APPLYING FOR ADJUSTMENT OF STATUS THROUGH VAWA

By ILRC Attorneys

The Violence Against Women Act (VAWA) allows certain noncitizens abused by a family member to seek immigration relief based on the abusive relative's immigration status, without having to involve that abusive family member in the immigration process. VAWA was meant to prevent individuals from staying in abusive relationships solely because the abuser holds the key to their ability to obtain lawful status and may be exerting that power as part of their abuse and control. Instead of involving the abuser, someone who qualifies for VAWA can "self-petition" by filing Form I-360.[1] Despite the name, VAWA can benefit people regardless of their gender and includes abused children, parents, and spouses.

Obtaining lawful permanent residence (a "green card") through VAWA is a two-step process. The first step involves filing the VAWA self-petition on Form I-360. The second step involves filing the application for permanent residence, which for adjustment of status (the process of applying for permanent residence from within the United States) is on Form I-485. Many VAWA self-petitioners are eligible to adjust status within the United States, although a small subset may instead need to apply for permanent residency at a U.S. consulate or embassy abroad ("consular processing").[2] To qualify as a VAWA self-petitioner for step one, the individual must be the abused spouse or child of a U.S. citizen or permanent resident, or the abused parent of a U.S. citizen son or daughter; the abuser must be a U.S. citizen or permanent resident;[3] and the

[1] Form I-360 is also used to self-petition as a special immigrant juvenile, widow(er) of a U.S. citizen, and several other classifications. Depending on the basis for the I-360 application, the applicant must fill out different sections of the form.

[2] VAWA self-petitioners who may need to consular process include those who are currently residing outside the United States, or who came to the United States with a K-1 fiancé(e) visa but married someone other than the U.S. citizen who filed the K-1 petition on their behalf; such individuals are prohibited from adjusting status based on any other petition apart from the one filed by the U.S. citizen who petitioned for them to come as a fiancé(e).

[3] If the abuser is no longer a U.S. citizen or permanent resident, the VAWA applicant must submit the I-360 within two years of the abuser losing their status.

applicant must have been the victim of battery or extreme cruelty; resided with the abuser at some point in time; reside in the United States or meet certain exceptions; be able to demonstrate good moral character; and if a self-petitioning spouse, be able to show that they entered into the marriage in good faith. To apply to adjust status through VAWA at step two, VAWA self-petitioners have slightly modified requirements from other family-based adjustment applicants, as we will cover in this advisory.

This practice advisory[4] will go through the steps and process for filing an adjustment of status application based on VAWA. For more information on VAWA in general, including filing the I-360 VAWA self-petition, see *The VAWA Manual: Immigration Relief for Abused Immigrants* (ILRC 2020).[5] See also a practice advisory comparing VAWA with other humanitarian forms of relief like U and T nonimmigrant status, since sometimes a person may not quite qualify for one of these forms of relief but instead be a better fit for another of these relief options.[6]

I. VAWA Adjustment Eligibility

VAWA self-petitioners adjust under INA § 245(a), like other family-based adjustment applicants; however, special rules apply to VAWA cases. In general, these special provisions are less rigorous than those applied to other adjustment applicants.

To apply to adjust through VAWA, the applicant must meet the following requirements:

- Have an approved VAWA I-360 self-petition, unless the I-360 is filed concurrently with the adjustment application (see next section);
- A visa is currently available, either because the applicant is an immediate relative,[7] or the priority date is current[8] (see next section for more details); and
- Be admissible under INA § 212(a) (or eligible for and granted a waiver) (see Section IV, below).

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[4] For questions or comments about this practice advisory, please contact Ariel Brown at abrown@ilrc.org.

[5] Available at https://www.ilrc.org/publications.

[6] ILRC, *Humanitarian Forms of Relief Part I: U, T, VAWA* (June 28, 2019), https://www.ilrc.org/humanitarian-forms-relief-part-i-u-t-vawa.

[7] An immediate relative is the spouse, child, or parent of a U.S. citizen. *See* INA § 201(b). "Child" means unmarried and under age 21. INA § 101(b)(1). For an immediate relative parent of a U.S. citizen, the U.S. citizen son or daughter must be at least 21 years old. INA § 201(b).

[8] Or, in certain months USCIS will allow early filing of adjustment applications where the priority date is not yet current but *close* to being current, according to the Visa Bulletin's Dates for Filing (Chart B). For more information, see https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin.

Several requirements for general family-based adjustment of status do not apply to those who are adjusting based on VAWA. The following adjustment requirements **do not apply** to VAWA self-petitioners:

- Threshold requirement that an adjustment applicant under INA § 245(a) have been inspected and admitted or paroled (in other words, a VAWA applicant who entered without inspection (EWI) may still adjust, without needing INA § 245(i));
- Bars to adjustment under INA § 245(c), which prevent others from adjusting for example if they have ever worked without authorization or failed to continuously maintain lawful status; and
- The affidavit of support requirement for other family-based adjustment applicants (instead, VAWA adjustment applicants submit Form I-864W to show they are exempt from the affidavit of support requirement).

> **Example:** Angela came to the United States ten years ago, without inspection. Now, she has an approved I-360 based on abuse by her U.S. citizen spouse. Ordinarily, Angela would be ineligible to adjust because she was not inspected and admitted or paroled (unless she qualified under INA § 245(i)) and would instead have to consular process if she had an approved petition and wanted to apply for permanent residency. But as a VAWA self-petitioner, her initial entry without inspection does not disqualify her from adjusting.

II. When to Apply for Adjustment of Status as a VAWA Self-Petitioner

A. If the Abuser Is a U.S. Citizen

VAWA self-petitioners who are immediate relatives, meaning their abuser is a U.S. citizen spouse, parent, son, or daughter,[9] have the option of either filing the I-360 first and then later filing their adjustment application once the I-360 is approved, or filing the I-360 at the same time as the adjustment (sometimes called a “concurrent” or “one-step” filing). In most instances, filing as a one-step may be the best option because it allows the applicant to get employment authorization sooner, based on the pending adjustment application (whereas with the I-360, they are not eligible for a work permit until the I-360 is approved). However, if the applicant is uncertain if their I-360 will be approved based on the strength of the facts, evidence, or other

[9] *See* INA § 101(b)(1).

issue, they may want to file the I-360 first and only file the adjustment application packet if the I-360 is approved.

B. If the Abuser Is a Lawful Permanent Resident

If the abuser is a permanent resident, the VAWA self-petitioner falls under the preference category system where there may be a wait before their priority date is current and a visa is available. They cannot file their adjustment application until their priority date is current. Spouses and children of permanent residents fall under the family-based second preference 2A ("F2A") category.

To figure out whether the F2A category is current in a given month, you must refer to the State Department's Visa Bulletin chart for "Final Action Dates" (Chart A).[10] The priority date, which is the date the Vermont Service Center (VSC) received the I-360, must be *earlier* than the date listed in order for it to be "current." Recently, family-based 2A has been current for all countries, meaning there is no wait for people in the preference 2A category to file an adjustment application. However, in past years there has been a wait of a year or longer for this category to be current. Therefore, it is important to always check the current month's Visa Bulletin if the abuser is a lawful permanent resident to check whether you are able to file the adjustment application now or must wait. In addition, even if family-based 2A were not current according to Chart A, the Visa Bulletin has a second chart, "Dates for Filing" (Chart B), that shows priority dates that are viewed as *close* to current; in some months, USCIS allows early filing of adjustment applications using Chart B.[11]

> **Example:** Juana is from Guatemala and the abused spouse of a lawful permanent resident. She filed her VAWA I-360 on November 1, 2015. Once her I-360 was approved in April 2017, she wanted to apply to adjust. However, the April 2017 Visa Bulletin showed a final action date for family-based 2A for Guatemala (which falls under the "all other chargeability areas" besides China, India, Mexico, and the Philippines that each have their own separate lists and wait-times) of June 8, 2015. Because Juana's priority date (November 1, 2015) was not earlier than June 8, 2015, in April 2017 she could not yet file for adjustment since at that time only petitions filed before June 8, 2015 were "current."

[10] The Visa Bulletin is available at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html. Usually, the upcoming month's visa bulletin is posted by the middle of the preceding month, e.g. around mid-May 2021 the June 2021 visa bulletin was posted. A given month's visa bulletin does not go into effect until the first day of that month, i.e. the June 2021 visa bulletin goes into effect on June 1, 2021.

[11] To figure out whether USCIS is allowing use of Chart B of the Visa Bulletin in a given month, go to https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin.

Example: Julian's I-360 was just approved on May 19, 2021. His priority date was January 12, 2019. Julian is from France. His abusive spouse was a lawful permanent resident. Can he apply to adjust now?

Yes, because according to the June 2021 Visa Bulletin Chart A, F2A is current (indicated by a "C") for all countries of chargeability and for all priority dates (i.e. there is no cutoff date in order to be considered "current"). Julian can submit his adjustment application now, without having to wait.

III. Contents of VAWA Adjustment Application Packet

To apply for adjustment of status based on VAWA, compile and submit the following:

- Filing and biometrics fees[12] or Form I-912, Request for Fee Waiver;[13]
- Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative;
- Cover letter with index/table of contents outlining eligibility and evidence;
- Form I-485, Application to Register Permanent Residence or Adjust Status;[14]
- Passport-style photos;[15]
- Copy of I-360 Approval Notice (or Form I-360 with supporting documents if filing concurrently);
- Copy of birth certificate, with translation;

[12] For current adjustment filing fees, go to https://www.uscis.gov/i-485.

[13] Although standard family-based adjustment applications do not allow for fee waiver requests, VAWA self-petitioners may request a fee waiver. For all immigration forms, always check the USCIS forms website to confirm you are using a currently acceptable version of the form. For the I-912, this is https://www.uscis.gov/i-912. Note in the past VSC used to accept informal fee waiver requests that consisted of a short declaration and income and expense statement, however more recently VSC will only accept a fee waiver request on Form I-912.

[14] Information on accepted versions of the form, and the form itself, is available at https://www.uscis.gov/i-485.

[15] While traditionally two photos are required per application—2 for the I-485, 2 for the I-765, and 2 for the I-131—practitioners have reported success only submitting 2 photos in total for the entire adjustment application.

- Sealed I-693 medical exam results (or submit at interview, which is usually advisable);[16]
- Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support;[17]
- Form I-601, Application for Waiver of Grounds of Inadmissibility,[18] or Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal,[19] if applicable (see next section);
- Form I-765, Application for Employment Authorization[20] – category (c)(9) for pending adjustment; and
- Form I-131, Application for Travel Document.[21]

Unless the VAWA self-petitioner is in removal proceedings,[22] the VAWA adjustment packet is filed with the USCIS Vermont Service Center. The mailing address for the Vermont Service Center is:[23]

USCIS
Vermont Service Center
38 River Road
Essex Junction, VT 05479-0001

[16] While listed as one of the required documents for an adjustment of status application, USCIS allows—and this is usually advisable—submission of the medical exam at time of interview rather than with the initial filing, since the medical exam may expire before the interview (in which case the applicant will have to get another medical exam). The medical exam must have been signed by the civil surgeon no more than 60 days before submission, whether with the initial adjustment filing, at time of adjustment interview, or another date, and will expire after 2 years. *See* USCIS Policy Manual, Vol. 8, Part B, Ch. 4(C)(4), https://www.uscis.gov/policy-manual/volume-8-part-b-chapter-4.

[17] Information on accepted versions of the form, and the form itself, is available at https://www.uscis.gov/i-864w. Note that although the Trump-era public charge rule eliminated Form I-864W, now that that rule has been vacated and withdrawn, USCIS has resumed use of Form I-864W for VAWA self-petitioners and others.

[18] Information on accepted versions of the form, and the form itself, available at https://www.uscis.gov/i-601.

[19] Information on accepted versions of the form, and the form itself, available at https://www.uscis.gov/i-212.

[20] Information on accepted versions of the form, and the form itself, available at https://www.uscis.gov/i-765.

[21] Information on accepted versions of the form, and the form itself, available at https://www.uscis.gov/i-131.

[22] Only USCIS has jurisdiction to decide the underlying VAWA I-360, but once USCIS approves the I-360 the immigration judge can adjudicate a VAWA adjustment for an applicant who is in proceedings.

[23] USCIS updated the VSC address effective June 25, 2021, replacing the former St. Albans, VT address. Through June 24, 2021, USCIS instructs filers to continue to use the old address: USCIS Vermont Service Center, 75 Lower Welden St., St. Albans, VT 05479-0001.

Practice Tip: For a VAWA adjustment application that is not filed concurrently with the I-360, write in large red letters on the cover letter, forms, and envelope: "VAWA Adjustment Application" to make sure it is properly routed to the VAWA Unit of the VSC.

IV. Inadmissibility Grounds and Special VAWA Waivers and Exceptions

As with other adjustment applicants under INA § 245(a), a VAWA adjustment applicant must be admissible under INA § 212(a), or else eligible for and granted a waiver (if available). However, special exceptions and other provisions apply to some of these inadmissibility grounds for VAWA adjustment applicants.

A discussion of general exceptions and waivers of the grounds of inadmissibility, applicable to all individuals subject to the grounds of inadmissibility, is beyond the scope of this practice advisory.[24] However, in this section we will discuss how to approach the inadmissibility analysis in a VAWA adjustment case and highlight the special exceptions or other provisions that specifically exist for VAWA cases. Keep in mind, however, that all general waivers are also available to VAWA adjustment applicants, in addition to the special ones discussed in this section.

When evaluating whether your VAWA client is inadmissible, ask yourself the following questions:

1. Does the inadmissibility ground really apply to my client? VAWA self-petitioners are specifically exempted from some of the inadmissibility grounds under certain circumstances. For example, the public charge ground of inadmissibility does not apply to VAWA self-petitioners.

2. If the ground of inadmissibility appears to apply to my client, do the facts show that my client potentially is not inadmissible? For example, if you think your client made a misrepresentation, was it willful? Material? Did they make a timely retraction? (Note these are general defenses/factual questions related to a ground of inadmissibility, not specific to VAWA.)

3. Even if my client is inadmissible, is there a waiver for which they are eligible, including any of the special VAWA waivers of inadmissibility?

[24] For more information on inadmissibility and waivers in general, see *Inadmissibility & Deportability* (ILRC 2019), updated 2021 edition forthcoming, available at https://www.ilrc.org/publications.

Example: Alicia is married to an abusive U.S. citizen and wants to file a one-step VAWA adjustment application. She tells you that she first came to the United States when she was three years old. Subsequently, when she was seven years old, she and her parents briefly left the United States to attend her grandmother's funeral in Mexico. She returned to the United States without inspection. Is she inadmissible if she applies as a VAWA self-petitioner?

Alicia is inadmissible under the permanent bar at INA § 212(a)(9)(C) because she departed the United States after having accrued more than one year of unlawful presence (four years—counting from when she arrived at age three to when she took the trip abroad at age seven),[25] and then re-entered the United States unlawfully. Unfortunately, she would not qualify for the special VAWA waiver of this ground of inadmissibility because it requires a connection between the abuse and the triggering of the permanent bar, and here triggering the permanent bar was unrelated to the later abuse by her U.S. citizen spouse. There is no other, general waiver available for this ground of inadmissibility until after she has remained outside the United States for a minimum of ten years, thus she is ineligible to adjust through VAWA at this time. She could potentially apply for permanent residency through VAWA (or another petition) after waiting outside the United States for ten years and then seeking a waiver of this ground of inadmissibility.[26]

The following special waivers and other exceptions and exemptions exist for VAWA adjustment applicants:[27]

- **Communicable diseases:** Special waiver at INA § 212(g)(1)(C) for the communicable disease ground of inadmissibility at INA § 212(a)(1)(A)(i), if the VAWA self-petitioner can demonstrate that they merit a favorable exercise of discretion;

[25] Note there is no "minor exception" for the permanent bar—unlawful presence accrues for purposes of the permanent bar even when the person is under age eighteen. By contrast, for the three- and ten-year unlawful presence bars at INA § 212(a)(9)(B), accrual of unlawful presence does not start until age eighteen, based on an exception laid out in the statute specifically for this ground. *See* INA § 212(a)(9)(B)(iii)(I).

[26] This is an example of a situation where you might want to explore related forms of relief, such as the U visa based on the domestic violence by her U.S. citizen spouse, since the U visa allows for a waiver of the permanent bar without having to wait ten years outside the country first. *See* ILRC, *Humanitarian Forms of Relief Part I: U, T, VAWA* (June 28, 2019), https://www.ilrc.org/humanitarian-forms-relief-part-i-u-t-vawa.

[27] VAWA inadmissibility exceptions and waivers apply to VAWA self-petitioners, which include both the principal applicant and any derivative children. *See* INA § 101(a)(51). In addition, derivative children are considered VAWA self-petitioners in their own right upon turning 21. *See* INA § 204(a)(1)(D)(i)(III).

- **Crimes-related:** VAWA-specific waivers available under INA § 212(h)(1)(C) for certain crimes-related grounds of inadmissibility under INA § 212(a)(2), if the VAWA self-petitioner can demonstrate that they merit a favorable exercise of discretion;

- **Public charge:** VAWA self-petitioners are exempt altogether from the public charge ground of inadmissibility at INA § 212(a)(4), according to INA § 212(a)(4)(C)(i)(III), meaning this ground of inadmissibility does not apply to them at all;

- **Present without admission or parole ("EWI"):** While INA § 212(a)(6)(A)(ii) provides a VAWA-specific exception to INA § 212(a)(6)(A), present without admission or parole, if the VAWA self-petitioner can show a connection between the unlawful entry and the abuse, USCIS interprets VAWA adjustment applicants as altogether exempt from this ground, without needing to prove the statutory exception applies;[28]

- **Fraud and misrepresentation:** VAWA-specific waiver available under INA § 212(i) for the fraud or misrepresentation ground of inadmissibility at INA § 212(a)(6)(C)(i), if the VAWA self-petitioner can show extreme hardship to themselves or to their U.S. citizen, permanent resident, or "qualified alien"[29] parent or child;

- **False claim to U.S. citizenship:** While there is no specific VAWA waiver for a false claim to U.S. citizenship under INA § 212(a)(6)(C)(ii), some advocates have been successful arguing that a VAWA self-petitioner is not inadmissible under this ground if they can show that the false claim to U.S. citizenship was part of the abuse and control;[30]

- **Prior order:** Special consideration for waiver under INA § 212(a)(9)(A)(iii) for the ground of inadmissibility at INA § 212(a)(9)(A) for people with a final removal or deportation order who

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[28] *See* USCIS, *Policy Memorandum: Adjustment of Status for VAWA Self Petitioner Who Is Present Without Inspection* (Apr. 11, 2008), *available at* https://www.nationalimmigrationproject.org/PDFs/community/victims_crimes/2008_uscis-vawa-memo.pdf ("Effective immediately, USCIS interprets the introductory text in section 245(a) of the Act as effectively waiving inadmissibility under section 212(a)(6)(A)(i) of the Act for any [noncitizen] who is the beneficiary of an approved VAWA self-petition.").

[29] The term "qualified alien" includes lawful permanent residents, asylees, refugees, persons paroled into the United States for at least one year, immigrants granted withholding of deportation or removal, immigrants granted conditional entry under INA § 203(a)(7) as it existed prior to April 1, 1980, and Cuban and Haitian entrants. It also includes abused immigrants or the parents of abused children, if they have an approved VAWA self-petition or application for VAWA cancellation of removal or if they have a pending petition for one of those types of relief that sets form a prima facie case of eligibility. *See* 8 U.S.C. §§ 1641(b), (c).

[30] Note, however, that this argument may be more difficult to make now that the BIA has held that there is no longer a requirement that the false claim be made "knowingly," in *Matter of Zhang*, 27 I&N Dec. 569 (BIA 2019); nonetheless, coercion is a slightly different issue so advocates may continue to try to argue this.

then depart the United States and are within the period of time during which they are prohibited from seeking admission, if sought by a VAWA self-petitioner;[31]

- **Unlawful presence:** Special VAWA exception at INA § 212(a)(9)(B)(iii)(IV) for inadmissibility under INA § 212(a)(9)(B), the 3/10-year unlawful presence bars,[32] if the VAWA self-petitioner can show a substantial connection between the unlawful presence and the abuse they suffered; and

- **Permanent bar:** Special VAWA waiver at INA § 212(a)(9)(C)(iii) for the permanent bar at INA § 212(a)(9)(C), if the VAWA self-petitioner can show a connection between the abuse suffered, the unlawful presence and departure or the applicant's removal, and the subsequent unlawful entry or attempted reentry.

See also chart summarizing the above information, attached as Appendix A to this advisory.

Note: Waiver versus exception or exemption. If there is an exception or exemption that pertains to the ground of inadmissibility, that means that the ground of inadmissibility does not apply, at all, and no waiver is needed whether or not the client would otherwise appear to fall within the ground of inadmissibility; they simply do not have to think about that ground of inadmissibility because they are exempt. By contrast, with a waiver, the ground applies but the individual might be able to ask that the ground be forgiven, or waived, notwithstanding the fact that it applies. Thus, an exception or exemption is better than a waiver because you need only establish the exception or exemption applies, whereas with a waiver you must request the waiver by submitting an application, supporting evidence, filing fee or fee waiver, and hope that the waiver is granted.

Unlike general waivers of inadmissibility, which often require showing extreme hardship and/or a qualifying family member who is a U.S. citizen or permanent resident, most of these special VAWA waivers instead require a connection between the abuse and the event triggering the

[31] *See* VAWA 2005, § 813(b) (encourages Secretary of Homeland Security, Attorney General, and Secretary of State to particularly consider exercising their discretionary authority favorably in adjudicating such waivers, submitted on Form I-212, in cases of VAWA self-petitioners, among others).

[32] Note that most VAWA self-petitioners will not be inadmissible under this ground, however, because they are eligible for adjustment of status even if they entered without inspection and thus can avoid departing the U.S. to consular process, which would trigger the unlawful presence bars at INA § 212(a)(9)(B). A person who has accrued unlawful presence of more than 180 days or a year or longer is not inadmissible under this ground, unless they subsequently depart the United States, thereby triggering the ground of inadmissibility. In addition, a departure with advance parole does not trigger inadmissibility under INA § 212(a)(9)(B). *See Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012).

inadmissibility issue, or simply that the applicant is a VAWA self-petitioner and warrants a favorable exercise of discretion.

Even if there is no special VAWA waiver or exception for the ground of inadmissibility, remember that VAWA adjustment applicants, like all other adjustment applicants, are also eligible to apply for general waivers of inadmissibility that exist for some of these grounds, if they meet the criteria.

V. VAWA Adjustment Interview

After the adjustment application is filed, USCIS will send the applicant a receipt notice confirming that they have the application, and appointment notice to go to an Application Support Center for biometrics collection (fingerprints and photo). USCIS will also schedule an adjustment interview at the local USCIS field office.

At the interview, the USCIS officer will go over the information on the application to confirm that it is accurate. The officer will usually concentrate on the applicant's eligibility to adjust and admissibility. The applicant should bring the originals of any documents submitted with the initial adjustment application and their medical exam (if not already submitted), as well as all government-issued identity documents like their driver's license, work permit, passport, and Social Security card.

In advance of the interview, it can be helpful to explain what the interview will be like and to go over logistics like where the field office is located, where to park, what to wear, how early to plan to arrive, security, etc. It is also a good idea to do a mock interview, where you review all the forms and ask questions as if you were the interviewing officer, so the applicant has a sense of what the interview will be like and has an opportunity to practice responding to questions.

The USCIS interviewing officer at the adjustment interview should focus on the I-485; they should not review the merits of the I-360 self-petition. Nonetheless, although the VSC VAWA Unit, which has expertise in domestic violence, has already approved the VAWA self-petition, the USCIS officer at the adjustment interview may still ask some questions about the marriage and the abuse. At most, if the interviewing officer discovers new information that was not available to the VSC at the time the VAWA self-petition was approved and that makes the officer reasonably believe that the self-petition approval should be revoked, they must go through a series of steps that involves notifying the VSC's VAWA Unit because the VSC VAWA Unit, not the field office, is who will make a decision whether to revoke or reaffirm the self-petition.

Note: Special protections against the disclosure of information apply in VAWA cases. Immigration authorities may not permit information pertaining to a beneficiary of a VAWA self-petition to be used by or disclosed to anyone other than sworn department, bureau, or agency officers or employees and even then only for legitimate department, bureau, or agency purposes.[33] In addition, immigration authorities may not make an adverse determination of admissibility or deportability regarding an immigrant using information furnished solely by certain specified individuals, unless it relates to the conviction of a crime listed in the criminal inadmissibility or deportation grounds.[34] The specified individuals are abusive spouses and parents and members of the spouse's or parent's family who reside in the same household as the immigrant and have abused the immigrant or the immigrant's child, and the perpetrator of the abuse against the VAWA self-petitioner.[35]

VI. Derivatives and Self-Petitioning Children

At the I-360 stage, VAWA self-petitioning spouses and children may include their derivatives on the same form. Unfortunately, VAWA self-petitioning parents of abusive U.S. citizen sons and daughters cannot include their children as derivative beneficiaries. VAWA is the only situation where an immediate relative may also have derivatives. Derivatives may include the unmarried, under age 21 children of the VAWA self-petitioning spouse or child, as well as children who turn 21 after the self-petition is filed.[36] At time of adjustment, each adjustment applicant must submit their own, separate adjustment packet. VAWA derivatives may adjust regardless of whether the principal VAWA self-petitioner ever adjusts.

VAWA self-petitioning children, and derivative children of VAWA self-petitioners, do not lose their eligibility to obtain permanent residence when they turn 21 ("age out") as long as the VAWA I-360 was filed before they turned 21. However, turning 21 may delay—in some cases extensively—when they can apply to adjust, as they may move from an immediate relative category to a preference category, or from one category to another with a longer wait. For derivative children, once they turn 21 their status is automatically converted from a derivative beneficiary to a principal beneficiary in the family-based first, second, or third preference category, as applicable, and they can apply to adjust once a visa is immediately available in the appropriate category.[37]

[33] *See* 8 USC § 1367.

[34] *See id.*

[35] *See id.*

[36] *See* INA § 204(a)(1)(D)(i)(III).

[37] *See* INA §§ 204(a)(1)(D)(i)(I), (III).

As mentioned above, while VAWA protects against aging out of eligibility for the visa, such that the child will not lose out on their ability to immigrate when they turn 21, a child self-petitioner or derivative child who turns 21 may still face considerable delays in obtaining permanent residence due to their reclassified status. Some protection against these delays is available under the Child Status Protection Act (CSPA),[38] which contains special provisions for calculating the "CSPA age" for purposes of avoiding "aging out" for some visa petition beneficiaries. Nothing in the CSPA limits or negates VAWA's own age-out protections, but CSPA protections are more generous than the VAWA age-out protections. In a guidance memorandum, USCIS instructs officers adjudicating a VAWA I-360 to first examine whether the child will benefit under the CSPA. If the CSPA does not allow an individual who is over 21 to remain a "child" for immigration purposes, then the USCIS officer should review the VAWA age-out provisions to determine whether the individual may benefit under those provisions.[39]

Under CSPA as applied to a VAWA case, an abused self-petitioning child of a U.S. citizen will remain an immediate relative, as long as they were under 21 when they filed the self-petition; their age is "frozen" on the date they filed the I-360.[40] Similarly, where an abused spouse of a U.S. citizen files an I-360 self-petition and includes their minor child as a derivative beneficiary, that child's age will be locked in, or "frozen," such that they will remain in the immediate relative category even after they turn 21. In both these situations, the child would still be able to apply to adjust immediately, even if now over 21.

> **Example:** Liz's mother filed an I-360 based on abuse by her U.S. citizen father when Liz was 20 years old, and Liz was included as a derivative on the self-petition. The I-360 was approved nearly two years later, when Liz was over 21. However, Liz will still be able to apply to adjust based on VAWA because her age was frozen at the time that the I-360 was filed.

For children of permanent residents in a VAWA case, CSPA allows for an adjusted age calculation that deducts from the child's age on the date a visa becomes available the amount of time the self-petition was pending.[41] If that CSPA-adjusted age is under 21, then the child must "seek to acquire" within one year to take advantage of their CSPA age.[42] In an adjustment

[38] Pub. L. No. 107-208, 116 Stat. 927 (Aug. 6, 2002).

[39] Yates, USCIS, *Policy Memorandum: Age-Out Protections Afforded Battered Children Pursuant to the Child Status Protection Act and the Victims of Trafficking and Violence Protection Act* (Aug. 17, 2004).

[40] INA § 201(f).

[41] *See* INA § 203(h).

[42] *Id.*

case, seeking to acquire can be satisfied by filing the I-485.[43] Note that if a person files their adjustment application early, based on the Visa Bulletin Dates for Filing chart, it is possible that if their age is over 21 when a visa finally becomes available according to the Final Action Dates chart, they ultimately may be ineligible to adjust and filing the I-485 will have no effect.

> **Example:** Jose filed a self-petition as an abused child of a permanent resident, when he was 19 years old. His VAWA self-petition was just approved earlier this month, and now he wants to apply to adjust. Jose also just turned 21 but given that his I-360 was pending for about two years, it is possible that his CSPA-adjusted age will be under 21 when he deducts the amount of time the I-360 was pending. If it is, he should submit his I-485 application as soon as possible, to satisfy the "seek to acquire" within one year requirement and be able to utilize his under-21 CSPA-adjusted age.

> **Example:** Marisol filed an I-360 based on abuse by her permanent resident spouse on September 1, 2012 and listed her 20-year-old daughter Dahlia on that petition. The I-360 was approved on October 1, 2012. Dahlia turned 21 on May 1, 2013, and the priority date became current on September 1, 2013. Unfortunately, Dahlia will not be able to benefit from CSPA because she was 21 years and 4 months old on the date that a visa became available, and her petition was only pending for 1 month (making her "CSPA age" 21 years and 3 months, still too old to immigrate as a "child"). VAWA age-out protections, however, at least allow her to become a self-petitioner in the appropriate preference category (here, second preference 2B). She will not need to file a Form I-360 of her own and retains the priority date of the I-360 her mother filed on September 1, 2012. However, she will have to wait until F2B is current for her country and for that priority date, before she can file her adjustment application.

[43] Other actions may also satisfy the "seek to acquire" requirement, but they must be more than just "substantial steps." *See, e.g., Matter of O. Vazquez*, 25 I&N Dec. 817, 821-22 (BIA 2021), *Tovar v. U.S. Att'y Gen.*, 646 F.3d 1300 (11th Cir. 2011). In addition, if a person fails to seek to acquire within one year but can show that extraordinary circumstances preventing filing within the one-year period, they may still be able to benefit from CSPA. *See* USCIS Policy Manual, Vol. 7, Part A, Ch. 7(G)(3).

Appendix A: Chart Summarizing Special Inadmissibility Exceptions and Waivers for VAWA Self-Petitioners

Ground of Inadmissibility	Special Exception for VAWA?	Special Waiver for VAWA?
INA § 212(a)(1)(A)(i), Communicable diseases	No	Yes, at INA § 212(g)(1)(C)
INA § 212(a)(2), Crimes-related	No	Yes, at INA § 212(h)(1)(C)
INA § 212(a)(4), Public charge	Yes, does not apply; see INA § 212(a)(4)(C)(i)(III)	N/A – no waiver needed because ground does not apply
INA § 212(a)(6)(A), EWI	Yes, does not apply, according to USCIS (see Section IV in this advisory)	N/A – no waiver needed because ground does not apply
INA § 212(a)(6)(C)(i), Fraud/Misrepresentation	No	Yes, at INA § 212(i)
INA § 212(a)(6)(C)(ii), False claim to U.S. citizenship	No	No, but see arguments in Section IV of this advisory
INA § 212(a)(9)(A), Prior order	No	No, but special consideration for waiver under INA § 212(a)(9)(A)(iii)
INA § 212(a)(9)(B), Unlawful presence	Yes, at INA § 212(a)(9)(B)(iii)(IV)	N/A – no waiver needed if exception to ground applies
INA § 212(a)(9)(C), Permanent bar	No	Yes, at INA § 212(a)(9)(C)(iii)

San Francisco
1458 Howard Street
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792

Washington D.C.
1015 15th Street, NW
Suite 600
Washington, DC 20005
t: 202.777.8999
f: 202.293.2849

Austin
6633 East Hwy 290
Suite 102
Austin, TX 78723
t: 512.879.1616

San Antonio
500 6th Street
Suite 204
San Antonio, TX 78215
t: 210.760.7368

ilrc@ilrc.org www.ilrc.org

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