

VAWA Red Flags

Although your client may have a qualifying relationship to a United States citizen or lawful permanent resident and may further qualify for VAWA relief because of battery or extreme cruelty, the following “red flags” are grounds for concern. Any of the following may be cause for denial of a self-petition, a bar to adjustment of status, a ground for removal or a bar to cancellation of removal. If any of the following have ever applied to your client, consultation with an immigration attorney who is experienced with VAWA immigration relief is recommended:

- **Stowaway**
 - Not a bar to petition approval
 - INA 212(a)(6)(D)
 - Bar to adjustment of status or admission
 - INA 237(a)(1)(B)
 - May be ground for removal
 - Not a bar to cancellation of removal

- **Entry as an international exchange visitor**
 - Not a bar to petition approval
 - INA 101(a)(15)(J)
 - May be bar to adjustment of status or admission
 - Exceptions
 - INA 212(e)
 - Waiver available
 - INA 237(a)(1)(A)
 - May be ground for removal
 - INA 240A(c)(2)

- **Draft evasion**
 - Not a bar to petition approval
 - INA 212(a)(8)(B)
 - May be bar to adjustment of status or admission
 - No waiver if there is a bar
 - INA 237(a)(1)(A)
 - May be ground for removal

- **Previously deported/removed**
 - INA 101(f)(3)
 - May be bar to petition approval
 - INA 212(a)(9)(A)
 - May be bar to adjustment of status or admission
 - May be exception available
 - INA 237(a)(1)(A) and (B)
 - May be ground for removal

- **Failure to Voluntarily Depart**
 INA 240B(d)
 May be ineligible for cancellation of removal
 May be exception available

- **Removal Order Issued**
 Removal order must be rescinded before adjustment

- **Unlawfully present**
 Not a bar to petition approval
 INA 212(a)(9)(B)
 May be a bar to adjustment of status or admission
 Exception may be available
 INA 237(a)(1)(B) and (C)
 May be subject to removal

- **Departure since original entry**
 May trigger previous bar to adjustment

- **Unlawful entry**
 Not a bar to petition approval
 INA 212(a)(6)(A)
 May be a bar to adjustment of status or admission
 Exception may be available
 INA 237(a)(1)(B)
 May be subject to removal

- **Immigration violation (violation of law or conditions)**
 Not a bar to petition approval
 INA 237(a)(1)(B) and (C)
 May be ground for removal
 Not a bar to cancellation of removal

- **“Alien” smuggling**
 INA 101(f)(3)
 May be bar to petition approval
 May be exception available
 INA 212(a)(6)(E)
 May be bar to adjustment of status or admission
 May be exception or waiver available
 INA 237(a)(1)(E)
 May be ground for removal
 May be exception or waiver available
 INA 240A(b)(1)(C) and (2)(A)(iv)
 May be bar to cancellation of removal

May be exception available

- **Marriage fraud**
 - INA 204(a) and (c)
 - May be bar to petition approval
 - INA 212(a)(6)(c)(i)
 - May be bar to adjustment of status or admission
 - INA 237(a)(1)(G)
 - May be ground for removal
 - INA 240A(b)(2)(A)(iv)
 - May be bar to cancellation of removal

- **Any criminal convictions**
 - INA 101(f)(3)
 - May be bar to petition approval
 - May be exception available
 - INA 212(a)(2)
 - May be bar to adjustment of status or admission
 - May be waiver available
 - INA 237(a)(2)
 - May ground for removal
 - Limited exceptions and waivers available
 - INA 240A(b)(2)(A)(iv)
 - May be bar to cancellation of removal

- **Penal confinement (result of conviction)**
 - INA 101(f)
 - May be a bar to petition approval
 - May be an exception available

- **Prostitution**
 - INA 101(f)(3)
 - May be bar to petition approval
 - May be exception available
 - INA 212(a)(2)(D)
 - May be bar to adjustment of status or admission
 - May be waiver available
 - INA 237(a)(2)
 - May be ground for removal
 - INA 240A(b)(1)(C) and (2)(A)(iv)
 - May be bar to cancellation of removal
 - May be exception available

- **Controlled Substance Traffickers**
 - (Drug trafficking)
 - INA 101(f)

Bar to petition approval
No waiver
INA 212(a)(2)(C)
Bar to adjustment or admission
No waiver
INA 237(a)(2)(B)(i)
Ground for removal
No waiver
INA 240A(b) (2)(A)(iv)
Bar to cancellation of removal
No waiver

- **Human trafficking**

INA 101(f)
May be bar to petition approval
INA 212(a)(2)(H)
May be bar to adjustment of status or admission
INA 237(a)(2)
May be ground for removal
INA 240A(b)(1)(C) and (2)(A)(iv)
May be bar to cancellation of removal

- **Aggravated felony conviction**

INA 101(f)(8)
May be bar to petition approval
Limited possibility of exception
INA 212(a)(i)
May be bar to adjustment of status or admission
Waiver available (limited)
INA 237(a)(2)(A)(iii)
May be ground for removal
INA 238
May be subject to expedited removal
INA 242
May be limited judicial review to removal
INA 240A(b)(2)(A)(iv)
May be bar to cancellation of removal

- **Drug abuse or addiction**

Not a bar to petition approval unless there has been a conviction for possession (limited exception)
INA 212(a)(1)(iv)
May be a bar to adjustment or admission
INA 237(a)(2)(B)(ii)
Ground for removal
INA 240A(b)(2)(A)(iv)

Bar to cancellation of removal

- **Crimes of domestic violence, stalking or violation of protection order**
 - INA 237(a)(2)(E)
 - May be ground for removal
 - May be waiver available
 - INA 240A(b)(1)(C) and (2) (A)(iv)
 - May be bar to cancellation of removal
 - May be exception
- **Crime of child abuse**
 - INA 237(a)(2)(E)(i)
 - May be ground for removal
 - Waiver not available
 - INA 240A(b)(1)(C) and (2) (A)(iv)
 - May be bar to cancellation of removal
- **Child Protective Services intervention (child neglect-no conviction)**
 - INA 101(f)
 - May be a bar to petition approval
 - Exception may be available
- **Money laundering**
 - INA 101(f)
 - May be bar to petition approval
 - INA 212(a)(2)(I)
 - May be bar to adjustment of status or admission
 - INA 237(a)(2)
 - May be ground for removal
 - INA 240A(b)(1)(C) and (2)(A)(iv)
 - May be bar to cancellation of removal
- **Misrepresentation for immigration purposes**
 - INA 101(f)
 - May be a bar to petition approval
 - INA 212(a)(6)(C)
 - May be bar to adjustment of status or admission
 - May be waiver available
 - INA 237(a)(3)(C)
 - May be ground for removal
 - May be waiver available
 - INA 240A(b)(2)(A)(iv)
 - May be bar to cancellation of removal
 - May be exception available

- **False testimony for immigration purposes**
 - INA 101(f)(6)
 - May be a bar to petition approval
 - May be an exception available
 - INA 212(a)(6)(C)
 - May be a bar to approval
 - May be a waiver available
 - INA 240A(b)(1)(B) and (2)(A)(iv)
 - May be a bar to cancellation of removal
 - May be an exception available

- **Falsely claiming citizenship (U.S.)**
 - Not a bar to petition approval
 - INA 212(a)(6)(C)(2)
 - Bar to adjustment of status or admission
 - No waiver
 - Extremely limited exception
 - INA 237(a)(3)(D)
 - Ground for removal
 - No waiver
 - Extremely limited exception
 - INA 240A(b)(2)(A)(iv)
 - Bar to cancellation of removal
 - No waiver
 - Extremely limited exception

- **Terrorist activities**
 - INA 101(f)
 - May be bar to petition approval
 - INA 212(a)(3)(B)
 - Bar to adjustment
 - No waiver available
 - INA 237(a)(4)(B) or (1)(A)
 - May be ground for removal
 - INA 240A(c)(4)
 - May be ineligible for cancellation of removal

- **Espionage and Sabotage**
 - INA 101(f)
 - May be bar to petition approval
 - INA 212(a)(3)(A)
 - May be bar to adjustment of status or admission
 - Waiver only available for nonimmigrants
 - INA 237(a)(4)(A)
 - May be ground for removal
 - INA 240A(c)(4)

May be ineligible for cancellation of removal

- **Nazi persecution, genocide, commission of any act of torture or extrajudicial killing and severe violations of religious freedom**
 - INA 101(f)(9)
 - Bar to petition approval
 - INA 212(a)(3)(E) and (2)(G)
 - Bar to adjustment or admission
 - No waiver for immigrants
 - INA 237(a)(4)(D) and (E)
 - Ground for removal
 - No waiver
 - INA 240A(b)(1)(B) and (2)(A)(iv)
 - Bar to cancellation of removal

- **Public charge**
 - Not a bar to petition approval
 - INA 212(a)(4)
 - May be bar to adjustment of status or admission
 - May be exceptions available
 - INA 237(a)(5)
 - May be ground for removal
 - May be exception available

- **Unlawful voting**
 - INA 101(f)
 - May be a bar to petition approval
 - May be an exception available
 - INA 212(a)(10)(D)
 - May be bar to adjustment of status or admission
 - May be an exception available
 - INA 237(a)(6)
 - May be ground for removal
 - May be an exception available

- **Habitual Drunkard (Alcohol abuse)**
 - INA 101(f)(1)
 - May be a bar to petition approval

- **Communicable disease**
 - Not a bar to petition approval
 - INA 212(a)(1)(A)(i)
 - May be a bar to adjustment of status or admission
 - May be a waiver available

- **Lack of vaccination record**
 Not a bar to petition approval
 INA 212(a)(1)(A)(ii)
 May be a bar to adjustment of status or admission
 May be exception or waiver available

- **Physical or mental disorder**
 INA 212(a)(1)(A)(iii)
 May be a bar to adjustment of status
 May be a waiver available

- **Illegal gambling**
 INA 101(f)(4) [income principally from gambling] and (5) [2 convictions for gambling]
 May be a bar to petition approval

- **Polygamy**
 INA 204
 May be a bar to finding of bona fide marriage
 INA 212(a)(10)(A)
 May be a bar to adjustment of status or admission

- **Removal without further review**
 (Expedited removal order)
 INA 235
 Limited administrative review
 INA 242
 Limited judicial review

- **Totalitarian Party Membership (Communist)**
 INA 212(a)(3)(D)
 May be bar to adjustment of status or admission
 Exceptions available

- **International child abduction**
 INA 101(f)
 May be bar to petition approval
 INA 212(a)(10)(c)
 May be bar to adjustment of status or admission
 May be exception available
 INA 240A(b)(1)(C) and (2)(A)(iv)
 May be bar to cancellation of removal
 May be exception available