

CHAPTER 1

INTRODUCTION

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§ 1.1 Introduction to Immigration Relief for Abused Noncitizen Spouses and Certain Other Family Members

The Violence Against Women¹ Act (VAWA), enacted in 1994 and amended in 1996, 2000, 2006, and 2013, addresses a widespread problem: some abused noncitizens stay in abusive relationships because an abusive family member holds a key to their immigration status in the United States. U.S. immigration law permits U.S. citizens (USCs) and lawful permanent residents (LPRs) to *petition* for lawful status for certain relatives through a “family visa petition.” Until a noncitizen has legal immigration status, they can be deported at any time and cannot get permission to work legally. Undocumented noncitizens are ineligible for some important types of government aid like Temporary Assistance for Needy Family (TANF) and food stamps, which are critically important to survivors of domestic violence to free themselves and their children from an abusive family member and to ensure their health and safety.

Too often, abusive spouses use the family visa process to control the undocumented spouse. Some refuse to file the family visa petition. Others threaten to withdraw the petition or even call immigration authorities to deport a spouse who leaves, objects, or calls the police to report the abuse. Congress did not want U.S. immigration laws to be used as a weapon in an abuser’s arsenal. Hence VAWA was created, to permit survivors in this situation to gain lawful status on their own, without having to rely on an abusive spouse’s participation in the process.

Under VAWA’s major immigration provision, an **abused spouse or child** of a USC or LPR or an **abused parent** of an adult USC son or daughter can *self-petition* for lawful immigration status in the United States. Once a VAWA self-petition is approved, the self-petitioner will have some protection from deportation, will be qualified to work legally in the United States, and can receive much of the same government aid that lawful permanent residents are eligible for. Under an additional provision, special rules make it easier for an abused spouse or child of a USC or LPR

¹ Despite the title of the Act, the Violence Against Women Act (VAWA) is available to eligible survivors of abuse regardless of sex, as husbands, fathers, and sons may also be survivors of domestic violence.

to qualify in removal proceedings for *cancellation of removal*. Cancellation of removal is only available to people who have a case in immigration court.

While VAWA can provide critical benefits that may help many abused noncitizens escape abuse, outreach to such groups can be challenging. Unless potential beneficiaries know about VAWA, particularly from someone they trust, they cannot apply and get the benefits they need. Government agency and nonprofit staff who work with immigrants can be extremely effective at identifying potential applicants, providing them with information and referrals, and helping them gather the documentation they need to apply. Additionally, although legislative changes to VAWA in 2000, 2006, and 2013 improved the immigration provisions from the original version, future legislative changes may not be as good, so potential applicants should not delay applying if they are ready and able to apply now.

It is also important to recognize, however, that deciding whether to apply for relief under VAWA is ultimately the potential applicant's decision. Some people who may qualify for immigration relief under VAWA may choose not to apply. Some people may feel that the application process is too complex and requires them to relive trauma they have experienced. Others may be concerned that applying under VAWA will cause their abusers to be arrested or deported, or that they will be criticized by their families or communities for going outside the family about the abuse. People's concerns are as varied as the effects of domestic violence. Although a friend, social worker, or other advocate may feel that it is essential that an immigrant survivor of domestic violence apply for relief under VAWA, that helper must respect the decision of the domestic violence survivor themselves.

§ 1.2 How to Use This Manual

This manual is designed for staff of non-profit organizations, government agencies, shelters, law enforcement agencies, schools, social service agencies, and health care providers as well as immigration lawyers, pro bono attorneys, DOJ-accredited representatives, and paralegals. This manual guides you through the entire process of handling an immigration case with an abused noncitizen, from the first meeting with a potential VAWA applicant through completion and filing of the appropriate petition, application, and appeal (if necessary), that will lead to lawful permanent residence (a "green card"). It also provide guidance on representing abused noncitizens in removal proceedings.

A successful VAWA case involves partnership between domestic violence advocates, the legal worker, and the client. This requires developing trust, and educating and encouraging the client to become an active participant in their case. In recognition of this, this manual is not simply a discussion of legal requirements and procedures. It also includes ideas for how to help clients understand the benefits available under VAWA, the legal requirements, and ways in which they can help make their cases as strong as possible. Please see particularly the discussion of working with clients in **Chapter 2**. Individuals need to be informed and empowered participants in the preparation of their VAWA case. It is therefore important *not* to keep clients in the dark about the rules and procedures that may have a profound impact on them and the considerations they should take into account in deciding whether to apply for VAWA relief.

Much of this manual is dedicated to presenting and discussing the core legal requirements for VAWA relief. Some of the legal requirements are clear-cut and relatively inflexible. Others are

murky, not clearly defined, and may be more open to interpretation. The U.S. Citizenship and Immigration Service (USCIS) immigration officers at the service center in Vermont, which handles VAWA self-petitioning cases, are trained in the dynamics of domestic violence and often understand these issues. However, some VAWA policy is set at other levels of USCIS, for instance local USCIS field offices handle VAWA cases at later stages, which can lead to inconsistent adjudication experiences, and even the Vermont Service Center sometimes makes mistakes. We strongly encourage you to investigate challenging USCIS' interpretation of any legal requirement that is not grounded in the Immigration and Nationality Act (INA).

Although we have thoroughly researched the legal requirements presented in this manual, you should not use it as a substitute for your own research and knowledge. Immigration law, policy, and procedure change constantly and can be complex. Attached to this chapter at **Appendix 1-A** is a list of resources for technical assistance, listserves, updates, and materials. We strongly recommend that advocates regularly consult with these resources to find the latest developments on VAWA law and procedure.

§ 1.3 Contents of This Manual

This manual contains eleven chapters, with an appendix at the end of each chapter. The following subjects are covered in detail:

- **Chapter 2** discusses issues involved in working with immigrant survivors of domestic abuse, and includes guidelines for explaining VAWA's requirements and process to clients in understandable terms.
- **Chapter 3** provides a detailed description of the legal requirements for self-petitioning under VAWA.
- **Chapter 4** describes the self-petitioning process, including the contents of the application packet and the self-petitioning timeline.
- **Chapter 5** describes "adjustment of status"—the process in the United States through which someone (like an approved VAWA self-petitioner) applies to become an LPR.
- **Chapter 6** details the Immigration and Nationality Act's "grounds of inadmissibility," a list of conditions and conduct which can prevent an immigrant, including a VAWA self-petitioner, from getting LPR status.
- **Chapter 7** covers waivers of the grounds of inadmissibility available to VAWA self-petitioners.
- **Chapter 8** describes "consular processing," the process outside the United States through which someone (like an approved VAWA self-petitioner) applies to become an LPR.
- **Chapter 9** describes the process whereby a battered conditional resident (a person who immigrated through a spouse within two years of having married that spouse) can have the conditions on their LPR status removed without the cooperation or involvement of the abusive spouse.
- **Chapter 10** provides information about removal proceedings and motions to reopen for those who are required to appear before an immigration judge or who have already been ordered deported or removed in the past.

- **Chapter 11** details VAWA cancellation of removal, the procedure for domestic violence survivors in removal proceedings to obtain LPR status.

The appendix at the end of each chapter includes many items an advocate may need to help a client submit an effective application for VAWA immigration relief, including sample petitions, applications, and documentation and copies of relevant USCIS notices, statutes, and memoranda interpreting VAWA. (See the **Index of Appendices** at the end of each chapter).

§ 1.4 Overview of VAWA Self-Petitioning Eligibility

The major limiting factor for VAWA self-petitioning is that the self-petitioner must have been abused by a close family member with U.S. immigration status—specifically, a USC or LPR spouse or parent or a USC son or daughter. This limitation is the result of Congress’s intent to remove an abuser’s power over the survivor’s ability to gain immigration status—a power that abusers without immigration status do not have.² The following individuals may be eligible to self-petition, if they also meet the self-petitioning requirements:

- An abused spouse of a USC or LPR;³
- An abused child of a USC or LPR (a “child” is generally defined as unmarried and under twenty-one years of age);⁴
- A non-abused spouse of a USC or LPR whose child is abused by the USC or LPR spouse;⁵ or
- An abused parent of a USC son or daughter (a “son” or “daughter” is defined as twenty-one years or older).⁶

Someone who fits into one of these categories and hopes to self-petition under VAWA is called a “VAWA self-petitioner.” Non-abused children of an abused spouse or child may also benefit from VAWA if they are listed on the abused spouse or child’s VAWA self-petition.⁷ See **Chapter 3** for an in-depth discussion of who qualifies for VAWA self-petitioning.

§ 1.5 Overview of VAWA Self-Petitioning Requirements

A person who qualifies as a spouse, child, or parent according to the legal definitions listed above must also meet *all* of the following requirements. **Chapter 3** provides a more in-depth discussion of the requirements for VAWA self-petitioning.

1. The self-petitioner’s spouse abused the self-petitioner (or the self-petitioner’s child) during the marriage (in the case of a child or parent self-petitioner, the abuse could have

² Survivors of domestic violence, or other serious crimes, perpetrated by individuals who are not related to the victim and/or who do not have U.S. immigration status may instead be eligible for other forms of immigration relief, such as a U visa. While not the subject of this manual, see § 1.7 for mention of other forms of relief for survivors of domestic violence.

³ INA § 204(a)(1)(A)(iii) (spouse of USC); INA § 204(a)(1)(B)(ii) (spouse of LPR).

⁴ INA § 204(a)(1)(A)(iv) (child of USC); INA § 204(a)(1)(B)(iii) (child of LPR).

⁵ INA § 204(a)(1)(A)(iii) (spouse of USC); INA § 204(a)(1)(B)(ii) (spouse of LPR).

⁶ INA § 204(a)(1)(A)(vii).

⁷ *Id.*; INA § 204(a)(1)(A)(iv); INA § 204(a)(1)(B)(iii).

- happened at any time).⁸ Note: The self-petitioner does not have to be married to the abuser at the time of filing the VAWA self-petition, if the marriage ended because of the abuse and the marriage ended no more than two years before filing the self-petition.⁹
2. The self-petitioner was subjected to battery or extreme cruelty by the USC or LPR spouse or parent or the USC son or daughter:¹⁰

Battery or extreme cruelty includes behavior such as the following:

- Threatening to beat or terrorize them
 - Hitting, punching, slapping, kicking, or hurting them in any way
 - Emotionally abusing them, such as insulting them at home or in public
 - Forcing them to have sex when they do not want to
 - Threatening to take their children away or hurt them
 - Threatening to deport them or turn them over to immigration authorities, as part of a larger pattern of control and abuse
 - Controlling where they go, what they can do, and who they can see
 - Forcibly detaining them
 - Engaging in a *pattern of behavior* that would not appear abusive if considered individually
3. The self-petitioner lived with the abuser at some time. They do not have to be living together now or when the self-petition is submitted.¹¹
 4. With some exceptions, the self-petitioner must currently be living in the United States. If the self-petitioner is living abroad, they may still qualify if the abusing spouse is an employee of the U.S. government or armed services, or the abuse occurred in the United States.¹²
 5. If the self-petitioner is an abused spouse, the self-petitioner must have married the abuser in “good faith.”¹³
 6. The self-petitioner has good moral character. Basically, this means that they did not commit certain crimes or immigration offenses.¹⁴

⁸ INA § 204(a)(1)(A)(iii)(II)(BB) (spouse of USC); INA § 204(a)(1)(B)(ii)(I)(bb) (spouse of LPR).

⁹ INA § 204(a)(1)(A)(iii)(ii)(aaa)(CC)(ccc) (spouse of USCs); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(ccc) (spouse of LPRs).

¹⁰ INA § 204(a)(1)(A)(iii)(I)(bb) (spouse and intended spouse of USC); INA § 204(a)(1)(A)(iv) (child of USC); INA § 204(a)(1)(B)(ii)(I)(bb) (spouse and intended spouse of LPR); INA § 204(a)(1)(B)(iii) (child of LPR).

¹¹ INA § 204(a)(1)(A)(iii)(II)(dd) (spouse of USC); INA § 204(a)(1)(B)(ii)(II)(dd) (spouse of LPR).

¹² INA § 204(a)(1)(A)(v) (spouse and child of USC); INA § 204(a)(1)(B)(iv) (spouse and child of LPR).

¹³ INA § 204(a)(1)(A)(iii)(I)(aa) (spouse of USC); INA § 204(a)(1)(B)(ii)(I)(aa) (spouse of LPR).

¹⁴ INA § 204(a)(1)(A)(iii)(II)(bb) (spouse of USC); INA § 204(a)(1)(B)(ii)(II)(bb) (spouse of LPR).

7. The abuser must be a USC or LPR. However, if the abuser lost their USC or LPR status due to an incident of domestic violence, the abused spouse or child may self-petition within two years of the abuser's loss of status.¹⁵

If a self-petitioning spouse or child qualifies as a VAWA self-petitioner, then their children (unmarried and under age twenty-one, including adopted children and stepchildren) listed on their self-petition also qualify for VAWA, even if they have not suffered any form of abuse.¹⁶ When the child of the VAWA self-petitioner turns twenty-one, they will not lose VAWA benefits, including eligibility to apply for an immigrant visa. Instead, USCIS will consider the derivative a VAWA self-petitioner in their own right and just change their visa category from that of an "unmarried child" to one for an "unmarried son or daughter."¹⁷

§ 1.6 Overview of VAWA Self-Petitioning Process and Benefits

Unlike most family-based immigration applicants, an approved VAWA self-petitioner may be eligible for work authorization and certain public benefits, and be protected from deportation, during the waiting period before they obtain lawful permanent residence. The self-petitioning process, and the points at which an applicant is eligible for various types of relief, is briefly discussed below, and in more depth in **Chapter 4**. Self-petitions are adjudicated by USCIS at its Vermont Service Center (VSC).

1. The self-petition is filed on Form I-360, accompanied by documentation to prove how the self-petitioner meets the self-petitioning requirements, with a specially designated USCIS VAWA Unit at the Vermont Service Center. USCIS can correspond with a self-petitioner's designated representative instead of with the self-petitioner themselves so their abuser will not find out that they filed a self-petition.
2. If the self-petition appears approvable, USCIS will send the self-petitioner (or their representative) a Notice of Prima Facie Eligibility. The self-petitioner may use this notice as evidence of "qualified alien" status to obtain government aid like Medicare and TANF (and with some additional requirements, food stamps and other benefits). Some of these benefits vary by state.
3. If USCIS approves the self-petition, they will send the self-petitioner an Approval Notice and a Notice of Deferred Action, if one was requested.¹⁸ Deferred Action means the immigration authorities know the self-petitioner is in the United States and removable, but have decided to favorably exercise their discretion not to deport them. The self-

¹⁵ INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb) (USC abuser); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) (LPR abuser).

¹⁶ INA § 204(a)(1)(A)(iii) (child of abused spouse of USC); INA § 204(a)(1)(B)(i) (child of abused spouse of LPR).

¹⁷ INA § 204(a)(1)(D)(i).

¹⁸ Adjudication times at USCIS services centers and district offices can vary from office and change over time. To find the processing times for the Vermont Service Center where all VAWA I-360s are adjudicated, go to <https://egov.uscis.gov/processing-times/> or go to the USCIS website at <https://www.uscis.gov> and search for "processing times."

- petitioner can apply for work authorization from USCIS based on being an approved VAWA self-petitioner or based on having Deferred Action.¹⁹
4. The approved self-petitioner may “adjust status” or consular process to obtain LPR status once their immigrant visa becomes available. This may be immediately for spouses, children, and parents of USC’s, or may take several years for spouses and children of LPRs depending on the visa wait-lists, which are based on country of origin and visa category.

§ 1.7 Other Forms of Immigration Relief for Abused Noncitizen Spouses and Certain Other Abused Noncitizen Family Members

Some abused noncitizens who do not qualify for VAWA self-petitioning may instead be eligible for other forms of immigration relief. These options are discussed in more detail in **Chapters 9** and **11**. Briefly, they include:

Battered spouse waiver of joint petition for removal of conditional residence. A noncitizen who is a conditional resident need not file a VAWA self-petition. Conditional residence means the person already has lawful permanent resident status, subject to certain conditions or limitations on their status that last for two years. Near the end of the two-year period, in order for the spouse to become an LPR without conditions the married couple must together file an application on Form I-751 (called a “joint petition”). In abusive relationships, instead of enduring the harmful relationship and hoping their spouse will help file the joint petition, the conditional resident may have the option of obtaining a special “battered spouse waiver” of the joint petition requirement, showing that they have been subjected to battery or extreme cruelty during the marriage to the USC or LPR. This is discussed in further detail in **Chapter 9** of this manual.

VAWA cancellation of removal. VAWA permits some abused noncitizens to apply for permanent residence status while in removal proceedings, in a process called cancellation of removal. The major requirements for VAWA cancellation of removal are:

- The noncitizen has been battered or subject to extreme cruelty by a spouse, former spouse, or parent who is or has been a USC or LPR;
- The noncitizen has resided continuously in the United States for at least three years; and
- Removal from the United States would cause extreme hardship to the noncitizen, or their child or parent.

This form of relief is discussed in further detail in **Chapter 11** of this manual.

U visas for survivors of crime. Abused noncitizens who are not married to their USC or LPR abusers, or are married to abusers who are not USC’s or LPR’s, cannot file a VAWA self-petition. However, in 2000 a “U” visa category was created for survivors of crimes including domestic violence, who are willing to help in a criminal investigation or prosecution of perpetrators of

¹⁹ VAWA self-petitioners who request work authorization based on Deferred Action must file a separate Form I-765 and may be asked for proof that they have an economic necessity to work. Principal VAWA self-petitioners requesting initial work authorization do not need to file Form I-765 (but will need to file a Form I-765 at renewal or for a replacement). Derivative children must also use Form I-765 to request work authorization.

crime. This option is discussed in further detail in the ILRC's manual *The U Visa: Obtaining Status for Immigrant Victims of Crime*, which can be purchased at <https://www.ilrc.org/publications>.

Special immigrant juvenile status. Children who have been abused, abandoned, or neglected by one or both parents and have been declared a dependent of a state juvenile court, which may include family/custody, dependency, guardianship, or juvenile delinquency proceedings, may self-petition for an immigrant visa as a Special Immigrant Juvenile (SIJS). Under this program, the immigration status of the child's parents is irrelevant. Furthermore, until recently a child seeking to adjust as a special immigrant juvenile had no wait for a priority date to become current because visas for SIJs come from the employment-based fourth preference category, which never used to be oversubscribed. However, the entire process needs to be completed while the child is still under a state court's jurisdiction. This is discussed in-depth in an ILRC publication, *Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth*, which can be purchased at <https://www.ilrc.org/publications>.

T visas for survivors of human trafficking. Some abused noncitizens may be eligible for a "T" visa, another visa category created in 2000. This visa category was created for survivors of both human sex trafficking and labor-related trafficking. This form of relief is discussed in-depth in the ILRC's *T Visas: A Critical Immigration Option for Survivors of Human Trafficking*, which can be purchased at <https://www.ilrc.org/publications>.

Asylum for domestic violence. Some abused noncitizens may be eligible for asylum if they can show that they were persecuted, or have a well-founded fear of future persecution, based on their race, religion, nationality, political opinion, or membership in a particular social group. Despite challenges under the Trump administration, cases filed on behalf of on domestic violence survivors have made asylum for some survivors of domestic violence a stronger possibility for obtaining protection and legal status. For assistance with these cases, please consult the resources available from the Center for Gender and Refugee Studies at <http://cgrs.uchastings.edu/>.

CHAPTER 1
REQUIREMENTS FOR SELF-PETITIONING UNDER THE VIOLENCE
AGAINST WOMEN ACT (VAWA)

INDEX OF APPENDICES

Appendix 1-A Resources for Advocates Serving Survivors of Domestic Abuse,
 Trafficking, and Other Crimes

Immigrant Legal Resource Center
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