to be considered valid for purposes of according the beneficiary preference classification under section 203(a)(1) of the Act if the beneficiary remains unmarried or under section 203(a)(3) if the beneficiary marries.

(F) Upon the beneficiary's marriage when the beneficiary has been accorded classification under section 201(b) or section 203(a)(1) of the Act. Provided that all requirements of section 204(f) of the Act continue to be met, however, the petition is to be considered valid for purposes of according the beneficiary preference classification under section 203(a)(3) of the Act.

(iii) *Petitions under section 203(b), other than special immigrant juvenile petitions.* (A) Upon invalidation pursuant to 20 CFR Part 656 of the labor certification in support of the petition.

(B) Upon the death of the petitioner or beneficiary.

(C) Upon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of the Service who is authorized to grant or deny petitions.

(D) Upon termination of the employer's business in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.

(iv) *Special immigrant juvenile petitions.* Unless the beneficiary met all of the eligibility requirements as of November 29, 1990, and the petition requirements as of November 29, 1990, and the petition for classification as a special immigrant juvenile was filed before June 1, 1994, or unless the change in circumstances resulted from the beneficiary's adoption or placement in a guardianship situation:

(A) Upon the beneficiary reaching the age of 21;

(B) Upon the marriage of the beneficiary;

(C) Upon the termination of the beneficiary's dependency upon the juvenile court;

(D) Upon the termination of the beneficiary's eligibility for long-term foster care; or

(E) Upon the determination in administrative or judicial proceedings that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(b) *Notice.* When it shall appear to the director that the approval of a petition has been automatically revoked, he or she shall cause a notice of such revocation to be sent promptly to the consular office having jurisdiction over the visa application and a copy of such notice to be mailed to the petitioner's last known address.

20. Section 205.2 is amended by revising paragraph (b) and adding new paragraphs (c) and (d), to read as follows:

§ 205.2 Revocation on notice.

* * * * *

(b) *Notice of intent.* Revocation of the approval of a petition of self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

(d) *Appeals.* The petitioner or self-petitioner may appeal the decision to

revoke the approval within 15 days after the service of notice of the revocation. The appeal must be filed as provided in part 3 of this chapter, unless the Associate Commissioner for Examinations exercises appellate jurisdiction over the revocation under part 103 of this chapter. Appeals filed with the Associate Commissioner for Examinations must meet the requirements of part 103 of this chapter.

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

21. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

22. Section 216.1 is amended by adding a new sentence at the end of the section, to read as follows:

§ 216.1 Definition of conditional permanent resident.

* * * The conditions of section 216 of the Act shall not apply to lawful permanent resident status based on a self-petitioning relationship under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(b)(ii), or 204(a)(1)(B)(iii) of the Act or based on eligibility as the derivative child of a self-petitioning spouse under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act, regardless of the date on which the marriage to the abusive citizen or lawful permanent resident occurred.

Dated: March 1, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–7219 Filed 3–25–96; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R–0797]

Rules Regarding Equal Opportunity; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains technical corrections to the final rule that was published April 6, 1994 (59 FR 16096). The rule sets forth the requirements, policies and procedures with regard to discrimination in employment, and in agency programs and activities, at the Board of Governors of the Federal Reserve System.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: J. Mills Williams, Senior Attorney (202/452–3701), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC, 20551. For users of Telecommunications Device for the Deaf (TDD) only, please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections, revised an interim rule that was subject to public comment.

Need for Correction

As published, the final rule contained three technical, non-substantive errors that may prove to be misleading and are in need of clarification.

List of Subjects in 12 CFR Part 268

Administrative practice and procedure, Age, Civil rights, Equal employment opportunity, Federal buildings and facilities, Federal Reserve System, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination, Wages.

Accordingly, 12 CFR Part 268 is corrected by making the following correcting amendments:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

1. The authority citation for Part 268 continues to read as follows:

Authority: 12 U.S.C. 244 and 248 (i), (k) and (l).

§ 268.301 [Corrected]

2. In § 268.301, paragraph (c)(3), the cite ''§ 268.209(a)(8)'' is revised to read ''§ 268.209(b)(8)''.

§ 268.305 [Corrected]

3. In § 268.305, paragraph (c)(1), the cite ''§ 268.202(e)(3)'' is revised to read ''§ 268.202(f)(3)''.

§ 268.506 [Corrected]

4. In § 268.506, remove the cite ''(29 U.S.C. 225)'' at the end of the first sentence.

By order of the Board of Governors of the Federal Reserve System under delegated authority, March 20, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–7174 Filed 3–25–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–21; Amendment 39–9547; AD 96–06–10]

Airworthiness Directives; AlliedSignal, Inc. LTS101 Series Turboshaft Engines Installed on Eurocopter France Model AS–350D and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal, Inc. (formerly Textron Lycoming) LTS101 series turboshaft engines installed on Eurocopter France (formerly Aerospatiale) Model AS–350D and SA–366G1 helicopters, that requires incorporation of design modifications to the power turbine (PT) rotor. This amendment is prompted by reports of PT disk failures after No. 3 bearing failures. The actions specified by this AD are intended to prevent an uncontained engine failure due to a PT disk failure.

DATES: Effective May 28, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal, Inc. (formerly Textron Lycoming) LTS101 series turboshaft engines installed on Eurocopter France (formerly Aerospatiale) Model AS–350D and SA–366G1 helicopters was published in the