



U.S. Citizenship
and Immigration
Services

HQOPRD 70/6.1.1

Interoffice Memorandum

To: Office of Domestic Operations
Office of Refugee, Asylum, and International Operations
Office of National Security and Records Verification

From: Robert C. Divine /s/
Acting Deputy Director

Date: May 3, 2006

Re: Disclosure of Certain Information Relating to Criminal Histories of Petitioners to
Potential Visa Beneficiaries

The purpose of this memorandum is to provide interim guidance to U.S. Citizenship and Immigration Services (USCIS) adjudicators regarding when it may be appropriate to disclose certain information relating to a visa petitioner's¹ criminal history involving violence or sex offenses to potential visa beneficiaries or their legal guardians.

The Privacy Act, 5 U.S.C. § 552a, et al., limits the circumstances under which information contained within a record maintained by USCIS can be disclosed to any person. This includes information pertaining to a visa petitioner's criminal history involving violence or sex offenses and the disclosure of such information to a potential beneficiary. Subsection 552a(b)(8), however, permits the disclosure of such information "pursuant to a showing of compelling circumstances affecting the health and safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual." In other words, information that may be contained in USCIS records may be disclosed to a potential visa beneficiary or his or her legal guardian under subsection (b)(8) of the Privacy Act if USCIS finds compelling circumstances that may affect the health and safety of the potential visa beneficiary. However, disclosure is limited only to those portions of the petitioner's criminal history involving violence or sex offenses that are directly relevant to the "health and safety" of the potential beneficiary. Normally, for example, a conviction as a sexual predator should be considered a compelling circumstance affecting the health and safety of a child who would reside with the sexual predator.

¹ Special procedures required for I-129F fiancée petitions under the International Marriage Broker Regulation Act (IMBRA) will be addressed in separate guidance. These procedures are not expected to apply to Forms I-600/600A, in which the adjudicator would consider directly a petitioner's conviction in adjudicating the petition, rather than only disclosure to the beneficiary.

If the petitioner's criminal history involving violence or sex offenses is in the form of a publicly available conviction record, the adjudicator, with appropriate supervisory approval, may share that information without further consultation with the record holding agency. In all other instances where there is adverse information contained in USCIS records related to the petitioner's criminal history involving violence or sex offenses, the adjudicator, with appropriate supervisory approval, must obtain permission to disclose such information from the agency that contributed the adverse information. Concerns about safety outside the scope of this memo should be brought to the attention of the adjudicator's supervisor.

In accordance with subsection (b)(8) of the Privacy Act, the adjudicator must inform the visa petitioner of the disclosure in writing. The notice must reflect the information disclosed and that it was disclosed pursuant to 5 U.S.C. § 552a(b)(8). The appropriate USCIS file should be annotated to reflect the circumstances that warranted such disclosure, the supervisory concurrence and, where consent was required from the originating agency, how consent was acquired. Also as a matter of policy, the adjudicator must document in writing the exact information disclosed to the beneficiary.

When the beneficiary is in the United States or falls within the jurisdiction of a USCIS office overseas, the disclosure to the beneficiary shall be by way of an in-person interview at the local office. The disclosure may lead to a delay in adjudication while the beneficiary considers the information disclosed. Disclosure may also lead to a determination that the relationship is not viable, resulting in denial of the petition. Disclosure may result in petition or application approval (typically upon a confirmation by the beneficiary that he or she wishes the matter nevertheless to proceed to approval). When the beneficiary is abroad, and the petition is approved², any adverse information that might affect the health or safety of a beneficiary should be provided to the Department of State (DOS), including by annotation of the petition as appropriate. DOS will make its own decision whether and how to disclose the information to the beneficiary.

This guidance should be implemented as soon as possible. Please direct any questions concerning these changes through appropriate supervisory channels to Laura Dawkins, via electronic mail.

² This memo is intended to provide guidance on when disclosure may be appropriate and not guidance on the adjudication itself. This memo is not meant to suggest that an adjudicator must approve a petition despite the petitioner's conviction of a violent or sexual crime that may somehow lead, for instance, to a conclusion that the relationship is not viable, using adjudicative tools and procedures normally available.