

8 U.S.C. § 1367 - Information From Batterer

A. Statute - 8 U.S.C. § 1367(a)(1) (IIRAIRA § 384)

... in no case may the Attorney General, or any other official or employee of the Department of Justice ... make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by--

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,
(B) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,

(C) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty),

(D) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty...

[sections E and F relate to U and T visa applicants]

unless the alien has been convicted of a crime or crimes listed in INA § 241(a)(2).

B. Cases

Three unpublished cases have referred to this statute but none have found it applicable:

Board of Immigration Appeals

Matter of Baez de Hughes, 2007 WL 1122865 n.2 (February 16, 2007) - Respondent argued that the IJ erred by using facts from her I-360 petition and information from her abusive spouse to make an adverse credibility determination. 8 U.S.C. § 1367(a)(1) was not violated because none of the evidence considered was furnished by Respondent's second husband, who Respondent claims was the abuser, nor was any of the evidence furnished by an individual who consented to or acquiesced to the abuse.

Ninth Circuit

Mejorada v. Ashcroft, 103 Fed.Appx. 263, 264 (9th Cir. 2004) - Petitioner claimed that the IJ erred in making an adverse finding of deportability based solely upon information furnished by her abusive husband, in violation of 8 U.S.C. § 1367(a)(1). However, 8 U.S.C. § 1367(a)(1) was not violated because the INS relied on a valid independent source of the information in question (a certified copy of Petitioner's foreign birth certificate).

Eleventh Circuit

Yari v. U.S. Atty. Gen., 192 Fed.Appx. 842, 844 (11th Cir. 2006) - 8 U.S.C. § 1367(a)(1) was not violated because the record demonstrated that the IJ and the BIA did not rely on information provided by Petitioner's spouse in determining his removability. Petitioner was removed on the basis of his violation of the terms of his student visa. His wife's withdrawal of her petition for adjustment of status on his behalf merely terminated a procedural stay that had prevented him from being removed on a separate ground.