Adam Walsh Child Protection and Safety Act of 2006
TITLE IV—Immigration law reforms to prevent sex offenders from abusing children
Sec. 402. Barring family-based petitions

Congress passed the Adam Walsh Child Protection and Safety Act of 2006 (AWA) and President Bush signed the AWA into law on July 27, 2006. The declared purpose of the AWA was "to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims."

The 2006 AWA made revisions to the Immigration and Nationality Act (INA) that rendered certain U.S. citizens with a "specified offense against a minor" ineligible to file family-based visa petitions for family members, unless the secretary of the U.S. Department of Homeland Security (DHS) finds, in his or her "sole and unreviewable discretion," and that the petitioner presents "no risk" to the proposed beneficiary. Section 111(7) of the AWA defines the specified offenses.

USCIS Malicious AWA Policy Has Destroyed at least 4000 Families Since 2011

By the agency's own statistics, the number of denied AWA family petitions will surpass 4000 by 2017. *This is a staggering number of families decimated by USCIS for no apparent reason.* Each of these cases highlights the stories of immigrant families who struggle for years to cope with the heartbreaking effects of our country's broken immigration system. USCIS's malicious AWA policy serves no rational purpose and undermines the goals of family unity.

For years after its enactment, the USCIS has either outright denied or intentionally stalled thousands of family petitions that it determined to fall within its own AWA policy. By 2011, after several years of long delays, the USCIS denied virtually all AWA applications held at the agency for review since 2008. **The agency reports that it receives 400-600 AWA application per year and boosts that it has denied 99% of all AWA family petitions received**:

- In July 2013, USCIS reported receiving about 400 AWA cases in 2012, approving just two cases.
- In May of 2014, the agency reported that 601 cases were reviewed the prior year, with "fewer than 10" approved. The agency reports it reviewed approximately 2,500 cases since 2008.
- In July 2016 the agency reported reviewing approximately 340 cases the prior year, with approximately 1,300 cases pending review. The agency declined to give statistics regarding approval rates.

Senator Patrick Leahy's "Crystal Ball"

On July 20, 2006 at the 2nd Session of 109th Congress, Senator Patrick Leahy of Vermont voiced concerns about the AWA revision to immigration law, that it "casts a wide net and in many cases will harshly, unnecessarily penalize people seeking entry to the United States who should be afforded the chance to keep their families intact."

On the 109th congressional record, Senator Leahy further stated that "In a case of a citizen who is on the path to rehabilitation or whose crime was relatively minor; denial of a family member's support would serve no rational purpose and would undermine the goals of family unity. I hope the Secretary will actively use this waiver authority to limit the broad reach of this provision to those cases where a citizen or legal resident genuinely poses a threat to a family member seeking entry."

Senator Leahy's envisioned concerns were well founded. Ten years since the AWA's passage, the U.S. Citizenship and Immigration Services (USCIS) has adopted and aggressively implemented a profoundly different interpretation of the AWA immigration provisions than described during the 109th Congress. Senator Leahy's forewarning of abuse of the AWA provision has been fully realized with USCIS's denial of virtually all of the family petitions determined to fall within the AWA category by the agency.

The AWA Amendment to the INA Represents a Departure – the first of its kind, unprecedented and nearly impossible evidentiary standards

Following the AWA's enactment, USCIS expansively interpreted the scope of the "specified offense" definition while simultaneously imposing a virtually impossible-to-meet burden on petitioners to establish that they pose no risk to the family members for whom they seek to petition.

The agency published its definition of the 2006 AWA waiver authority in its 2008 standard operating procedures (SOP). The SOP specified that approval of an AWA waiver should be "rare."

The USCIS SOP states that a petitioner convicted of a specified offense against a minor is burdened to clearly demonstrate "beyond any reasonable doubt" that he or she poses no risk to the beneficiary – a virtually impossible standard causing nearly all cases to be denied. The "beyond a reasonable doubt" standard imposed by the USCIS was not authorized by the AWA statute.

AWA cases are the only use of this heightened evidentiary standard for family visa approval within USCIS. For other visa petition proceedings at USCIS, the applicable standard is ordinarily "preponderance of the evidence" or the "clear and convincing" standard used in other family petitions.

Potential harm to a family member is not required to be identified by a USCIS examiner. The SOP does not require the USCIS to identify a nexus between the criminal act of the petitioner and any potential harm to a foreign beneficiary.

The USCIS SOP requires the USCIS examiner to "*automatically* presume that risk exists in any case where the intended beneficiary is a child, irrespective of the nature and severity" of the disqualifying crime."

Many AWA denials involve cases where there are no children involved, clearly an expansion of the declared purpose of the AWA by the 109th Congress "to protect children."

Abuse of the Authority Granted by Congress in 2006; Complete Lack of Objectivity by USCIS for AWA cases

The current USCIS operating procedures openly state a strong bias against approval, shows the complete lack of objectivity and abuse of the authority granted to the agency under AWA in 2006.

USCIS's position that most petitions should be barred, with no waiver granted, is in direct conflict with the U.S. government's highly touted policy of "Keeping Families Together"

The USCIS AWA policy is suspected to have numerous violations of the US Constitution and various State Constitutions but has never had a proper judicial review by any court as the agency maintains that it has "**sole and unreviewable discretion**" of its decisions for AWA family petitions.

The Startling Power Invoked by DHS; the agency may deport a noncitizen for a crime committed by someone else

AWA family petitions are the only petitions in the agency to scrutinize exclusively the character of the *United States citizen* petitioner instead examining the fitness of the intending immigrant.

As a consequence of the current USCIS policy for AWA cases, the immigrant beneficiary is held responsible for a crime committed by someone else. DHS deports them and permanently banishes them from their family for nothing that they did but for a crime committed by their United States citizen petitioner – and often for crime committed a long time ago for which punishment and rehabilitation are complete.

The INA specifically defines "conviction," only "with respect to an alien." The agency's decision to focus on only a petitioner's criminal history, rather than the foreign national's record sets these AWA cases apart from all other family petitions processed by USCIS.

USCIS AWA Policy Harms the Most Vulnerable Members of Society Instead of Protecting Them

The USCIS policy to separate virtually 100% of these families, actually harms the very same class of "most vulnerable members of society" that the agency claims to protect with its polices by keeping families separated for extended periods of time lasting for years while forcing them through an extensive legal and emotional ordeals.

Immigrant women and children affected by these denials are often poor by US standards. Their loved ones are forced to use precious family resources for extensive legal costs and duplicate living expenses of supporting residences abroad and at home for years while trying to overcome this unfair and abusive process by USCIS.

For many spouses, especially women, the banishment and forced separation from their spouse means a lifetime of despair where divorce, meaningful income and opportunity are not possible. Their religious beliefs and practices are comprised without the sanctity of the marriage and solidarity of their family no longer intact.

No one should ever have to live with the constant crippling fear of losing a spouse or child to deportation and having their families ripped apart when they have never broken any law and by no fault of their own.

The lasting consequence of the USCIS AWA denial for these couples will be an inability to live together *anywhere*.

USCIS Focuses on Punishment of the US Citizen Petitioner Rather Than Protection of Children from Criminal Acts and Abuse

For AWA cases only, the agency scrutinizes exclusively the character of the *United States citizen* petitioner instead examining the fitness of the intending immigrant as done for all other visas processed by the agency.

The fact that USCIS does not bar rapists, murderers or any other criminal category from immigrating foreign family members suggests the AWA statute is more of a punishment targeting only certain US citizens rather than a safeguard of protecting foreigners or children from possible crimes, abuses or exploitation.

The fact that a US citizen with an AWA qualifying conviction may marry any other US citizen shows that this USCIS policy does nothing towards the actual purpose of protecting children from crimes, abuses or exploitation for which AWA was enacted for.

In Its Current State, the USCIS AWA Process Is Unfair and Resembles a "Kangaroo Court" that Blatantly Disregards Recognized Standards of Immigration Law and Justice

When family petitions are denied, it normally should be appealed to the Board of Immigration Appeals (BIA). However, to date the BIA has maintained that it has no jurisdiction to review the denial decision by the USCIS due to "Sole and unreviewable discretion" of the nearly 100% of AWA denials it has issued.

The BIA also asserts it does not have jurisdiction to review constitutional concerns raised by petitioners in their appeals. The BIA is organized within US Department of Justice.

Currently, there is no court available under statute to review a decision of the USCIS unless there is a court ordered deportation. As many foreign beneficiaries are outside the U.S, they will not be subject to removal proceedings so they never have an opportunity for any consideration.

A removal order will not address the constitutional problems associated with a USCIS denial and subsequent BIA refusal to conduct a review before removal proceedings.

As a result, these 4000 families decimated by USCIS are left helpless without any meaningful opportunity to obtain administrative review of USCIS AWA denials. There are no safeguards or statues to ensure USCIS exercises its discretion objectively and fairly.

Summary

US Department of Homeland Security and the US Department of Justice has allowed USCIS to develop a policy that enables the agency to categorically deny virtually 100% of family petitions for AWA cases, impose completely different and a more restrictive review standard than for all other visas processed by the agency, and then create an end-around appeal system to effectively eliminate any higher level legal review of these denied petitions; all designed for the express purpose of punishing a targeted group of U.S. citizens with a certain category of criminal convictions.

This offensive policy by USCIS runs counter to immigration laws, policies and practices. It punishes foreigners for someone else's criminal conviction. The agency intentionally delays these petitions for years and creates an impossible legal process for the families to overcome. Instead of working to unify these families, USCIS does everything it can to break these families apart and to banish the family members to different countries. The typical consequence for many couples is the inability to live together *anywhere.*

The most repugnant fact is that USCIS has made it their goal to do this to virtually 100% of the U.S. citizens with an AWA immigration case. The ruining of peoples' lives, breaking up families and banishing family members far away from each other is all done by design of the agency's standard operating procedures and legal processes established expressly for these particular cases.

These are not collateral consequences that arise from one's criminal conviction, these are well-planned, organized, deliberate actions taken by the U.S. government against its own citizen and innocent foreign citizens who have never done anything except fall in love, commit in marriage and start a family.

In 2003 Smith v. Doe, the question before the US Supreme Court was: If the intention (of sex registration) was to impose a punishment or "civil proceedings". If the intention was to punish, that ends the inquiry. If the intention was to enact a regulatory scheme that is civil and non-punitive, the Court must examine whether the scheme is so punitive as to negate the State's intention to deem it civil.

It is hard to find a clearer example, than the USCIS handling of AWA family petitions, of how the public sex offender registry laws have evolved to become punishment since 2003 Smith v. Doe decision.

This is somehow connected to the protection of children? When is enough going to be enough?

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