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January 10, 2013

Alejandro Mayorkas, Director  
United States Citizenship and Immigration Services  
20 Massachusetts Avenue, NW  
Washington, DC 20529

Re: Draft PM-602-XXXX  
Adjudicator's Field Manual, Chapter 30.13  
Eligibility for Employment Authorization for Battered Spouses of Certain  
Nonimmigrants

South Asian Americans Leading Together (SAALT) writes in partnership with twelve organizations – ASHA for Women, DAYA, Inc., Hamdard Center for Health and Human Services, Mai Family Services, Manavi, Raksha, Saathi of Rochester, South Asian American Policy and Research Institute (SAAPRI), South Asian Network (SAN), Sakhi for South Asian Women, Sneha, Inc., and Turning Point for Women and Families – in response to the December 12, 2012 Draft Policy Memorandum regarding Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants.

South Asian Americans Leading Together (SAALT) is a national, nonpartisan, non-profit organization that elevates the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. SAALT works with a base of individual members and advocates and is the coordinating entity of the National Coalition of South Asian Organizations (NCSO), a network of 41 organizations across the country that provide direct services to, organize, and advocate on behalf of South Asians in the United States.

With over 3.4 million South Asians in the United States,<sup>1</sup> our community includes undocumented immigrants, dependents and temporary workers on various visas, refugees and asylum-seekers, lawful permanent residents, and United States citizens. Specifically, numerous South Asians enter the country through the H-1B visa program for workers employed in “specialty occupations.” In fact, approximately 147, 290 Indian nationals alone were admitted under this program in 2011.<sup>2</sup> Unfortunately, the spouses of these individuals who enter as H-4 visa holders and face numerous restrictions, including the inability to obtain legal employment. This barrier to legal employment is even more paralyzing when the H-4 holder is a victim of domestic violence.

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<sup>1</sup> SAALT, A Demographic Snapshot of South Asians in the United States (July 2012) available at <http://www.saalt.org/attachments/1/SAALT%20AAF%20National%20Factsheet%20July%202012%20Update.pdf>

<sup>2</sup> 2011 Yearbook of Immigration Statistics, U.S. Department of Homeland Security, Office of Immigration Statistics (September 2012) available at [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois\\_yb\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf).

For many South Asians in the United States, and often H-4 holders, domestic violence is a large-scale problem and escape is nearly impossible. The danger of domestic violence in our community is sometimes so serious that it can be life threatening. From March 1990 to March 2008, at least 148 intimate-violence related fatalities or near fatalities were reported in South Asian community newspapers.<sup>3</sup> Additionally, a study of South Asian women in the Greater Boston area found that, in 1998 and 1999, 40.8% reported experiencing physical or sexual abuse at the hands of their current partners, while only 3.1% of those abused ever obtained a protective order.<sup>4</sup> From these numbers, it is apparent that large populations of South Asians are facing abuse, but many of them do not seek the protection of the court or perhaps, reach out for assistance at all. For an H-4 holder, reaching out for assistance or leaving an abusive partner may be even more difficult if they do not have the resources to leave or become financially self-sufficient. Over the years, we have collected numerous stories of South Asian H-4 holders who were trapped in abusive marriages: a doctor, suffering abuse at the hands of her spouse, mother-in-law, and brother-in-law, was forced to beg her spouse for money to buy her infant son medicine because she could not work; a woman subjected to violent sexual abuse who was afraid to leave her spouse and fall out of status; a former law student unable to work and forced to return to her country of origin because her spouse was abusing her and her son. The list goes on and on and the solution has been much-anticipated.

For these reasons, we applaud the recent Adjudicator's Field Manual, Chapter 30.13, Draft Policy Memorandum 602-XXXX, Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants that will undoubtedly make it easier for battered spouses to obtain work authorization and improve their situations. While this draft guidance is a step in the right direction, we write this comment to point out areas for improvement that we hope will be taken into consideration. Namely, this guidance can be greatly improved by (1) including confidentiality provisions to protect battered spouses and their children; (2) extending work authorization beyond the duration of the abuser's status, (3) identifying additional specific examples of evidence of abuse; (4) providing an explicit statement that there is no time restriction on evidence of abuse or its proximity to the time of the employment authorization application; and, (5) providing competency training to adjudicators on the experiences of South Asian battered spouse applicants.

**1. Confidentiality provisions must be included in order to protect the safety of battered spouse applicants and their children.**

As situations of domestic violence are extremely sensitive in nature, confidentiality is a crucial piece of every victim's safety. It is essential for victims of domestic violence to pursue avenues for assistance without the knowledge of their abusive partner. If that

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<sup>3</sup> Dasgupta, S.D., *Manavi Occasional Paper No. 3: Communicating with Faith: Anti-Domestic Violence Advocacy in Religious Communities* (2007).

<sup>4</sup> Raj, A. and Silverman, J., *Intimate Partner Violence Against South Asian Women in Greater Boston* in *Journal of the American Medical Women's Association* (2002).

confidentiality is compromised and the abuser becomes aware of these actions, the victim's safety is at risk. Additionally, the victim stands to lose his or her autonomy and trust in the systems that have been created for assistance. As each situation is different, it must be the victim's decision as to what information to share with the abuser because only the victim knows what will keep him or her safest. Therefore, confidentiality is crucial to any battered spouse's application for employment authorization because without it, the very purpose of the guidance is lost. A battered spouse cannot become financially self-sufficient if he or she cannot apply out of fear of the potential consequences at home or may face harm if he or she does.

Through the Violence Against Women Act (VAWA), Congress has previously acknowledged the importance of confidentiality provisions in domestic violence situations. In fact, Congress created these provisions in order to prevent the manipulation of the immigration system into another tool for "power and control" over victims.<sup>5</sup> VAWA's confidentiality provisions prohibit the disclosure of "any information" by the Department of Homeland Security (DHS), the Department of State (DOS), and the Department of Justice (DOJ).<sup>6</sup> Additionally, these agencies are not allowed to use information solely provided by the abuser to take negative action against the victim nor can enforcement actions take place at specified locations, which are connected to the victim seeking services.<sup>7</sup> Finally, DHS established procedures for reporting violations of these provisions as DHS believed this accountability would serve their interests and that of the public as well.<sup>8</sup>

Similarly, the Adjudicator's Field Manual (AFM) Chapter 30.13 guidance on employment authorization for battered spouses must include the confidentiality provisions of IIRAIRA § 384(a)(1) and (2) and 8 U.S.C. § 1367(a)(1) and (2) as well as a procedure for violations of these provisions in order to allow the full benefit of this guidance to be achieved, while maintaining the safety of the battered spouse applicant.

**2. Employment authorization should not be limited to the remainder of the applicant's authorized stay, but should instead extend work authorization beyond the duration of the abuser's status in order to provide the battered spouse with meaningful options.**

Under AFM Chapter 30.13(f), employment authorization is limited to the period of time equal to the remainder of the applicant's current authorized stay. First, this limitation is

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<sup>5</sup> Orloff, Leslye, *VAWA Confidentiality* (American University Washington College of Law and Legal Momentum) citing 151 Cong. Rec. E2607-07 (2005).

<sup>6</sup> IIRAIRA §384(a)(2); 8 U.S.C. §1367(a)(2).

<sup>7</sup> Orloff, *VAWA Confidentiality* at 1-2 citing IIRAIRA §384(a)(1) and (2); 8 U.S.C. §1367(a)(1) and (c), 8 U.S.C. §1229(e), and INA §239(e).

<sup>8</sup> Violence Against Women Act (VAWA) Confidentiality Provisions at the Department of Homeland Security, Department of Homeland Security available at <http://www.dhs.gov/violence-against-women-act-va-wa-confidentiality-provisions-dhs>.

not mandated by the Immigration and Naturalization Act (INA) § 106. INA §106 does not limit the length of employment authorization for battered spouses of the same nonimmigrant categories, require that the marriage exist at the time of or adjudication of the application, or require that the applicant “maintain” his or her status. INA §106 simply requires that the applicant was “admitted” under one of the designated categories (i.e. A, E(iii), G, or H non-immigrant status). Second, this restriction is contrary to the purpose of the battered spouse employment authorization and goes against the intention of the Violence Against Women Act (VAWA) by making it increasingly difficult for battered spouses to leave their abusers.

In part, the benefit of this guidance to battered spouse applicants is to provide them with the ability to legally work and gain access to resources and self-sufficiency. However, with this limitation, the status of the battered spouse remains tied to that of his or her abuser, thereby giving the abuser control over the battered spouse’s ability to work. By this standard, the battered spouse does not practically have the option of leaving his or her abuser because a divorce, for example, would result in a termination of status and work authorization. Similarly, if the abusive spouse fails to renew his or her H-1B because he or she pursues an alternate route to status (e.g. an employment-based green card application), the H-4 battered spouse is left without status or employment authorization, and thereby, more susceptible to abuse. As a result, the battered spouse is indefinitely forced to remain with the abuser and rely on the abuser’s renewal of or adjustment of status in order to maintain his or her own status and work authorization. Additionally, many eligible battered spouses may not be able to submit applications if their status is soon to expire, thus, not allowing for meaningful impact on their lives.

Therefore, it is important that the AFM Chapter 30.13(f) be amended in order to allow the guidance to have the full effect of providing options to battered spouses that do not force them to remain in the marriage. Section (f) should, at a minimum, create an exception to the requirement of maintenance of status for those who are out of status due to no fault of their own (e.g. divorce from the abuser, abuser’s failure to extend the spouse’s status, abuser’s loss of status due to domestic violence, abuser’s death, etc). Additionally, the guidance should provide a minimum one-year period of employment authorization in order to provide the battered spouse applicant with meaningful relief. Finally, if the abuser applies to adjust status, Chapter 30.13 should allow the battered spouse to extend his or her employment authorization, so that he or she can continue to work and subsequently self-petition under VAWA. To do otherwise would punish those who have already been adjudicated as victims of domestic violence, while allowing their abusers to adjust status.

With these amendments, AFM Chapter 30.13 will provide battered spouses with meaningful options for self-sufficiency through employment authorization.

**3. Evidence of abuse should include additional specific examples such as the affidavits, school records, and records from children’s services.**

Under AFM Chapter 30.13(c)(1), the guidance details examples of evidence of abuse “such as police reports, court records, medical records, or reports from social service agencies.” The language also states that “[i]f there is a protective order in place, a copy should be submitted.” While we understand that this list is not exhaustive and are grateful that the guidance includes the low standard of “any credible evidence,” we believe that it is important to include other commonplace examples of evidence of abuse so that applicants and adjudicators are aware of the different forms of evidence likely to exist, particularly secondary evidence.

Many victims of domestic violence do not seek out assistance from the police, the courts, or medical personnel due to fear of the repercussions and the inability of these individuals to protect them or help them escape the abuse. For these and many other reasons, the most substantive and detailed accounts of abuse come from the victim as well as friends, family members, or neighbors who are aware of the abuse. Therefore, it is crucial that Chapter 30.13 also explicitly inform individuals and adjudicators that affidavits from the applicant and other individuals regarding the abuse are acceptable forms of documentation. Additionally, school records and records from children’s services are another form of documentation that frequently do not involve the initiative of the battered spouse, and therefore, are likely to provide evidence, despite the applicant’s fears of reporting. Without these additions, many battered spouses who have not reached out for assistance may believe that they do not qualify for employment authorization and adjudicators may not understand the barriers to obtaining the evidence that is mentioned in the guidance.

For these reasons, we request that evidence of abuse specifically include affidavits, school records, and records from children’s services as well as other secondary evidence consistent with the “any credible evidence” standard.

**4. An explicit statement that there is no time restriction on evidence of abuse or its proximity to the time of the employment authorization application should be included.**

Similarly, AFM Chapter 30.13(c) must explicitly inform battered spouse applicants and adjudicators that there is no time restriction on the evidence of abuse, particularly as the current language states that a copy should be submitted if “there is a protective order in place.” Though this paragraph also indicates that court records are evidence of abuse, the language implies that protective orders should only be submitted if they are current. Furthermore, it creates confusion regarding whether such order must be temporary or final. Additionally, though INA § 106 states that the abuse occurred during the marriage, battered spouse applicants should still be able to present incidents of abuse prior to the



marriage. These incidents alone need not be the basis for the employment authorization under INA § 106. However, evidence of abuse throughout the relationship is essential to the adjudicator's understanding of the nature of the relationship and abuse during the marriage as well.

Domestic violence is a pattern of abuse, one that may take place over a short period of time or for many years at length. The entire history of the relationship and incidents of abuse are necessary to form a thorough understanding of the pattern of abuse and the victim's story, actions, and fears. Whether and when a victim engages with law enforcement, the court system, or any other services is a personal choice based on the circumstances of that individual, including the nature and history of the abuse, the behavior of the abusive partner, and a variety of other factors. It is quite possible that a battered spouse applicant may have documentation from years ago, but never again sought assistance for numerous reasons. This fact on its own does not mean that the spouse was not abused or that the spouse's safety is not at risk. Though these possibilities may seem to be basic concepts, domestic violence victims are often criticized by agencies and society when they have not recently sought assistance. It is crucial that battered spouse applicants and adjudicators understand that evidence of abuse, regardless of the time frame, must be considered in employment authorization determinations.

Therefore, we request that AFM Chapter 30.13(c) clearly state that there is no requirement the evidence of abuse be in close proximity to the filing of the application – that such evidence could be from any point in time during the relationship in order to fully understand the abuse during the marriage; and, that the court documents need not be final, current, or active orders.

**5. Adjudicators should be provided with competency training relating to the experiences of South Asian battered spouse applicants in order to better understand reasons that they may have difficulty reaching out for assistance.**

As previously mentioned, there are various reasons that battered spouse applicants may not have reached out for assistance from anyone, particularly the police, the courts, or medical personnel during their relationship. For many South Asians, these barriers are exacerbated by fears of identifying as a victim of domestic violence within the community, alerting others in and outside the community of the abusive partner's behavior, and the dangers and difficulties of engaging with law enforcement and the courts, particularly following experiences of post-9/11 backlash. Additionally, as South Asian battered spouse applicants are reliant on their abusers for their immigration status, they are likely to have well-founded fears regarding immigration consequences for themselves and their families.



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Numerous potential South Asian applicants face an overlapping complexity of fears related to their status, cultural experiences, language proficiency, and their histories of abuse to name a few. It is crucial that adjudicators are provided with this large-scale competency training in order to understand the experiences and complexities of the issues faced by South Asian applicants and remain sensitive to these issues.

In light of the concerns and comments detailed above, we respectfully request that the draft memorandum be modified to include the above-referenced additions so that battered spouse applicants may receive the full benefit of this important and substantial change in their employment eligibility.

Thank you for the opportunity to submit these comments and your consideration of our requests. We are hopeful that this guidance will help improve the lives of many South Asian battered spouses. Please do not hesitate to contact us at (301) 270-1855 with any questions or concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read "Manar Waheed".

Manar Waheed, Esq.  
Policy Director  
South Asian Americans Leading Together (SAALT)