




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

December 15, 2016

MEMORANDUM FOR: Julián Castro, Secretary, S

FROM: Tonya Robinson, Acting General Counsel, C 

SUBJECT: Eligibility of Battered Noncitizen Self-Petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act of 1980

This memorandum addresses the rights of certain noncitizens who are battered or subjected to extreme cruelty by a spouse or parent, who is an United States Citizen or lawful permanent resident (LPR), to apply for and receive assistance under Section 214 of the Housing and Community Development Act of 1980 (Section 214). HUD programs covered under Section 214 include the programs under the U.S. Housing Act of 1937 (Public Housing and Section 8 tenant-based and project-based rental assistance), as well as the Section 235 Homeownership, Section 236 Rental Assistance, Rent Supplement, Flexible Subsidy and Section 221d(3) Below Market Interest Rate Programs. This memorandum also addresses, in light of recent modifications to the Department of Homeland Security (DHS) Systematic Alien Verification for Entitlements (SAVE) System, the required process for verifying eligibility of these noncitizens for HUD's Section 214-covered multi-family programs.¹

The Violence Against Women Act of 1994 (VAWA) allows these noncitizens to self-petition for LPR status without the cooperation or knowledge of their abusive relative. These battered noncitizens are referred to as "self-petitioners." The terms "VAWA self-petitioner," "self-petitioner" or "petitioner" refer to the categories of battered noncitizens seeking VAWA-related relief described in 8 U.S.C. § 1101(a)(51), 8 U.S.C. § 1641(c), 62 Fed. Reg. 61344, 61367 (Nov. 17, 1997), and other VAWA-related petitions or applications for lawful permanent resident status. Prior to VAWA, these battered noncitizens were dependent on their abusers to obtain authorized immigration status because the abusing relative held the right to file the immigration petition on their behalf and could refuse to file or withdraw the petition at any time.

Section 214 states that, "notwithstanding any other provision of law," HUD may not make certain financial assistance available to any noncitizen unless the person falls within certain enumerated exceptions, one of which is "lawful permanent resident." Additionally, Section 214 and associated regulations at 24 CFR Part 5 provide that financial assistance from HUD cannot

¹ This clarification is consistent with HUD's Multifamily Housing Programs Handbook (HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, Appendix 2-B (2013)) and HUD's interpretation of Section 214 and its regulations at 24 CFR part 5, Subpart E. However, the DHS alternative verification process has been superseded by the changes made to the SAVE System.

be delayed, denied, reduced or terminated on the basis of immigration status while verification of eligibility or appeal of a determination as to satisfactory immigration status is pending. This memorandum clarifies that self-petitioners can indicate that they are in “satisfactory immigration status” when applying for assistance or continued assistance from Section 214-covered housing providers. It is the Office of General Counsel’s position that this interpretation of VAWA and Section 214 is consistent with Section 214 and VAWA’s objectives to enhance victim safety and to place noncitizen victims of domestic violence in the same position vis-à-vis immigration law as they would have enjoyed had they not been abused by their U.S. citizen or LPR relative.

Consistent with applicable HUD requirements implementing section 214 at 24 CFR Part 5, housing providers are required to verify noncitizen eligibility for federal financial assistance. The verification of satisfactory immigration status for Section 214-covered programs is performed by housing providers using the DHS SAVE System. Generally, the question of verification will arise in connection with self-petitioners when the self-petitioner is either an applicant for assistance, or is a member of a participating family and the abuser is removed from the family due to allegations of domestic violence.

Upon the assertion of an applicant or participant that he or she is a self-petitioner, the housing provider must use the SAVE System to verify immigration status. Evidence that an individual is a self-petitioner includes one of the following: (i) INS Form I-360 VAWA self-petition; (ii) INS Form I-130 family-based visa petition; or (iii) INS Form I-797 Notice of Action indicating (a) receipt of the I-130 or I-360 by DHS, (b) a prima facie determination, or (c) approval of the I-360 or I-130 petition by DHS. Under Section 214, once a self-petition (I-360 or I-130 Forms) or I-797 Notice is submitted to the housing provider, and until a final determination by DHS as to LPR status is actually made, including any appeal of a determination on the self-petition or LPR status, the self-petitioner’s application for financial assistance cannot be denied, and financial assistance shall not be delayed, denied, reduced or terminated on the basis of immigration status. In addition, all the other protections afforded under VAWA apply to the self-petitioner throughout the verification process.

Because we anticipate that housing providers will have several questions about the documents a self-petitioner must submit, as well as the protections afforded by VAWA, OGC has recommended, and the Office of Public and Indian Housing and the Office of Housing have agreed, to publish a notice consistent with this opinion.