

production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). A producer must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other delivery or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. If the information submitted by producers on the application concerning a unit's production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or the production is unable to be verified based on submitted documentation, the Committee may request additional documentation such as tray count, payroll records, prior years' production, and insurance records to substantiate the tonnage of raisins produced on all production units that such applicant controls or owns. Producers' would not be precluded from submitting other information substantiating production if those producers' desired. A new production unit will not be eligible for the raisin diversion program until at least 1 year's production has been grown and is documented. An existing production unit, transferred to a new or expanding producer, is eligible for the raisin diversion program as soon as the previous year's production can be properly documented.

\* \* \* \* \*

(s) *Additional opportunity for vine removal.* (1) The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a production unit may file an application to participate in a raisin diversion program. The announced date shall be not later than May 1. The diversion certificates will be issued only for the production units from which vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20. The vines shall be removed from the production units for which such applications are approved not later than June 1.

\* \* \* \* \*

Dated: November 7, 1997.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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BILLING CODE 3410-02-P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 204

[INS No. 1845-97]

RIN 1115-AE77

#### **Prima Facie Review of Form I-360 When Filed by Self-Petitioning Battered Spouse/Child**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the Immigration and Naturalization Service (Service) regulations to enable the Service to review Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, filed by a battered spouse or child, to determine whether a prima facie case has been established. Recent legislation broadened the definition of aliens who qualify for public assistance to include battered aliens, and specifically those aliens whose self-petitions have been approved and those who file a self-petition which establishes a prima facie case for immigrant classification under the Violence Against Women Act.

**DATES:** *Effective Date:* This interim rule is effective November 13, 1997.

*Comment Date:* Written comments must be submitted on or before January 12, 1998.

**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 1845-97 on your correspondence. Comments are available for public inspection at this location by calling (202) 514-3291 to arrange an appointment.

#### **FOR FURTHER INFORMATION CONTACT:**

Karen FitzGerald, Staff Officer, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, Room 3214, Washington, DC 20536, telephone (202) 514-5014.

## SUPPLEMENTARY INFORMATION:

### Background

The Immigration and Nationality Act (the Act) allows a citizen or lawful permanent resident (LPR) of the United States to seek immigrant status for certain alien relatives from the Service. In order to receive this benefit, a visa petition must be filed on behalf of the alien relative and approved by the Service. The alien must then qualify for immigrant visa issuance abroad or adjustment of status in the United States.

Historically, the initiation of the visa petition process was solely at the discretion of the U.S. citizen or LPR relative. For that reason, the citizen or LPR effectively controlled the ability of an alien spouse or child to regularize his or her immigration status. Congress, in the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Bill), Public Law 103-322, dated September 13, 1994, recognized the potential for misuse of this discretion within households where domestic violence occurs. Title IV of the Crime Bill, the Violence Against Women Act (VAWA), contains provisions which enable these battered spouses and children to self-petition for immigrant classification, thus limiting the ability of an abusive citizen or LPR to use the immigration laws to perpetuate further violence against a spouse or child residing in the United States.

### Interim Rule

On March 26, 1996, the Service published an interim rule at 61 FR 13061, establishing the eligibility requirements for battered spouses and children using the self-petitioning process. The Service received numerous comments which are under consideration as the final rule is prepared for publication. This rule does not in any way alter the eligibility or evidentiary requirements set forth in that interim rule.

### Impact of New Legislation

Since the Service published its interim rule, Congress has enacted new legislation that affects the ability of most aliens to receive public assistance. In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress mandated that only "qualified aliens," as defined by statute, were eligible for public assistance. Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), amended the definition of "qualified alien" to include battered aliens, including certain aliens who file or have

approved self-petitions. This "qualified alien" status is afforded not only to aliens with approved self-petitions, but also to those who file a self-petition which establishes a prima facie case for immigrant classification.

#### **Purpose of Establishing a Prima Facie Case**

At the present time, the Service adjudicates the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, and issues a notice of approval to those self-petitioning spouses and children who demonstrate eligibility. Upon approval of the self-petition, the applicant is a "qualified alien" for purposes of the PRWORA. Often, however, the initial submission does not comply with all of evidentiary burdens required for the Service to adjudicate the self-petition. In such cases, pursuant to Service regulations, self-petitioners are generally sent a request for evidence which sets forth the deficiencies of the application and allows the applicant 60 days in which to submit supplemental documentation. The applicant may be granted an additional 60 days at the discretion of the Service pursuant to current regulations at 8 CFR 204.1(h).

However, because battered aliens can be "qualified aliens" without approval of the petition, the Service must also evaluate the petition and the evidence submitted in support of the petition to determine if the alien has established a prima facie case. Although the statute affords benefits to those who establish prima facie eligibility, neither the statute nor the legislative history adequately details the requirements for establishing this eligibility. Conventional dictionary definitions are of little assistance in this regard. Without standards, determinations could be made inconsistently and with varying constancy to Congressional intent, which would be detrimental to the purpose of the statute and to the individual petitioner trying to meet it. This interim rule explains the standards to be utilized by the Service in determining whether the petitioner has established a prima facie case.

#### **Requirements for Demonstrating a Prima Facie Case**

The prima facie determination will be made only after a self-petition has been filed with the Service, and the decision to issue that Notice of Prima Facie Case (Notice) rests solely with the Service. In evaluating whether a self-petitioner has established a prima facie case, the Service must have evidence of each of the required elements of the self-petition as detailed in Service

regulations at § 204.2 (c)(1) and (e)(1). Accordingly, self-petitioners should submit Form I-360 and credible relevant evidence in support of the petition addressing each of the statutory elements as detailed in the instructions accompanying Form I-360: (1) existence of the qualifying relationship; (2) the citizenship or immigration status of the abuser; (3) the self-petitioner's eligibility for immigrant classification; (4) residence in the United States; (5) evidence that, during the qualifying relationship, the petitioner and abuser resided together in the United for some unspecified period of time; (6) battery or extreme cruelty; (7) good moral character; (8) extreme hardship; and (9) in the case of a self-petitioning spouse, good faith marriage. The elements and evidentiary requirements are set forth in 8 CFR § 204.2 (c)(1) and (e)(1).

If the Service determines that a petitioner has demonstrated prima facie eligibility, a Notice of Prima Facie Case will be issued. The Notice is neither a benefit nor immigration status in its own right, and an applicant cannot apply solely for a Notice of Prima Facie Case. The decision to issue such a notice rests solely with the Service. Applicants are encouraged to submit full documentation at the earliest possible time. However, bona fide candidates for self-petitioning should not postpone filing the petition because they are unable to immediately comply with all of the regulatory requirements.

As an example, an applicant who has been unable to obtain police reports from each place of residence during the past 3 years could submit other supporting documentation which addresses the good moral character element of the adjudication. For the purpose of making a prima facie determination, an affidavit from the applicant stating he or she has never been arrested and is a person of good moral character may be considered acceptable for purposes of establishing a prima facie case. However, on its own, this affidavit is not sufficient to meet the evidentiary burden of § 204.2 (c)(2)(v) and (e)(2)(v). Before final adjudication, the applicant must still submit police reports or, if they are unavailable, some other type of documentation as required by those provisions.

The Service's decision to issue or not to issue a Notice will not be a factor in the adjudication of the underlying petition, nor will it constitute a binding determination of the credibility of the evidence submitted. Prima facie evidence will not always fully or completely satisfy the evidentiary burdens, and may be contradicted by evidence, documentation, or affidavits

(or any other credible evidence) which come to the attention of the Service after a favorable prima facie determination has been made. Self-petitioners should be aware that such situations may result in the denial of the I-360 petition, even if a favorable prima facie determination was initially made. Conversely, the Service's decision not to issue the Notice of Prima Facie Case is not fatal to the underlying petition.

The prima facie evaluation will consist of an initial review of the Form I-360 and the supporting documentation. Applicants who set forth a prima facie case will receive a Notice of Prima Facie Case to document their "qualified alien" status for public benefits. The Notice is valid until the Service has adjudicated the petition. At present, the Service intends to issue the Notice with a validity period of 150 days, which exceeds the time required for adjudication in the majority of these cases. In those few cases when the Service is unable to complete the adjudication within the 150-day period, the applicant will be able to request an extension pursuant to the instructions on the Notice. Because the Notice is intended solely for the purpose of enabling petitioners to apply for public benefits within the United States, the Service will only issue the Notice to petitioners residing in the United States.

#### **Filing and Initial Processing**

Because the prima facie determination is not a separate benefit granted by the Service, the procedures that an applicant must follow are those set forth in the interim rule. The only procedural change concerns the filing of the Form I-360. As a result of the Direct Mail Notice published at 62 FR 16607 on April 7, 1997, all I-360 petitions filed by a self-petitioning spouse, child, or parent on behalf of a battered child, must be mailed directly to the Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479. Self-petitioners will be provided with documentation indicating the Service has received the self-petition (Notice of Receipt). After reviewing the petition, the Service will mail applicants notification of the status of the petition. Regardless of whether a Notice of Prima Facie Case is issued, applicants who receive notice of an adverse preliminary finding will have the opportunity to respond with additional evidence or arguments. The self-petitioner will be advised by the Service as to the additional evidence or documentation needed to support the petition, and will be provided the opportunity to submit this additional evidence until the Service makes a final decision.

**Good Cause Exception**

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d). It is in the public interest to provide prima facie determinations, which will enable qualifying spouses and children to apply for public assistance benefits. These resources and services may be critical to some applicants as they seek safety and independence from the abuser.

**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 this rule will not have a significant economic impact on a substantial number of small entities because of the following factors: This rule addresses the grant of immigration benefits to certain individuals based on a family relationship to an abusive citizen or lawful permanent resident of the United States. This rule affects individuals, not small entities, and the economic impact is not significant.

**Executive Order 12866**

This rule is 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. Accordingly, this regulation has been submitted to and approved by the Office of Management and Budget.

**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.

**Executive Order 12988 Civil Justice Reform**

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the

private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Paperwork Reduction Act**

This interim rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule have been previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of control numbers.

**List of Subjects in 8 CFR Part 204**

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

**PART 204—IMMIGRANT PETITIONS**

1. The authority citation for part 204 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 1641; 8 CFR part 2.

2. Section 204.2 is amended by adding new paragraphs (c)(6) and (e)(6), to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(6) *Prima facie determination*—(i) Upon receipt of a self-petition under paragraph (c)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a "prima facie case" for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104–208.

(ii) For purposes of paragraph (c)(6)(i) of this section, a prima facie case is established only if the petitioner

submits a completed Form I–360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (c)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.

(iii) If the Service determines that a petitioner has made a "prima facie case," the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.

(iv) For purposes of adjudicating the petition submitted under paragraph (c)(1) of this section, a prima facie determination—

(A) Shall not be considered evidence in support of the petition;

(B) Shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and,

(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (c)(2) of this section.

\* \* \* \* \*

(e) \* \* \*

(6) *prima facie determination*—(i) Upon receipt of a self-petition under paragraph (e)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a "prima facie case" for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104–208.

(ii) For purposes of paragraph (e)(6)(i) of this section, a prima facie case is established only if the petitioner submits a completed Form I–360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (e)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.

(iii) If the Service determines that a petitioner has made a "prima facie case" the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.

(iv) For purposes of adjudicating the petition submitted under paragraph (e)(1) of this section, a prima facie determination—

(A) Shall not be considered evidence in support of the petition;

(B) Shall not be construed to make a determination of the credibility or

probative value of any evidence submitted along with that petition; and,  
(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (e)(2) of this section.

\* \* \* \* \*

Dated: July 21, 1997.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 97-29770 Filed 11-12-97; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-CE-89-AD; Amendment 39-10196; AD 97-23-08]

RIN 2120-AA64

#### **Airworthiness Directives; Avions Pierre Robin Model R3000 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all Avions Pierre Robin Model R3000 airplanes that are equipped with yaw damper Modification No. 013. This AD requires inspecting the bridle cable ends for correct installation in the grooved screw, inspecting for correct cable winding on the capstan and correct cable tension, and correcting any discrepancies found. This AD also requires installing lockwire to the tension adjustment screw. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to prevent the rudder control from becoming jammed because of the yaw damper control cables slipping out of the groove on the tension adjustment screw, which could result in a reduction in the directional controllability of the airplane.

**DATES:** Effective December 5, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 8, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation

Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97-CE-89-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 03 80 44 20 50; facsimile: 03 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-89-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karl M. Schletzbaum, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426-2169.

#### **SUPPLEMENTARY INFORMATION:**

##### **Events Leading to Issuance of This AD**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Avion Pierre Robin Model R3000 airplanes that are equipped with yaw damper Modification No. 013. The DGAC reports an incident where the yaw damper jammed due to the cable slipping out of the tension adjustment screw during operation. This condition, if not corrected in a timely manner, could result in the rudder control becoming jammed with possible reduction in the directional controllability of the airplane.

##### **Relevant Service Information**

Avions Pierre Robin has issued Service Bulletin No. 152, dated September 30, 1996, which specifies the following:

- inspecting the bridle cable ends for correct installation in the grooved screw;
- inspecting for correct cable winding on the capstan and correct cable tension;
- correcting any discrepancies found; and
- installing lockwire to the tension adjustment screw.

The DGAC classified this service bulletin as mandatory and issued French AD 97-079(A), dated March 12, 1997, in order to assure the continued airworthiness of these airplanes in France.

#### **The FAA's Determination**

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### **Explanation of the Provisions of This AD**

Since an unsafe condition has been identified that is likely to exist or develop on other Pierre Robin Model R3000 airplanes of the same type design registered in the United States that are equipped with yaw damper Modification No. 013, the FAA is issuing an AD. This AD requires inspecting the bridle cable ends for correct installation in the grooved screw, inspecting for correct cable winding on the capstan and correct cable tension, correcting any discrepancies found, and installing lockwire to the tension adjustment screw. Accomplishment of the actions of this AD would be in accordance with the previously referenced service bulletin.

#### **Comments Invited**

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of