HUMANITARIAN FORMS OF RELIEF PART I: U, T, VAWA

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Noncitizen victims of violence, serious crimes, and persecution may be eligible for certain forms of immigration protection and status. These options are often referred to as Humanitarian Forms of Relief. They include: T nonimmigrant status, U nonimmigrant status, VAWA self-petition, asylum, and special immigrant juvenile status.

This practice advisory is one of two that will give an overview of these options, their eligibility requirements, and some factors to consider before applying. This advisory is meant to be an introduction to humanitarian forms of relief: U nonimmigrant status, T nonimmigrant status, and VAWA self-petition. This advisory should be used as general guidance, to identify potential eligibility, and to understand the processes and benefits of each form of relief. For a more detailed analysis on issues related to humanitarian forms of relief, please visit the Immigrant Legal Resource Center website at: https://www.ilrc.org/u-visa-t-visa-vawa.

I. U Nonimmigrant Status:

U nonimmigrant status, often referred to as the "U visa," is available to noncitizens who have been victims of serious crimes in the United States that resulted in substantial physical or mental harm. Individuals granted U status can remain lawfully in the United States, obtain employment authorization, and eventually apply for lawful permanent residence. The U visa was created so that noncitizen victims of crimes would not be afraid to report those crimes.

Law:

The law for U nonimmigrant status can be found in the INA at § 101(a)(15)(U) [definition of U nonimmigrant] and INA § 214(p) [miscellaneous U nonimmigrant requirements], and in the regulations at 8 CFR §§ 212.17, 214.14.

A. Eligibility for U Nonimmigrant Status:

1. Been the victim of a qualifying criminal activity;
2. Have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity;
3. Possess information concerning that criminal activity;
4. Have been helpful, are being helpful, or are likely to be helpful in the investigation or prosecution of the criminal activity;
5. Have certification from a federal, state, or local law enforcement authority certifying their helpfulness in the detection, investigation, or prosecution of the criminal activity; and

6. The criminal activity violated the laws of the United States or occurred in the United States.

The key requirements for U nonimmigrant status are discussed in greater detail below.

Practice Note: U visas are capped at 10,000 per year, meaning no more than 10,000 can be granted per year. Many more U visa applications are currently pending beyond this limit, so there is an extensive backlog of U visa cases. Current estimated processing times for a U visa is about 10 years.

1. Victim of qualifying criminal activity:

A noncitizen may be eligible to apply for U nonimmigrant status if they have been a **victim of certain criminal activity**.

Qualifying criminal activity: Only individuals who have been victims of one of the crimes listed at INA § 101(a)(15)(U)(iii) or substantially similar crimes will be eligible to apply for a U visa. Some of the qualifying crimes include abusive sexual contact, domestic violence, involuntary servitude, kidnapping, manslaughter, obstruction of justice, rape, sexual exploitation, trafficking, witness tampering, and felonious assault.

The statue also allows for "other related crimes" to be considered, where the crimes are substantially similar. This is a recognition that not all state statutes classify crimes in the same way, so crimes with the same or substantially similar elements as those listed in the statute may still qualify for U eligibility, even if they are classified differently by a particular state.[1] There is no requirement that the crime be a felony (with the exception of felonious assault).

Victim: An applicant may be eligible to apply for U nonimmigrant status if they can show they were either a "direct" or "indirect" victim of a qualifying crime.[2]

> **Note**: There are some overlaps between the different forms of relief discussed in this advisory. For example, someone who is a trafficking victim might also be eligible for T nonimmigrant status (discussed below). Remember that individuals can apply for multiple forms of relief and advocates do not have to pick just one. It is important to evaluate what the needs of the applicant, as well as facts, and see what option might be best for them.

A **direct victim** is an individual who is harmed as a direct result of the criminal activity.[3] In limited cases, U.S. Citizenship & Immigraiton Services ("USCIS") will consider an individual who can be classified as a "bystander victim" as a direct victim. A "bystander victim" is someone who experiences a direct harm because of the criminal activity, even if the act was not directed at them. The most common example USCIS uses to explain who a bystander victim is that of a woman who suffers a miscarriage as a result of witnessing a homicide or other serious, qualifying crime.

An **indirect victim** is the family member of a direct victim who is incompetent, incapacitated, or deceased. This includes spouses, unmarried children under 21 years of age, parents if the victim was under 21 years of age, and siblings under the age of 18, if the victim was under 21 years of age.[4] The applicant will have to prove that the direct victim was incompetent or incapacitated in order for them to qualify as an indirect victim. USCIS will determine on a case-by-case basis if the direct victim was indeed incapacitated or incompetent. USCIS has stated that a minor victim (under age 18) is considered legally incompetent for this purpose, although in recent years the Vermont Service Center[5] has been more restrictive in this determination. Indirect victimization can be an important way for parents of U.S. citizen (USC) children who have been victimized to qualify for this relief. It is important to screen when the USC child is harmed to see if the undocumented parent would qualify.

Example: David's wife Dana was killed during a home invasion robbery. Although David wasn't the victim of the murder, he is the spouse of a murder victim and can therefore be considered an indirect victim and apply for U nonimmigrant status so long as he meets all the requirements.

Example: Hortencia's 4-year-old son Elias was the victim of abusive sexual contact by another family member. Elias is a U.S. citizen so does not need to and cannot qualify for U nonimmigrant status. However, if Hortencia is helpful with the investigation and shows the harm she suffered from her son's victimization, she may qualify for U nonimmigrant status as an indirect victim because her son, the direct victim, lacks capacity due to his young age.

2. Substantial physical or mental abuse:

An applicant for U nonimmigrant status will need to show they have **suffered substantial physical or mental abuse** as a result of having been a victim of qualifying criminal activity. In determining if the abuse suffered was "substantial," USCIS will consider the severity of the injury suffered and the abuse inflicted. Some factors that will be considered include: nature of injury, severity of the perpetrator's conduct, severity of the harm suffered, duration of infliction of harm, and permanent or serious harm to appearance, health, physical, or mental soundness.[6] No single factor will be used in determining the severity of the harm and a victim's past harm is taken into consideration when evaluating the current harm suffered. For example, a domestic violence victim's past abusive relationship can be considered when determining the impact of the recent domestic violence they suffered. Abuse will be considered in its totality, and USCIS recognizes that abuse may involve a series of acts or occur repeatedly over a period time.[7] A victim's declaration will be key in showing the harm suffered, in addition to any medical records and case manage/social worker letters.

3. Cooperation with law enforcement:

An applicant will also have to show that they have been helpful, are being helpful, or are likely to be helpful in the investigation or prosecution of the criminal activity.[8] It is important to note that there is no requirement for the criminal investigation to lead to the prosecution of the perpetrator and it is enough that someone helped in the detection (i.e. reporting).[9] A victim who is under 16 years of age, incompetent, or incapacitated does not have to meet this requirement.[10] Age is determined for the victim on the day that the qualifying criminal activity occurred.[11]

An applicant must submit a signed certification from a law enforcement agency.[12] This has to be on Form I-918 Supplement B, U Nonimmigrant Certification, signed by the head of the agency or an official designated by the head at a federal, state, or local enforcement authority.[13] Unlike T nonimmigrant status (discussed below in section II), secondary evidence of cooperation is not accepted; the I-918 Supplement B certification is a mandatory requirement for all U applicants. Form I-918 Supplement B will need to state information concerning the qualifying criminal activity, how the victim was helpful, and a brief description of the harm suffered. Note that certifications are only valid for 180 days, therefore once a department returns the signed certification, applicants will only have six months to complete and submit their application, or else they will have to get a new signed certification.

B. Benefits of U Nonimmigration Status:

An applicant who is granted U nonimmigrant status will be in lawful status in the United States for four years[14], be eligible for a work permit (employment authorization document, or "EAD"), and have access to public benefits. The time at which they become eligible for public benefits will depend on the state in which they reside.[15]

Deferred Action: If USCIS determines the applicant meets the basic U nonimmigrant eligibility requirements, they will place the applicant on a waitlist until a U visa becomes available, as many more people apply for U visas each year than the 10,000-annual cap on U visas. Some advocates refer to this as "conditional approval," because it does not guarantee that the applicant will ultimately be granted U nonimmigrant status, simply that the applicant has been found prima facie

eligible. Individuals on the U visa waitlist, however, are eligible for deferred action and a work permit, under category (c)(14).[16] At the time of writing this advisory, U nonimmigrants are being approved for deffered action 4-5 years after submitting their application.

Deferred action is not lawful status[17] and does not count towards the three years that are required before a U nonimmigrant can apply for lawful permanent residence. Deferred action is a determination that the applicant is a low priority for removal.

Derivatives: Applicants can include certain family members in their application as derivatives. Who they can include will depend on the applicant's age at the time of filing:

- If the applicant is under 21, they can include their spouse, unmarried children under 21, parents, and unmarried siblings under 18;
- If the applicant is 21 or older, they can include their spouse and unmarried children under 21.

Derivatives do not age out. A derivative's age is determined at the time the principal applicant files their application. Derivatives must remain unmarried until the U nonimmigrant status is granted.

Note: Principal U applicants can add derivatives after they have filed their U application and even after they have been granted U nonimmigrant status by submitting a derivative application with proof of the principal's U nonimmigrant filing.[18]

Waivers: Applicants for U nonimmigrant status will have to show they are admissible into the United States or demonstrate they are eligible for a public interested waiver of any applicable inadmissibility ground. A waiver is available under INA § 212(d)(14) that allows USCIS to grant the waiver if in the "public or national interest." A U nonimmigrant applicant may apply for a waiver of any of the inadmissibility grounds except for those in INA § 212(a)(3)(E), related to perpetrators and participants of Nazi persecution, genocide, acts of torture or extrajudicial killing.[19] U nonimmigrant applicants can also apply for a general waiver under INA § 212(d)(3).

Pathway to Lawful Permanent Residence: Individuals can apply for lawful permanent residence after three years in U nonimmigrant status. To apply, they will need to show that they have been physically present in the United States for a continuous period of at least three years in U nonimmigrant status, did not unreasonably refuse to provide assistance to law enforcement, are not inadmissible under INA § 212(a)(3)(E), and their continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.[20]

The rest of the inadmissibility grounds under INA § 212(a) do not apply to U nonimmigrants at time of adjustment of status, however USCIS might still consider negative factors as a matter of discretion. Therefore, in cases with negative factors, such as criminal issues or immigration violations, it is important to provide evidence of positive equities to counterbalance.

C. Considerations Before Applying for U Nonimmigrant Status:

- There is no requirement for the victim and the perpetrator to be related to one another, or that the perpetrator have immigration status. Compare with VAWA (discussed in section III of this advisory), where the perpetrator must be a U.S. citizen or LPR and have a specific relationship with the victim.
- There is no deadline for applying; so long as the crime was reported and law enforcement certifies, an applicant can submit a U nonimmigrant status petition at any time, even years after the crime occurred.
- Wait time for U nonimmigrant status is extremely long—as of June 2019 the wait for initial review was four years or longer. This initial determination may result in an applicant being granted deferred action and issued work authorization while they wait for a final decision on their case (which takes years, as well).

- Given the cap on U visas and the long waitlist, it may be worthwhile to consider applying for T nonimmigrant status instead of U nonimmigrant status, as there is some overlap of qualifying criminal activity between these two forms of relief.

II. T Nonimmigrant Status:

T nonimmigrant status, often referred to as the "T visa," is a nonimmigrant status that allows noncitizen survivors of severe forms of human trafficking to remain lawfully in the United States, obtain employment authorization, and eventually apply for lawful permanent residence. The T visa was created to combat human trafficking and provide immigration relief for persons who were trafficked into the United States.

Law:

The law for T visas can be found in the Immigration and Nationality Act (INA) at INA § 101(a)(15)(T) [definition of T nonimmigrant] and INA § 214(o) [miscellaneous T nonimmigrant requirements] and the implementing regulations at 8 CFR §§ 212.16, 214.11.

A. Eligibility Requirements for T nonimmigrant status:

Eligibility Requirements for T nonimmigrant status:[21]

1. Is or has been the victim of a severe form of trafficking;
2. Is physically present in the United States, a U.S. territory,[22] or at a port of entry on account of trafficking. This includes a survivor who was allowed to enter the United States to participate in the investigative or judicial processes associated with the trafficking;
3. Can demonstrate that they complied with any reasonable request for assistance in the federal, state, or local investigation or prosecution of acts of trafficking or the investigation of a crime where acts of trafficking are at least a central reason for the commission of that crime UNLESS they qualify for an exemption or exception to this requirement;
4. Would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

Each of these requirements is discussed in greater detail below.

1. Severe form of trafficking:

An individual is considered to be a victim of human trafficking if they have been induced to participate by "force, fraud, or coercion" in either of the following:

- **Sex Trafficking**: a commercial sex act induced by force, fraud, or coercion OR in which the person induced to perform such an act is under 18 years of age;[23]
- **Labor Trafficking**: recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[24]

Note that commercial sex acts involving minors do not need a showing of force, fraud, or coercion. This is not the case for labor trafficking cases, regardless of age.

When proving trafficking, it is important to outline the process used, the means used, and the end results. Consider the following questions:

- **Process**: was it done by recruiting, harboring, transporting, providing, or obtaining a person for labor?
- **Means:** was force, fraud, or coercion used against the survivor?

- **Purpose:** was the objective the survivor's involuntary servitude, peonage, debt bondage, slavery, or commercial sex?

  Example: Jiachiang left Fujian province in China with a smuggler, known as a "snakehead," with the understanding that he would have work in New York City. He began to work at a Chinese restaurant in New York City, where he slept in the back. The owners demanded long hours and only paid him $100 a week. When he said he wanted to quit, they threatened to hurt his family members back in China if he left and throw him in jail if he said anything to anyone. Here, Jiachiang might be eligible for T nonimmigrant status due to labor trafficking because he became subject to involuntary servitude when he was coerced into staying at a job because of the threats made to him and his family.

2. Physically present on account of the trafficking:

T nonimmigrant applicants must be physically present in the United States, a U.S. territory, or a port of entry "on account of the trafficking." The applicant must also be physically present in the United States at the time the application is received by U.S. Citizenship and Immigration Services (USCIS).[25] "On account of" is interpreted to include those individuals currently in a trafficking situation, those who have been released from trafficking situations, and those who escaped a trafficking situation. It is important to note that USCIS is heavily scrutinizing this element and it can be harder for applicants who have been here for many years after escaping the trafficking incident to prove that they are still present "on account of" the trafficking situation. A departure, even if it is brief and to visit a family member, will break the applicant's "physical presence" in the United States. Individuals who return to the United States will have to show that their return is related to the trafficking (either re-victimization, victim of a new incident, or to help in the investigation).[26]

There is a common misconception that only individuals who were trafficked into the country are eligible for this relief. However, crossing an international border is not required to demonstrate that someone is a victim of a severe form of human trafficking. Some survivors of trafficking came to the country on their own, either on a visa or without status, and were trafficked once inside the United States.

> **Example:** Mai came to the U.S. as a young girl with her family and has no immigration status. Mai's boyfriend began pimping her out when she was 16 years old. He said with the money she earned they could start a life together. When she didn't want to do it anymore, he threatened to tell everyone that she was a "slut." He also threatened to break up with her and warned her that his buddies in the gang were depending on her to help earn them some money.
>
> Mai could potentially be eligible as a victim of sex trafficking. Mai came to the United States many years ago with her parents and was later pimped by her boyfriend. Mai is present in the United States as an individual who is currently being trafficked by her boyfriend. It does not matter that she entered for another reason.

3. Complied with a reasonable request made by law enforcement agency:

To qualify for T nonimmigrant status, a victim must show that they contacted law enforcement regarding the trafficking, unless an exception applies, and have complied with any reasonable request from law enforcement. They need only show they reached out to law enforcement, not that law enforcement responded or acted on the information. A person who never contacted law enforcement regarding the trafficking will not be eligible unless they meet exceptions outlined below.[27] USCIS will look at several factors when determining if a request was reasonable. This includes, but is not limited to, general law enforcement agency practices, nature of the victimization, specific circumstances of the victim, severity of trauma suffered or whether the request would cause further trauma.[28]

Unlike the process for U nonimmigrant status, certification of cooperation by a law enforcement agency is not required to prove cooperation but when possible, it is good to try and obtain certification. Instead, or in addition, applicants can

show cooperation through their efforts to contact law enforcement officials, their own declaration stating who they attempted to contact, email correspondence, photocopies of business cards of law enforcement officials, declarations by case managers and other witnesses of efforts to cooperate with law enforcement.[29]

An applicant must comply with any reasonable request by a law enforcement agency from the time of the initial application through the time they apply for lawful permanent residence (also referred to as "LPR" status or a "green card") through adjustment of status.

Exceptions:

a. Minors: applicants who are under 18 years of age are exempt from complying with reasonable request for cooperation.[30]
b. Trauma: applicants over the age of 18 who are unable to cooperate due to physical or psychological trauma may qualify for an exception from this requirement.[31] An applicant will need to submit evidence of the trauma to meet this requirement. For example, a declaration describing the trauma, a signed statement from a doctor or case worker describing their mental state or a psychological evaluation, and/or medical records documenting the trauma.[32]

4. Extreme hardship upon removal:

Lastly, applicants for T nonimmigrant status will have to show that they will suffer extreme hardship involving unusual and severe harm if removed. Some factors that will be considered include: age, maturity, and personal circumstances of the applicant; physical or psychological issues of the applicant that necessitate medical or psychological care not reasonably available in the foreign country; nature and extent of the physical and psychological consequences of the trafficking; impact of loss of access to the United States court system; social practices or customs in the foreign country that would punish the applicant for having been trafficked; likelihood of re-victimization; and vulnerability to harm by the trafficker.[33]

Applicant declarations are key to show the extreme harm that would be suffered if removed. Additionally, applicants can use medical records, affidavits from witnesses, and statements from case managers, social workers, or family members. Applicants should also include documentation on country conditions to illustrate the lack of access to resources or support as well as any stigma that might exist from being a victim of trafficking.

B. Benefits of T Nonimmigrant Status:

T nonimmigrant status lasts for four years[34] and allows a grantee to apply for work authorization. T nonimmigrants also have access to both state and federal public benefits.[35] Additionally, T nonimmigrants can apply for lawful permanent residence after three years in T nonimmigrant status.

Derivatives: Applicants for T nonimmigrant status can include certain family members as derivatives in their application. Who they can include will depend on the applicant's age:

- Applicants who are under 21 can include their spouse, unmarried children under 21, parents, and unmarried siblings under 18.
- Applicants who are 21 or older can include their spouse and unmarried children under 21.

Applicants can also include certain family members, regardless of the applicant's age, if these family members are in present danger of retaliation as a result of escaping trafficking or cooperating with law enforcement:

- Parents;
- Unmarried siblings under 18 years of age; and

- Children of any age or marital status of qualifying family members who have been granted derivative T nonimmigrant status.

Waivers: T nonimmigrant applicants must also be "admissible," meaning that they do not fall under any of the applicable grounds of inadmissibility at INA § 212(a) or if they do, they have been granted a waiver. The public charge ground of inadmissibility at INA § 212(a)(4) does not apply to T nonimmigrants,[36] so no waiver is needed for this ground. For the grounds that do apply, many are waivable for T nonimmigrant applicants if they can show it was incident to or caused by the victimization and if in the national interest. The only grounds that cannot be waived are security-related, international child abduction, and renunciation of U.S. citizenship to avoid taxation.[37] T nonimmigrants can apply for two different waivers: a T-specific waiver, at INA § 212(d)(13), and a general nonimmigrant waiver, at INA § 212(d)(3).

Pathway to Lawful Permanent Residence: Individuals granted T nonimmigrant status are eligible to apply for lawful permanent residence after three years under INA §245(l). To apply for a green card based on T nonimmigrant status, they will have to show that they have been physically present in the United States for a continuous period of at least three years in T nonimmigrant status,[38] are a person of good moral character, complied with any reasonable request from law enforcement (or meet one for the exemptions), and are admissible to the U.S.[39] Applicants will need to show they are not inadmissible under INA § 212(a). Applicants may have been granted a waiver for certain grounds at the T application phase and may seek a waiver when adjusting status for any ground that has not already been waived.

C. Considerations Before Applying for T Nonimmigrant Status:

- Remember, a person does not have to been trafficked *into* the U.S. in order to qualify for the T Visa—a person can also be trafficked within the U.S. after entering the country and be eligible for T nonimmigrant status.
- A trafficked individual's initial consent is irrelevant—a person who initially consents may be considered to have been trafficked because of the trafficker's coercive or deceptive conduct and the subsequent exploitation.
- There are no filing deadlines for victims trafficked after October 28, 2000. USCIS will accept an application for T nonimmigrant status even if the applicant was victimized years ago.
- Applicants can include various kinds of evidence to show cooperation with law enforcement, as a formal law enforcement certification is not required. Furthermore, minors do not need to meet the cooperation requirement.
- There is a 5,000-visa cap for T nonimmigrant status that has never been reached and thus there is no wait (beyond the amount of time it takes to adjudicate the application) at this time. This is in stark contrast to the U nonimmigrant status, see section I.

III. VAWA self-petition:

The Violence Against Women Act (VAWA), first enacted in 1994, was created to address a widespread problem of abused noncitizens staying with their abusers because the abuser held a key role to the victim attaining lawful immigration status in the United States. The VAWA self-petition process mirrors the family-based process but frees the victim from having to rely on the abuser's cooperation to petition for them, as they can proceed with the family-based immigration process without the abuser's knowledge or involvement. Under VAWA an abused spouse or child of a lawful permanent resident (LPR) or U.S. citizen (USC), or an abused parent of a USC son or daughter (age 21 or older), can submit a self-petition on their own behalf.

Law:

The law for a VAWA self-petition can be located in INA § 204(a)(1)(A) and in the regulations at 8 CFR § 204.1.

A. Eligiblity for VAWA Self-Petition:

VAWA self-petitions can benefit abused men *and* women, abused children and parents, and abused spouses, including same sex couples who are legally married.

The eligibility requirements for VAWA self-petition:[40]

1. They are the abused spouse or child of a USC or LPR, or an abused parent of a USC son or daughter;
2. The abuser was an LPR or USC;
3. They were the victim of battery or extreme cruelty;
4. They resided with the abuser in the United States at some point;
5. They can demonstrate good moral character; and
6. Self-petitioning spouses must show they entered into the marriage in good faith.

See below for a discussion of the main requirements.

1. Qualifying family relationship:

Unlike other forms of relief described in this advisory, VAWA self-petitioners must show a familial relationship to the abuser and that the abuser had status. Spouses and children of LPRs or USCs and parents of adult USCs are eligible to self-petition. It is important to understand how these terms are defined in immigration law before applying.

Spouses: Abused spouses of USCs or LPRs can qualify to submit a VAWA self-petition.[41] The abused spouse will have to prove that the abuser is or was a USC or LPR, that they are legally married (or were married and are recently divorced, in some circumstances, see below), and that the marriage was entered into in "good faith."[42]

Status of Abuser: The abuser must be an USC or LPR for the applicant to qualify for VAWA. If the abuser lost their status because of the abuse, the self-petitioner can still qualify so long as they submit the self-petition within two years of the abuser's loss of status.[43] The abuse to the noncitizen could have been before the abuser gained status *BUT* note that the abuser has to have gained status before a divorce is finalized in order for the individual to be eligible to self-petition.

Marriage: The abused individual must be legally married to the USC or LPR abuser. A marriage is considered legal if it is valid in the place where the ceremony was performed. This includes both common law marriages, where recognized,[44] and same sex marriages. An applicant could be divorced from the abuser and still qualify so long as they can show the divorce was connected in some way to the abuse and they file their self-petition within two years of the divorce[45] (this can also include annulments[46]). Applicants cannot remarry until their self-petition is approved.

In the case of the abusive spouse's death, an abused spouse of a USC can still file their self-petition within two years of the abuser's death.[47] This is *not* the case for the spouse of an LPR, unless the petition was already pending when the abuser passed away.[48] An abused spouse who thought they were legally married but in fact were not, such as in the case when the abuser was already legally married to someone else and the self-petitioner was unaware of the other marriage, can still self-petition.

Example: Maribel's husband abused her for years before she was finally able to flee to a friend's house. Maribel later learns that he became an LPR. Though Maribel no longer lives with her abuser, she may qualify for a VAWA self-petition because she is married to an LPR; it does not matter that she was abused by him when he was undocumented. The abuser need not be an LPR during the abuse (although the abuse must have taken place during the marriage), *but* the applicant must be married to the abuser at time of filing or have been a spouse of an LPR within the past 2 years, if now divorced. Maribel was

abused and is still the spouse of an LPR, therefore she may qualify to file a VAWA self-petition if she meets all the other requirements.

Marriage Entered Into in Good Faith: The marriage must have been entered into in good faith and not solely for the purpose of obtaining immigration status. Although there is no exact definition for what makes a good faith marriage, courts have identified some factors like whether the couple intended to establish a life together at the time of the marriage.[49]

It is important to note that a *non-abused* spouse of a USC or LPR, whose child was abused by the USC or LPR spouse, can also qualify to file a self-petition under VAWA.[50]

Children: For a child to be eligible to self-petition, they must show that they meet the definition of a "child" in immigration law. A "child" is defined as unmarried and under 21 years of age.[51] There are other requirements, having to do with whether the child was born in wedlock or legitimated, and whether the child is a step-child or adopted child, that can be located at INA § 101(b)(1). An abused child of an LPR or USC can submit a VAWA self-petition.[52] The self-petitioning child does not have to be in the abuser's legal custody at the time of the VAWA self-petition and any changes in parental rights will not affect the child's ability to self-petition.[53]

A child who is over 21 and was eligible to self-petition but did not, can still file a VAWA self-petition so long as they do so before turning 25 and are unmarried at the time the self-petition is filed. They will have to show that the abuse was "at least a central reason" for the filing delay.[54] Additionally, the self-petitioner must have met all the qualifying factors for filing a VAWA self-petition before they turned 21. If the abuse took place after they turned 21, they do not qualify for VAWA as an abused "child."

A non-abused child of an abused spouse or child qualifies for VAWA if they are listed on the abused spouse's or child's self-petition as a derivative.[55]

Parents: An abused parent of a USC son or daughter (a "son or daughter" is defined as a child who is now 21 years or older) may also qualify to submit a VAWA self-petition.[56] The parent will need to show that the qualifying relationship existed at the time of the abuse and at the time of filing.[57] Unlike spouse and children VAWA self-petitions in which the abuser can be either a USC *or* an LPR, parents are only eligible to submit a VAWA self-petition if their abuser is a USC, because that is the only situation in which an adult child could file a petition for their parent (as an immediate relative); there is no visa category for an LPR son or daughter to petition for their parent and thus the abused parent of an LPR son or daughter cannot self-petition under VAWA—recall that VAWA does not create any new visa categories, it just allows abused family members to assume the role that the abusive petitioner could have occupied.[58] If the abusive USC son or daughter lost status or died, the parent can submit a petition within two years of the loss of status or death.[59]

2. Subjected to "battery or extreme cruelty":

For VAWA, an applicant needs to show that they were the victim of battery or extreme cruelty. However, unlike U and T nonimmigrant status, law enforcement need not have been involved or contacted regarding the abuse. There is no set list of factors to determine what battery or extreme cruelty is. In fact, the definition of abuse is flexible and broad enough to include physical, sexual, and psychological acts, as well as economic coercion.[60] Battery can include, but is not limited to, an act of violence that results in injury. This can also include threats of violence, even if they do not result in physical harm.[61] When evaluating what is battery or extreme cruelty, USCIS can take into consideration acts that might amount to battery or extreme cruelty when viewed as part of an overall pattern of violence, even if they might seem minor in isolation.[62] There is no exhaustive list of acts that are considered "battery or extreme cruelty" and examples can include social isolation; accusations of infidelity; incessantly calling, writing, or contacting the victim; interrogating the victim's friends; threats; economic abuse including not allowing the victim to work and controlling all their money; and degrading the victim.

Example: Jon is married to Dany, a U.S. citizen. Dany promised Jon that he would help him get a green card. Dany began to fill out the forms for Jon, but he never filed them. For the past year, Dany has been isolating Jon from his friends and family. He does not allow Jon to have any money without his permission and forbids him to leave the house without him. About a month ago, while Dany was at work, Jon went to help a sick friend. Dany came home early and was waiting at the house when Jon returned. He yelled at him, threatening to turn him in to immigration authorities and have him deported. Dany kicked Jon's beloved dog severely several times until Jon begged him to stop. This is not the first time Dany has mistreated his dog. Because of his husband's controlling behavior and mistreatment, Jon became depressed and despondent. Dany's behavior should qualify as extreme cruelty to Jon, potentially allowing Jon to file a VAWA self-petition.

3. Residence Requirements:

An applicant for VAWA must have lived with the abuser at some point, either inside or outside the United States. There is no specific timeframe for how long the victim has to live with the abuser in order to qualify; an applicant can qualify even if they only lived with the abuser for a short time.[63] There is also no requirement that the self-petitioner continue to live with the abuser to be eligible for VAWA.

Example: Marta married Jose in Venezuela. Jose is a lawful permanent resident. Marta went to the United States to live with Jose, but he subjected her to domestic abuse, and she fled to a friend's house shortly after joining Jose in the United States. Marta can self-petition, even though she no longer lives with Jose because she suffered domestic violence while living with him in the United States.

In addition to having lived with the abuser at some point, a VAWA self-petitioner does not have to presently reside in the United States in order to be able to file a VAWA self-petition, but the abuse generally must have occurred while in the United States (unless the abusive spouse is an employee of the U.S. government or a member of the U.S. armed services).[64]

4. Good moral character:

An applicant for VAWA must establish that they are a person of "good moral character" for the three years prior to filing their self-petition.[65] There is no clear definition in immigration law for good moral character but there is a list of acts that would bar a person from establishing good moral character at INA § 101(f). Some of the things that would bar someone from establishing good moral character are things like being declared a habitual drunk, engaging in prostitution, smuggling people into the country, certain drug convictions, and being incarcerated for an aggregate period of 180 days or more as a result of a conviction.[66] A person is only barred if they fall within any of these for the time period for which they are required to show good moral character. However, there are special exceptions for VAWA self-petitioners to these good moral character bars if the act or conviction is waivable with respect to the self-petitioner for purposes of determining whether the self-petitioner is admissible or deportable or the act or conviction was connected to the abuse suffered by the self-petitioner.[67]

The applicant's declaration, in which they detail their eligibility for VAWA, is their primary evidence of good moral character. In addition, applicants should submit police clearances from each place where they resided for six months or more during the past three years.

Children under 14 years of age are presumed to have good moral character and will not be required to submit evidence of good moral character.[68] If the child is 14 or older, the rules are the same as for an adult self-petitioner.

B. Benefits of VAWA Self-Petition:

A self-petitioner who meets the basic eligibility requirements will get a notice of "prima facie" eligibility within a few months of filing which they can use to access public benefits like Medicare.

Generally, an applicant whose VAWA self-petition is granted will be given deferred action while they wait to complete the process for lawful permanent residence and will be eligible for a work permit (EAD) and public benefits.

Derivatives: A self-petitioning spouse or child can include their children who are unmarried and under 21 years of age, including adopted children and stepchildren, as derivatives. [69] It does not matter for derivatives that they were not actually abused. Once a child is included, they will not lose VAWA benefits when they turn 21 years old. Instead, when they turn 21 they become self-petitioners in their own right and their visa category will change from that of an "unmarried child" to one of an "unmarried son or daughter."[70] Similarly, if a child of a USC abuser marries, they will automatically move to the third preference visa category for married sons or daughters of U.S. citizens.[71] This mirrors the regular family-based visa categories and movement between categories.

Self-petitioning parents of USCs *cannot* include derivatives.

Waiver: A VAWA self-petitioner does not need to establish that they are admissible when they file their self-petition. However, once a VAWA self-petitioner goes on to file their application for permanent residence—which they may be able to do at the same time as filing the self-petition if they are an immediate relative[72], otherwise they need to wait for their preference petition to be current—they must establish that they are not inadmissible under any of the applicable inadmissibility grounds or else eligible for a waiver. In addition to the standard waivers available for various grounds of inadmissibility at INA 212(h) and INA 212(i), there are special VAWA waivers, exceptions, or exemptions for some of the grounds of inadmissibility.[73]

Pathway to Lawful Permanent Residence: A VAWA self-petitioner will be eligible to apply for lawful permanent residence through adjustment of status under INA § 245(a), or consular processing. Similar to a family petition, a self-petitioner can submit their application for LPR status when an immigrant visa becomes available for their family-based classification, either as an immediate relative or one of the preference categories. This may be immediately for spouses, children (unmarried and under 21), and parents (whose USC sons or daughters are 21 or older) of USCs or may take several years for spouses and children of LPRs. Self-petitioners can use the State Department's Visa Bulletin to calculate when a visa is likely to become available for their preference category.[74]

As mentioned above in the discussion of VAWA waivers, at time of applying for lawful permanent residence, applicants must prove that they are not inadmissible under INA § 212(a). There are certain VAWA-specific waivers as well as general waivers that an applicant can submit to waive some of the grounds of inadmissibility.

C. Considerations Before Filing a VAWA Self-Petition:

- Applicants must have a familial relationship to the abuser—i.e. a legal marriage to the abuser, be the parent of the abuser, or the child of the abuser. A U visa might be an option where there is no legal relationship to the abuser.
- The abuser must be an LPR or USC. If they lost that status, the applicant must submit their self-petition within two years of the abuser losing their status. U nonimmigrant status might be an option where the abuser had no status or only a form of temporary status.
- Unlike with the U or T nonimmigrant status, with VAWA there is no requirement that the victim cooperate with or even contact law enforcement. A self-petitioner's detailed declaration may be sufficient proof, by itself, of the abuse.

- VAWA self-petitioners can apply to adjust under INA § 245(a), even if they were not inspected and admitted or paroled.
- The bars to adjustment under INA § 245(c), such as failure to maintain lawful status or working without authorization, do not apply to VAWA self-petitioners.[75]

IV. Conclusion

The above is only a brief overview of what makes a person eligible for these humanitarian forms of relief. It is important to research each immigration option thoroughly before submitting an application and to consult immigration experts for any complex cases, especially in light of recent changes in policy and procedure within the Department of Homeland Security and Immigration Courts. Below is a list of resources to support advocates in exploring and pursuing these legal options with clients.

V. Resources

- For technical assistance when filing these applications:
  - T, U, and VAWA: ILRC Attorney of the Day Technical Assistance, https://www.ilrc.org/technical-assistance
  - U and VAWA: ASISTA, http://www.asistahelp.org/en/access_the_clearinghouse/trafficking_and_t_visas/
  - T visas: Coalition to Abolish Slavery & Trafficking (CAST), http://www.castla.org/training
- For U visa certification information, the U Visa Certifier Database created by the Immigration Center for Women and Children (ICWC) gives access to certifier information across the United States. Individuals will need to subscribe in order to get access to the site. More information on how to register can be found at https://www.icwclaw.org/icwc-u-visa-zoho-database.
- To refer clients to free or low-cost legal service providers:
  - National Immigration Legal Services Directory: https://www.immigrationadvocates.org/nonprofit/legaldirectory/
- For information on access to public benefits: the National Immigration Law Center (NILC), www.nilc.org/accesstobens.html
- USCIS has issued various policy memos on U and T nonimmigrant status, as well as VAWA. See the USCIS website at https://www.uscis.gov/
  - Recently, USCIS released a new policy regarding when they will issue Notices to Appear (NTA) for applications that are denied when the applicant has no other lawful status, among other scenarios. For more information on how this new memo impacts U, T, and VAWA cases visit: https://www.ilrc.org/annotated-notes-and-practice-pointers-uscis-teleconference-notice-appear-nta-updated-policy-guidance
- USCIS is planning to make changes fee waivers in the coming months that may make it harder for applicants to apply if they cannot afford to pay the immigration filing fee. Note that although there is no fee for T nonimmigrant and U nonimmigrant applications, there is a fee for the waivers of inadmissibility. Currently, U and T nonimmigrants and VAWA self-petitioners are eligible for a fee waiver for all immigration applications. Visit the ILRC website for up-to-date information on changes to the fee waiver at https://www.ilrc.org/.

End Notes

[1] INA §101(a)(15)(U)(iii).
[2] 8 CFR § 214.14(a).
[3] 8 CFR § 214.14(a)(14).
[4] 8 CFR § 214.14(a)(14)(i).
[5] Vermont Service Center processes U nonimmigrant status applications.
[6] 8 CFR § 214.14(b)(1).
[7] *See* Preamble at Federal Register, Vol. 72, No. 179, p. 53016-53017 (Sept. 17, 2007).
[8] INA §101(a)(15)(U)(i)(II).
[9] U.S. Department of Homeland Security, U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, December 29, 2011 and "Centralization of Interim Relief for U Nonimmigrant Status Applicants," William R. Yates, Assoc. Dir. of Operations, USCIS (Oct. 8, 2003) at p. 4. This memorandum may be found on the USCIS website at www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2003/ucntrl100803.pdf.)
[10] 8 CFR § 214.14(b)(3).
[11] *Id.*
[12] 8 CFR § 214.14(a)(5).
[13] 8 CFR § 214.14(a)(3).
[14] In certain circumstances, applicants are able to extend their nonimmigrant status. For more information on this *see* USCIS Policy Memorandum *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* (October 2016), available at https://asistahelp.org/wp-content/uploads/2018/02/T-and-U-Extension-October42016.pdf.
[15] Some states will allow U nonimmigrant status applicants to apply for public benefits once they have received deferred action. Others, like California, will allow applicants of U nonimmigrant status to access public benefits once they receive their receipt notice
[16] 8 CFR § 214.13(d)(2).
[17] Deferred action is considered "lawful presence" instead. This means that a U applicant with deferred action will not accrue "unlawful presence" during the period of deferred action. 8 CFR 214.14(d)(3).
[18] 8 CFR § 214.14(f).
[19] INA § 212(d)(14).
[20] INA § 245(m); 8 CFR § 245.24
[21] INA §101(a)(15)(T)
[22] U.S. Territories include American Samoa, or the Commonwealth of the Northern Mariana Islands
[23] TVPA, § 103(8); 22 USC § 7102(9).
[24] *Id*.
[25] 8 CFR § 214.11(g)(1).
[26] 8 CFR § 214.11(g)(2).
[27] 8 CFR § 214.11(h)(1).
[28] 8 CFR § 214.11(h)(2).
[29] 8 CFR § 214.11(h)(3).
[30] TVPRA, § 4(b)(1)(A); INA § 101(a)(15)(T)(III); 8 USC § 1101(a)(15)(T)(i)(III); 8 CFR § 214.11(h)(4)(ii).
[31] INA § 101(a)(15)(T)(iii); 8 CFR § 214.11(h)(4)(i).
[32] 8 CFR § 214.11(h)(4)(i).
[33] 8 CFR § 214.11(i)(2).
[34] In certain circumstances, applicants are able to extend their nonimmigrant status. For more information on this *see* USCIS *Policy Memorandum*: *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* (October 2016), available at https://asistahelp.org/wp-content/uploads/2018/02/T-and-U-Extension-October42016.pdf.
[35] Note that some states give T applicants access to some public benefits even before they are granted T Nonimmigrant Status. The public benefits they will have access to depends on the state of residency and some states will accept their USCIS receipt notice to allow access.

[36] INA § 212(d)(13)(A).
[37] INA § 212(d)(13)(B)(ii).
[38] Any departures from the USA for more than 90 days or for any periods exceeding 180 days in the aggregate will cut off continuous presence.
[39] INA § 245(l); 8 CFR § 245.23(a).
[40] INA § 204(a)(1)(A)
[41] INA § 204(a)(1)(A)(iii) (spouse of USC) and INA § 204(a)(1)(B)(ii) (spouse of LPR).
[42] INA § 204(a)(1)(A)(iii).
[43] INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb).
[44] Common law marriage is recognized in DC, Colorado, Iowa, Kansas, Montana, Oklahoma, Rhode Island, South Carolina, Texas, and Utah.
[45] INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(ccc).
[46] *See* Aleinkoff, Executive Associate Commissioner, Office of Programs, "Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents," (April 16, 1996),
[47] INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa).
[48] INA § 204(l).
[49] *Lutwak v. United States*, 344 U.S. 604, 611 (1953); *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975); *Matter of Soriano*, 19 I&N Dec. 764, 765 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 2-3 (BIA 1983); *Matter of McKee*, 17 I&N Dec. 332, 334 (BIA 1980).
[50] INA § 204(a)(1)(A)(iii) (spouse of USC) and INA § 204(a)(1)(B)(ii) (spouse of LPR).
[51] INA § 101(b)(1).
[52] INA § 204(a)(1)(A)(iv) (child of USC) and INA § 204 (a)(1)(B)(iii) (child of LPR).
[53] 8 CFR § 204.2(e)(1)(ii).
[54] INA § 204(a)(1)(D)(v).
[55] INA § 204(a)(1)(A)(iv) and INA § 204(a)(1)(B)(iii).
[56] INA § 204(a)(1)(A)(vii).
[57] *See* USCIS Policy Memorandum, "Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen," PM-602-0046, August 30, 2011 [hereinafter USCIS, Parent Memorandum.
[58] INA § 204(a)(1)(A)(vii).
[59] INA § 204(a)(1)(A)(vii)(I).
[60] 8 CFR § 204.2(c)(1)(vi) [abused spouses]; 8 CFR § 204.2(e)(1)(vi) [abused children].
[61] 8 CFR § 204.2(c)(1)(vi).
[62] 8 CFR § 204.2(c)(1)(vi).
[63] INA § 204(a)(1)(A)(iii)(II)(dd) [spouses and intended spouses of U.S. citizens]; INA § 204(a)(1)(A)(iv) [children of U.S. citizens]; INA § 204(a)(1)(B)(ii)(II)(dd) [spouses and intended spouses of lawful permanent residents]; INA § 204(a)(1)(B)(iii) [children of lawful permanent residents].
[64] INA § 204(a)(1)(A)(v) [spouses, intended spouses, and children of U.S. citizens]; INA § 204(a)(1)(B)(iv) [spouses, intended spouses, and children of lawful permanent residents].
[65] The USCIS may also investigate the self-petitioner's background beyond the three-year period to determine good moral character, "*when there is reason to believe* that the self-petitioner may not have been a person of good moral character during that time" (emphasis added). *See* USCIS *Interoffice Memorandum: Determinations of Good Moral Character in VAWA-Based Self-Petitions Purpose* (January 19, 2005) available at https://asistahelp.org/wp-content/uploads/2018/10/USCIS-Memo-Determination-of-GMC-in-VAWA-January2005.pdf.
[66] INA § 101(f).
[67] INA § 204(a)(1)(C).
[68] 8 CFR § 204.2(e)(2)(v).
[69] INA § 204(a)(1)(A)(iii) [children of abused spouses and intended spouses of U.S. citizens]; INA § 204(a)(1)(B)(ii) [children of abused spouses and intended spouses of lawful permanent residents].
[70] INA § 204(a)(1)(D)(i)(III).
[71] INA § 204(a)(1)(D)(i)(I).
[72] INA § 201(b)(2)(A)(i) defines immediate family member as a spouse, unmarried minor child, or parent of a USC.
[73] Though VAWA self-petitioners adjust status under INA § 245(a), the inspected and admitted or paroled requirements do not apply to VAWA self-petitioners.
[74] US Department of State, Visa Bulletin, available at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html.
[75] INA § 245(c).

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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.