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## ***Preparing the VAWA Self-petition and Applying for Residence<sup>1</sup>***

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### **Introduction**

This chapter provides practical tips to filing the VAWA self-petition. This chapter is not intended to be an exhaustive list of recommendations,<sup>2</sup> but rather to be used as a guide when filing a VAWA self-petition. This guide will provide information on:

- Eligibility Requirements for Filing a Self-Petition
- General Filing Procedures and Practice Pointers
- The Self-Petitioner's Affidavit
- Affidavits from Witnesses and Advocates
- Checklist of Suggested Evidentiary Documents
- Obtaining Lawful Permanent Residence under VAWA

### **THE BATTERED IMMIGRANT PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT OF 1994**

The Violence Against Women Act of 1994 (VAWA), which was enacted as part of the Violent Crime Control Act of 1994, was the first piece of federal legislation in the United States specifically designed to help curb domestic violence.<sup>3</sup> VAWA's overarching goals were to enhance the protections available for battered women within the justice system, and to expand collaboration and cooperation between battered women's

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<sup>2</sup> For additional information on self-petition recommendations contact Gail Pendleton at the National Immigration Project [gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org) or visit their website at [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org). For new attorneys and advocates, it is highly advised to seek additional information from the National Immigration Project and to consult with experienced VAWA immigration attorneys and advocates. For a referral to experts, please contact the Immigrant Women Project at [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org).

<sup>3</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40001-702, 108 Stat. 1796, 1902-55 (1994).

supportive services and the criminal and civil justice systems.

Recognizing that immigration laws were being used as tools of power and control over immigrant victims of domestic violence, VAWA also included *special protections for immigrants abused by U.S. citizen or lawful permanent resident spouses or parents*. . The legal immigration status of these non-citizen victims often depended upon their relationships to their U.S. citizen, or lawful permanent resident abusers.<sup>4</sup> Abusers used their power over their spouses' or children's immigration status to control, threaten, isolate, harass, and coerce the immigrant victims. The battered spouse or child would likely be deterred from taking action to protect herself, such as seeking a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation by the Immigration and Naturalization Service INS, now known as U.S. Immigration and Customs Enforcement (ICE).<sup>5</sup>

VAWA 1994 contained provisions that limited the ability of the abuser to misuse the immigration laws in order to threaten and control his or her immigrant spouse or child. Specifically, VAWA remedied this situation by enabling battered immigrants to attain *lawful permanent residence* (a "green card") without the cooperation of their abusive spouse or parent. The Act created two forms of relief: 1) VAWA self-petitions and 2) VAWA cancellation of removal (formerly called "suspension of deportation"). These provisions ensure that immigrant victims of domestic violence have access to lawful immigration status without having to depend upon the cooperation or participation of their batterer.

## THE BATTERED IMMIGRANT PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT OF 2000

Although VAWA 1994 helped many battered immigrants, the legislative protections for battered immigrants remained incomplete. Subsequent immigration laws effectively barred access to VAWA protection for many immigrants, and implementation problems continued to plague the VAWA process. As a result, many immigrant victims of domestic violence remained trapped in these violent relationships despite the relief intended by VAWA 1994. In response, the battered immigrant advocacy community mounted an impressive campaign to respond to legislatively to some of the problems battered immigrants still faced. Due in part to the bipartisan efforts of sympathetic members of Congress responding to the advocacy community,<sup>6</sup> on October 28, 2000, President Clinton signed into law the Battered Immigrant Women Protection Act as a part of the Violence Against Women Act of 2000 (VAWA 2000).<sup>7</sup> The immigration provisions in VAWA 2000 were designed to restore and expand access to a variety of legal protections for battered immigrants by addressing residual immigration law obstacles standing in the path of battered immigrants seeking to free themselves from abusive relationships. The following section is a brief overview of one of the VAWA immigration forms of relief, the self-petition, including the VAWA 2000 amendments.<sup>8</sup>

### VAWA Self-Petitioners

Certain battered immigrants may obtain lawful permanent resident status (a green card) without the participation or cooperation of their abusive spouse by filing a VAWA self-petition. This is a two-step process. First, an eligible applicant must file a VAWA self-petition, which must be approved by the U.S. Citizenship and Immigration Services (CIS, formerly the INS). Second, the applicant must apply for lawful permanent residence either through the "adjustment of status" process in the United States or at a consulate abroad.

<sup>4</sup> H.R. REP. NO. 103-395 at 26-27 (1993).

<sup>5</sup> *Id.*

<sup>6</sup> Ann Moline, *Bipartisan Women Made Anti-Violence Act Happen*, WOMEN'S ENEWS, December 18, 2000, available at <http://www.womensenews.org/article.cfm/dyn/aid/376/context/archive> (last visited Aug. 28, 2004).

<sup>7</sup> Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1518 (2000). These new legal protections for battered immigrants went into effect October 28, 2000 and certain provisions were given retroactive effect.

<sup>8</sup> For further detailed information on the battered immigrant provisions of VAWA 2000, please consult the reading, SECTION BY SECTION CHART OF THE BATTERED IMMIGRANT PROVISIONS OF VAWA 2000. Copies may be obtained by contacting Legal Momentum at 1522 K St., NW, Suite 550, Washington, DC 20005; by phone at (202) 326-0040; or by e-mail at [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org).

## WHO IS ELIGIBLE TO FILE A VAWA SELF-PETITION?

- Abused spouses or former spouses of U.S. citizens and lawful permanent residents may file a VAWA self-petition. They may also include their children, even if the children are not abused, or are not related to the U.S. citizen or the lawful permanent resident.<sup>9</sup>
- Abused children of a U.S. citizen or lawful permanent resident may file a VAWA self-petition.<sup>10</sup>
- Spouses or former spouses (whether abused or not) whose children are abused by their U.S. citizen or lawful permanent resident spouse may apply for themselves.<sup>11</sup>

## WHAT ARE THE REQUIREMENTS FOR ESTABLISHING ELIGIBILITY FOR A VAWA SELF-PETITION?<sup>12</sup>

A self-petitioning spouse must satisfy **seven requirements**. A self-petitioning child must satisfy all the same requirements except for the “good faith marriage” requirement. The applicant must establish:

**1. Relationship to the abuser:** Self-petitioning spouses can demonstrate the marital relationship with a marriage certificate. A self-petitioning child must prove that s/he is the natural child, stepchild, or adopted child of a citizen or lawful permanent resident.<sup>13</sup>

If the self-petitioner is currently not married to the abuser by reason of the abuser’s bigamy, death or divorce, the self-petitioner may still qualify if she can prove that:

- She believed that she has legally married the abuser, but the marriage was invalid due to her abuser’s bigamy. Abused spouses who did not know they married a bigamist need to provide evidence that their marriage ceremony was actually performed.<sup>14</sup>
- She was the spouse of a U.S. citizen who died within the past two years. The self-petitioner must prove that she was the spouse of an abusive citizen and that her spouse died within the past two years.
- She was divorced from the abuser within the past two years. The self-petitioner must demonstrate that she was divorced from the abuser within the past two years, and that there was a connection between the divorce and the battery or extreme cruelty by the abusive spouse.<sup>15</sup>

**2. The abusive spouse or parent is a U.S. citizen or Lawful Permanent Resident:** A self-petitioner must prove that his or her spouse or parent is a U.S. citizen or lawful permanent resident.

- Loss of citizenship or lawful permanent resident status: In cases where the abuser has lost or renounced his immigration or citizenship status within the past two years, the self-petitioner must demonstrate that the loss of status or renunciation is related to an incident of domestic violence.<sup>16</sup>

<sup>9</sup> See Immigration and Nationality Act (INA) § 204(a)(1)(A)(iii), (B)(ii); 8 U.S.C. § 1154(a)(1)(A)(iii), (B)(ii) (2000) [hereinafter INA]. Children included in their parent’s VAWA self-petition are known as derivative children. To be included in the self-petition, the derivative child must be under 21 years of age at the time of filing.

<sup>10</sup> See *id.* § 204(a)(1)(A)(iv), (B)(iii). A self-petitioning child must prove that he or she is the child (natural, step-, or adopted) of a citizen or lawful permanent resident. Self-petitioning stepchildren must file while the child’s mother and abusive U.S. citizen or lawful permanent resident father are still married.

<sup>11</sup> See *id.* § 204(a)(1)(A)(iii), (B)(ii).

<sup>12</sup> For more information on what type of evidence can be used to prove VAWA cases, please consult the reading, VAWA DOCUMENTARY EVIDENCE MEMO. Copies may be obtained by contacting Legal Momentum at 1522 K St., NW, Suite 550, Washington, DC 20005; by phone at (202) 326-0040; or by e-mail at [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org).

<sup>13</sup> INA § 204(a)(1)(A)(iv), (B)(iii).

<sup>14</sup> H.R. CONF. REP. NO. 106-939, at 112-13.

<sup>15</sup> Section 1503(b)(1) of the Conference Report.

<sup>16</sup> Section 1503(b)(1) of the Conference Report.

**3. Residence:** Generally, self-petitioners must currently reside in the United States. Some self-petitioners may file from abroad if they meet one of three requirements:

- The abusive spouse or parent is an employee of the U.S. government;<sup>17</sup>
- The abusive spouse or parent is a member of the uniformed services;<sup>18</sup> or
- The abusive spouse or parent has subjected the immigrant spouse to battery or extreme cruelty in the United States.

**4. Residence with the abuser:** A self-petitioner does not have to reside with the abuser at the time of filing, but must still prove that she at one time resided with the abuser. Self-petitioners need not separate from the abuser in order to file a self-petition.<sup>19</sup>

**5. Battery or extreme cruelty during the marriage:**<sup>20</sup> The USCIS will consider any credible evidence, including civil protection orders, police and court records, medical reports, and affidavits of school officials, social workers, and shelter workers.

**6. Good moral character:** “Good moral character,” described below, is a term of art in immigration law. To show good moral character, a self-petitioner should submit a local police clearance or state-issued criminal background check from each locality or state, within or outside the United States, in which she has lived for six or more months during the three years immediately preceding the filing of the self-petition

**7. Marriage in good faith:** Self-petitioners need to demonstrate that they married or intended to marry (in cases of bigamy) in “good faith,” and not for the purpose of evading immigration laws.

## Divorce & VAWA Self-Petitioners

Prior to October 2000, battered immigrants who were divorced from their abusers were not eligible to file VAWA self-petitions. VAWA 2000 changed the law to enable divorced battered immigrants to file VAWA self-petitions “if the marriage was legally terminated during the two-year period immediately preceding the filing of the self-petition for a reason connected to the battering or extreme mental cruelty.”<sup>21</sup> This change in the law is effective for all VAWA self-petitions pending on, or filed on or after, October 28, 2000.<sup>22</sup>

The VAWA applicant must provide evidence that the battering or extreme mental cruelty led to or caused the divorce. The evidence submitted must demonstrate that the abuse occurred during the marriage, that the abuser was a citizen or permanent resident when the abuse occurred, and that the divorce took place within the two-year period immediately preceding the filing of the VAWA self-petition.<sup>23</sup> The USCIS has indicated that it will not require the divorce decree to specifically state that the termination of the marriage was due to

<sup>17</sup> The abuse may have occurred either in the United States or abroad.

<sup>18</sup> The abuse may have occurred either in the United States or abroad.

<sup>19</sup> Self-petitioners who plan to continue residing with their abusers should have a safe address where the CIS can reach them that would not be accessible to the abuser.

<sup>20</sup> The definition of “battery and extreme cruelty” includes:

being the victim of any act of a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi) (2004).

<sup>21</sup> Field Office Memorandum, Immigration and Naturalization Service, *Eligibility to Self-Petition as a Battered Spouse of a U.S. Citizen or Lawful Permanent Resident Within Two Years of Divorce* (Jan. 2, 2002).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

domestic violence.<sup>24</sup>

When an immigrant victim seeks help after a divorce has become final, the advocate or attorney should gather pre-divorce evidence demonstrating domestic violence. Such evidence may include protection orders, police reports, medical records, and affidavits of advocates, shelter workers or social workers who have knowledge about the domestic violence and its connection to the divorce. In some cases, when the immigrant victim flees or and goes into hiding, the abuser may obtain a divorce by publication in her absence. In such cases, although the decree will not state that the divorce is domestic violence-related, counsel for the victim can demonstrate that the divorce was part of the ongoing pattern of battering and extreme cruelty.

If a battered immigrant seeks help after the abuser files for divorce but before the divorce decree is final, advocates and attorneys working with the immigrant victim should, if possible, file the VAWA self-petition before the divorce becomes final. This is the safest approach for immigrant victims. Also, if the divorce action is ongoing, counsel for the victim can use discovery in the divorce case to obtain information and documentation that can be submitted in support of the self-petition.

### “Good Moral Character”

At the time of the filing of the initial VAWA self-petition, a petitioner (or a child self-petitioner who is fourteen years of age or older) must demonstrate that she or he is a person of “good moral character.”<sup>25</sup> The most significant factor that can undermine an immigrant victim’s ability to prove good moral character is a criminal history. Battered immigrant victims can end up as defendants in criminal cases for a variety of reasons. Examples include:

- The police made a dual arrest rather than determining who was the predominant perpetrator;
- The perpetrator spoke English with the police and the police could not or did not communicate with the victim when the police arrived and the abuser convinced the police to arrest her;
- The victim was forced into criminal behavior by her abuser;
- The victim shoplifted essential survival items while escaping abuse.

**When a potential VAWA applicant is a defendant in a criminal case that could lead to a finding of bad moral character, it is imperative to consult with an immigration expert immediately. Without appropriate counsel, the victim may plead guilty to charges that will render her ineligible for VAWA and could lead to her deportation.**<sup>26</sup>

While there is no statutory definition of good moral character, the Immigration and Naturalization Act (INA) lists actions which presumptively bar an individual from demonstrating good moral character.<sup>27</sup> It is not always easy to determine whether a specific crime established a lack of good moral character. Convictions for many crimes are statutory bars to good moral character, but other crimes, such as involuntary manslaughter or lesser offenses such as simple possession of a controlled substance, driving under the influence, or petty theft, for example, do not always bar a showing of good moral character.

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<sup>24</sup> *Id.*

<sup>25</sup> 8 C.F.R. § 204.2(c)(1)(i)(F).

<sup>26</sup> Attorneys and advocates with self-petitioners in this situation should contact the National Immigration Project of the National Lawyer's Guild at (617)227-9727, ext.2 or [gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org) or the Immigrant Women Program of Legal Momentum at (202) 326-0040 or [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org).

<sup>27</sup> INA § 101(f), 8 U.S.C. § 1101(f) (2000). The list of acts that bar findings of good moral character is discussed later in this chapter.

## PROVING GOOD MORAL CHARACTER

Moral character is evaluated by the government on a case-by-case basis, taking into consideration the standards to which the average citizen in the community is held. The petitioner must prove that she has maintained good moral character throughout the three-year period immediately preceding the filing of a self-petition.<sup>28</sup> Prior conduct may also be examined to determine good moral character at the discretion of CIS.<sup>29</sup> Self-petitioners must submit a police clearances letter from any state or locality where they have resided for at six months during the past three years. If they have been arrested during that time, they must submit copies of the arrest records and court dispositions.

Petitioners should always state in their affidavits if they have ever been arrested, and submit records of any previous arrests or convictions, or information concerning any other bad conduct (such as fraud). Before obtaining lawful permanent residence based on the self-petition, battered immigrants with approved self-petitions will need to be fingerprinted and the USCIS will use these fingerprints to run a criminal records search. This search will reveal all prior arrests in the United States, regardless of when they occurred. A battered immigrant with a criminal history should consult an immigration lawyer before filing the self-petition to determine whether she is barred from showing good moral character. She may meet the requirements for one of the domestic violence-related exceptions or waivers for criminal convictions or other ineligibility grounds.<sup>30</sup> It is better to reveal criminal or other behavior at the onset of a VAWA case, rather than to wait for CIS to discover it at a later stage. The staff members of the VAWA Unit of the CIS Vermont Service Center are trained in domestic violence and are more capable of assessing whether there is a connection between the domestic violence and any criminal activity and evaluating conduct within the context of the domestic violence.

Failure to disclose an arrest can undermine a person's credibility and may lead to denial of the self-petitioner's application for permanent residence or revocation of the approved self-petition.<sup>31</sup> There will be USCIS officers who may discover a criminal record at a later step in the proceedings.

## STATUTORY BARS TO GOOD MORAL CHARACTER

If the conduct of the self-petitioner falls under one of the statutory bars listed in INA Section 101(f), the USCIS generally is not permitted to waive this mandatory finding of a lack of good moral character.<sup>32</sup> An exception may exist for VAWA self-petitioners if they can establish a connection between the conduct and the domestic violence.<sup>33</sup> According to INA Section 101(f), a person is presumptively lacking in good moral character if he or she is engaging or has engaged in the following acts during the requisite period:

- Is or was a habitual drunkard;
- Is or was participating in prostitution within ten years of the date of application for a visa, admission, or adjustment of status;
- Is currently or has previously smuggled a person into the United States;
- Is or was a practicing polygamist;

<sup>28</sup> 8 C.F.R. § 204.2(c)(2)(v).

<sup>29</sup> NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, 1 IMMIGR. LAW AND DEFENSE § 8:32 (3d ed. 2004); see also *Matter of Sanchez-Linn*, 20 I. & N. Dec. 362, 365 (BIA 1991) (opining past conduct is relevant to the determination of good moral character).

<sup>30</sup> A criminal conviction or other act for which a waiver is otherwise available under the immigration laws will not bar a finding of good moral character for a VAWA self-petitioner if the crime or act is connected to the abuse. See INA § 204(a)(1)(C); 8 U.S.C. § 1154(a)(1)(C). For more information on waivers, see the discussion on obtaining lawful permanent residence later in this section and Chapter 9 of this manual.

<sup>31</sup> See INA § 205; 8 U.S.C. § 1155. See also 8 C.F.R. § 205.2. An immigration or consular officer may return the petition to the Vermont Service Center for revocation upon determination that the petition was approved in error.

<sup>32</sup> See *Miller v. INS*, 762 F.2d 21, 24 (3d Cir. 1985), cited in CHARLES GORDON, IMMIGRATION LAW AND PROCEDURE 74, 89 (1997).

<sup>33</sup> INA § 204(a)(1)(C); 8 U.S.C. § 1154(a)(1)(C).

- Has been convicted of or admits to committing acts that constitute a crime relating to a controlled substance (except a single offense for simple possession of thirty grams or less of marijuana);<sup>34</sup>
- Has been convicted of or admits to committing acts that constitute or a crime involving moral turpitude, not including petty or juvenile offenses;
- Was convicted of two or more offenses for which the total sentence actually imposed was five years or more;
- Was an illicit trafficker of any controlled substance or assisted others in such illicit trafficking;
- Has been convicted of two or more gambling offenses or whose income is derived principally from illegal gambling;
- Has given false testimony in order to obtain immigration benefits;
- Has been detained in a penal institution for an aggregate period of 180 days or more;
- Has been convicted of an aggravated felony.

In many cases there will be a connection between conduct that would preclude the establishment of good moral character and the abusive relationship. For example, a self-petitioner may be found to be a person of good moral character, despite her conviction on numerous counts of petty theft, if it is revealed that she stole food for her children because her spouse would not give her enough food or money. Self-petitioners should also submit character-references and other evidence that may offset such negative factors. Any form of community involvement, such as volunteer work or participation in religious and school activities, can help counter the effects of past criminal behavior and other bad conduct.

### “Extreme Cruelty”

VAWA’s immigration provisions define domestic violence more broadly than most state domestic violence statutes.<sup>35</sup> In addition to physical and sexual abuse, VAWA’s definition includes “extreme cruelty,” which is defined as:

being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.<sup>36</sup>

Courts in family law cases have found many non-physical forms of abuse to constitute extreme cruelty

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<sup>34</sup> Note that drug offenses are never treated as petty offenses for immigration law purposes. See *INA* § 212(a). In addition, any sale, however small in quantity or value, is considered trafficking under the immigration act. According to one decision from the 9th Circuit, some expunged drug convictions may be erased for immigration purposes, but in general, an expungement has no effect on a conviction for immigration purposes. *Murillo-Espinoza v. INS*, 261 F.3d 771 (9th Cir. Aug. 14, 2001); *Matter of Roldan-Santoyo*, Int. Dec. 3377 (BIA 1999), *vacated sub nom. Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000) (holding the decision in *Matter of Roldan* does not apply to certain state expungements of first-time drug offenses).

<sup>35</sup> Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POLY & L. 95, 106 (2002); Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 870 (1993).

<sup>36</sup> 8 C.F.R. § 204.2(c)(vi).

against the victim.<sup>37</sup> Courts have examined whether acts of cruelty are “of such nature and character as to destroy the peace of mind and happiness of the injured party,”<sup>38</sup> and whether the perpetrator intended to distress and humiliate the victim.<sup>39</sup> The victim’s self-esteem, dependency on the abuser, and ability to communicate are also factors abusers use to perpetuate extreme cruelty.

## THE IMPORTANCE OF DOCUMENTING EXTREME CRUELTY

In preparing a VAWA self-petitioning case, advocates and attorney should document the existence of each of the above listed factors that constitute or contribute to extreme cruelty. These issues should be addressed whether or not the immigrant victim has also suffered battering. Describing the extreme cruelty in a relationship, in addition to the abuse, gives the adjudicator a more complete description of the abuse the victim has suffered and the impact on the victim and her children. The existence of extreme cruelty, in addition to physical abuse, may also enhance the victim’s credibility and may contribute to an immigrant victim’s success in proving other elements of a VAWA case, including good faith marriage and good moral character.

## FORMS OF ABUSE

Abusers use many tactics to establish and retain control over their victims. While in some cases only one form of abuse will be sufficient to establish a case of extreme cruelty, other situations may require a victim to establish that many different acts, when examined collectively, constitute extreme cruelty. Extreme cruelty can include the following conduct:

- Intimidation and degradation;
- Economic and employment-related abuse;
- Social Isolation;
- Sexual Abuse;
- Immigration-related abuse;
- Possessiveness and harassment.

## INTIMIDATION AND DEGRADATION

Experts acknowledge that batterers commonly use a variety of tactics beyond violence to keep women in abusive relationships.<sup>40</sup> Abusers use threats to enhance a victim’s dependence on him by creating fear, stress, and humiliation, if the victim tries to leave or if she does not comply with his demands. Abusers use different forms of threats including: standing too close to victims, clenching their fists, sending warning looks, or displaying weapons to their intimate partners.<sup>41</sup> In cases where the victim is also an immigrant, abusers often threaten to report them to the immigration authorities.<sup>42</sup> Threats, intimidation, and degradation trap victims in abusive relationships, and can often form the basis for proving extreme cruelty.

## ECONOMIC AND EMPLOYMENT RELATED ABUSE

<sup>37</sup> See, e.g., *Muhammad v. Muhammad*, 622 So.2d 1239 (concluding husband’s harsh treatment toward wife, although religiously-motivated, constituted extreme cruelty) (Miss. 1993); *Keenan v. Keenan*, 105 N.W.2d 54 (Mich. 1960) (concluding husband’s disparaging statements to wife constituted extreme cruelty); *Ormachea v. Ormachea*, 217 P.2d 355 (Nev. 1950) (finding husband’s indifferent and sometimes hostile treatment of wife was extreme cruelty); *but see Carpenter v. Carpenter*, 193 P.2d 196 (Kan. 1948) (holding wife’s refusal to live with husband did not establish extreme cruelty).

<sup>38</sup> See *Veach v. Veach*, 392 P.2d 425, 429 (Idaho 1964); see also *Dickson v. Dickson*, No. D-98306, 1982 WL 5380 (Ohio App. May 27, 1982); *Conner v. Conner*, No. CA-1953, 1981 WL 6290 (Ohio App. June 4, 1981); *Pfalzgraf v. Pfalzgraf*, No. 52-CA-80, 1981 WL 6119 (Ohio App. Feb. 11, 1981).

<sup>39</sup> *Wolf v. Wolf*, 333 A.2d 138, 140 (R.I. 1975).

<sup>40</sup> See K.J. WILSON, *WHEN VIOLENCE BEGINS AT HOME* 17-18 (1997) (listing various forms of economic abuse, sexual abuse, threats, intimidation, isolation, and emotional abuse used by batterers); see also JUDITH HERMAN, *TRAUMA AND RECOVERY* 77 (1992).

See K.J. Wilson, *When Violence Begins at Home* 17-18 (1997) (listing various forms of economic abuse, sexual abuse, threats, intimidation, isolation, and emotional abuse used by batterers); Judith Herman, *Trauma and Recovery* 77 (1992).

<sup>41</sup> Mary Ann Dutton, *Understanding Woman’s Response to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1206 n.70 (1993).

<sup>42</sup> LETI VOLPP, *WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE* 6 (1995).

The lack of access to economic resources is the single largest barrier to a victim who seeks to leave an abusive relationship.<sup>43</sup> Victims may be prevented from participating in the labor market, or sabotaged at their workplaces.<sup>44</sup> Abusers are known to stalk or harass victims at work, and to send threatening e-mail or voice-mail messages that may cause the immigrant victim to be fired, or force her to leave her job for safety reasons. Furthermore, many illegal and undocumented immigrant victims are forced by their abusers to work illegally, and then their abusers threaten to have them deported.

## SOCIAL ISOLATION

Abusers may attempt to isolate their victims by prohibiting them from escaping, seeking help, and developing support systems or maintaining the victim's existing support systems.<sup>45</sup> The abuser may restrict the victim from using the phone,<sup>46</sup> prohibit her from going to work or school,<sup>47</sup> make her depend on him for transportation, limit the victim's contact with family or friends,<sup>48</sup> or prevent her from attending social activities.

Battered immigrants may be even further susceptible to social isolation due to the fact that many are far from any supportive community of family and friends.<sup>49</sup> To ensure isolation, an abuser might prevent a victim from learning English, or from having contact with people who speak English. A linguistic barrier minimizes a victim's ability to access health care, social services, domestic violence programs, immigrant rights agencies, law enforcement, and the courts.<sup>50</sup>

## SEXUAL ABUSE

Sexual abuse encompasses the criminal legal definition of sexual assault, requiring elements of lack of consent, force or threat of force, and sexual penetration, and may include a broader range of behavior, including unwanted sexual conduct engendered through more subtle or implicit threats.<sup>51</sup> Marital rape is a crime in most jurisdictions in the United States.

Rape, sexual assault and any unwanted sexual contact are crimes that constitute battery. In some VAWA self-petitioning cases, immigration attorneys, advocates, judges, and USCIS adjudicators make the mistake of treating cases of emotional abuse, in which sexual abuse is also present, as extreme cruelty cases and not battery cases. When sexual abuse is present and can be proven through the victim's affidavit and other evidence, the VAWA petition can be based on battery and extreme cruelty.

<sup>43</sup> Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 Geo. J. Pov. L. & Pol'y 245, 295-96 (2000) [hereinafter Dutton, *Help-Seeking Behaviors*]; see generally Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 Wm. & Mary J. Women & L. 597, 617-21 (2001).

<sup>44</sup> A study of domestic violence survivors found that 74 percent of employed battered women were harassed by their partner at work. Family Violence Prevention Fund, *The Workplace Guide for Employers, Unions, and Advocates*, San Francisco, 1998. According to an earlier study, twenty percent of all employed battered women lose their jobs because of their abusers' harassment in the workplace. Susan Schechter & Lisa T. Gray, *A Framework for Understanding and Empowering Battered Women*, in ABUSE AND VICTIMIZATION ACROSS THE LIFE SPAN 242 (Martha Straus, ed., 1988).

<sup>45</sup> See, e.g., *People v. Humphrey*, 54 Cal. Rptr. 2d 142, 921 P.2d 1 (1996); see also Ruth Jones, *Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser*, 88 Geo. L.J. 605 (2000).

<sup>46</sup> See, e.g., *Harshbarger v. Harshbarger*, No. 92-CA-111, 1993 WL 221269 (Ohio App. June 11, 1993) (concluding husband's prevention of wife from talking on the phone for more than twenty minutes a factor in the court's finding that he had committed extreme cruelty).

<sup>47</sup> FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE IN CIVIL COURT CASES at 23 (1992).

<sup>48</sup> See CHARLES EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AND LEGAL JUSTIFICATION 9-10 (1987). Nearly half of the women studied were forbidden by their batterers to have personal friends or to have such friends in the home. A husband's refusal to allow his wife to invite her relatives to visit constitutes extreme cruelty. See, e.g., *Gazzillo v. Gazzillo*, 379 A.2d 288 (N.J. 1977); *Harshbarger*, 1993 WL 221269.

<sup>49</sup> Leslye E. Orloff, Deeana Jang, & Catherine F. Klein, *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 314 (1995).

<sup>50</sup> *Id.* at 317.

<sup>51</sup> Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 FLA. B.J. 24, 25 (1994) (hereinafter Dutton, *The Dynamics of Domestic Violence*).

## IMMIGRATION-RELATED ABUSE

When immigration related abuse is present in a relationship it is a key indicator of extreme cruelty.<sup>52</sup> Abusers of immigrant women often threaten to report their victims to the immigration authorities.<sup>53</sup> When immigrant women are dependent on their partners for legal immigration status, are undocumented, or have a vulnerable non-permanent immigration status,<sup>54</sup> the power of immigration related abuse is accentuated.<sup>55</sup> Immigrant women are placed in the untenable position of having to choose between living with ongoing and escalating abuse or taking action to stop the abuse and risking deportation. Others believe that they will be turned away from help by social services, health care and the justice system because they are non-citizens.<sup>56</sup>

## POSSESSIVENESS AND HARASSMENT

Possessiveness and harassment also provide important evidence of extreme cruelty. An abuser may be jealous and possessive of the victim.<sup>57</sup> The abuser might accuse the victim of infidelity, and of attempts to attract other men.<sup>58</sup> Courts have ruled in family law cases that various types of behaviors can constitute extreme cruelty. An abuser may open the victim's mail;<sup>59</sup> call the victim frequently at home and at work or drive or loiter around the victim's home, work, or shelter;<sup>60</sup> constantly write letters to the victim;<sup>61</sup> contact the victim's friends, family or employer;<sup>62</sup> interrogate the children or other family members; stalk;<sup>63</sup> chase the victim's car;<sup>64</sup> or file frivolous legal actions against the victim.<sup>65</sup>

Like possessiveness, harassment is destructive of a victim's peace of mind and security. Through harassment the abuser demonstrates his control over the victim publicly. Harassment can humiliate a victim by portraying her as weak and subordinate. Public humiliation may be a culturally based form of extreme cruelty particularly among cultural groups that highly value privacy.

## General Filing Procedures and Practice Pointers

<sup>52</sup> Giselle Aguilar Hass, Mary Ann Dutton, & Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 105 (2000); see also Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 108 (2002).

<sup>53</sup> See, Leti Volpp, *Working with Battered Immigrant Women: A Handbook to Make Services Accessible* at 6 (1995).

<sup>54</sup> Examples include student visas (that can be violated by working) and work visas tied to a particular employer.

<sup>55</sup> Giselle Aguilar Hass, Mary Ann Dutton, & Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 105 (2000);

<sup>56</sup> Giselle Aguilar Hass, Mary Ann Dutton, & Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 105 (2000);

<sup>57</sup> In a survey of 234 women with history of physical abuse, 73% experienced excessive jealousy and possessiveness.

Follingstad, D., Rutledge, L., Berg, B., Hause, E., Polek, D. *The Role of Emotional Abuse in Physically Abusive Relationships*, 5 J. Fam. Violence 101, 113 (1990).

<sup>58</sup> Courts dealing with divorce cases have recognized false accusations of infidelity as extreme cruelty. See, e.g., Keenan v. Keenan, 105 N.W.2d 54 (Mich. 1960) ([g]rounds for divorce exist where a husband falsely accuses his wife of adultery); Mark v. Mark, 29 N.W. 2d 683 (Mich. 1947).

<sup>59</sup> Knuth v. Knuth, No. C1-92-482, 1992 WL 145387 (Minn. App. June 30, 1992).

<sup>60</sup> See Boniek v. Boniek, 443 N.W.2d 196, 198 (Minn. Ct. App. 1989).

<sup>61</sup> See State v. Sarlund, 407 N.W.2d 544, 546 (Wis. 1987).

<sup>62</sup> *Id.*

<sup>63</sup> States have recognized stalking as a ground to issue a civil protection order. See, e.g., N.M. STAT. ANN. § 40-13-2-C-9 (Michie Supp. 1993); N.J. STAT. ANN. § 2C:25-19 (West Supp. 1993); OKLA. STAT. ANN. TIT. 22, § 60.1 (West 1992); R.I. GEN. LAWS § 11-59-2 (2003). Stalking is generally defined as the intentional commission of more than one act which reasonably would — and in fact does — cause a victim to fear serious bodily injury. U.S. Department of Justice Office for Victims of Crime, *Strengthening Antistalking Statutes* (2002), available at <http://www.ojp.usdoj.gov/vawo/statistics.htm> (last visited Aug. 29, 2004). Over the last decade, every state has passed an anti-stalking law making such behavior a crime. *Id.* A 1996 study estimated that over one million women are stalked every year. National Center for Victims of Crime, *Stalking in America: National Violence Against Women Survey*, available at [http://www.ncvc.org/src/main.aspx?dbID=DB\\_NVAV587](http://www.ncvc.org/src/main.aspx?dbID=DB_NVAV587) (last visited Aug. 29, 2004).

<sup>64</sup> See Christenson v. Christenson, 472 N.W.2d 279, 280 (Iowa 1991).

<sup>65</sup> See Johnson v. Cegielski, 393 N.W.2d 547 (Wis. Ct. App. 1986).

Self-petitioners must complete and file USCIS Form I-360 (Petition for Amerasian, Widow or Special Immigrant) and include all supporting documentation. Forms are available on the Internet at [www.uscis.gov](http://www.uscis.gov), in person at a CIS office, by calling 1-800-870-3676, or by submitting a request by mail.

Self-petitions and the filing fee (\$185 as of August 2004) should be sent by certified return receipt mail to:

U.S. Citizenship and Immigration Services  
 Vermont Service Center  
 75 Lower Welden Street  
 St. Albans, VT 05479-0001

Self-petitioners should keep a copy of everything they submit to the CIS, including the application, accompanying documents, and the proof of mailing. **Copies, rather than original documents (such as birth certificates, legal documents, and photographs) should be sent with the petition.** Within a few weeks after mailing the application and fees, the self-petitioner should receive an acknowledgement or Notice of Receipt.

If the applicant requested that the filing fee be waived, the notice of receipt will only be issued after the fee waiver is granted. This will delay the official filing date of the self-petition. For this reason, self-petitioners who are filing near the end of the two-year deadline after a divorce should **not** request fee waivers, as this delay may cause the self petitioner to miss the filing deadline.

### 1) Practice Pointers

Battered immigrant women often seek help at shelters. Therefore, shelter workers are in the best position to help battered immigrants begin gathering the necessary documents and information for their self-petition. Immigration attorneys helping clients with VAWA self-petitions should work together with shelter workers or with a domestic violence advocate. These advocates will help the attorney and client develop the case affidavit and properly document the full history of violence, controlling behavior, and emotional abuse. Additionally, a shelter worker or domestic violence advocate can help create a safety plan for the client; such a plan may include providing a safe space for the collected information and documents to prevent the papers from being found and destroyed by the abuser.

An attorney working with a self-petitioner should make sure to:

- Collect all the necessary details of the client's story by asking open-ended questions through a series of interviews. Advocates can collect this information for the attorney. In such cases, the attorney obtains the draft affidavit that the advocate developed in collaboration with the client and organizes the affidavit in a format that will be most effective for the adjudicator.
- Collect affidavits and other documents corroborating the existence of domestic violence and of a good faith marriage.
- Index and summarize supporting documents by elements of proof so DHS examiners may easily understand which documents support what elements of proof and how.
- Include a cover letter providing a road map through the case, using bullets or a similar technique that maximizes reader-friendliness.

### The Self-Petitioner's Affidavit

The self-petitioner's personal affidavit is the most important piece of evidence; it is the first document that most VAWA adjudicators review, and should, if done well, support a finding that the applicant is credible.

The affidavit should provide as much detail as possible in the applicant's own words. The affidavit is essentially the story of the client's relationship with her spouse, and should explain why she is entitled to relief, while eliciting the reader's sympathy. The affidavit should address each element of proof. The attorney can recognize the affidavit and reword certain passages if they are unclear, but should not write the affidavit and should not use legal terminology. Attorneys and advocates should organize the victim's affidavit in chronological order, making it easier for the adjudicator to understand the development of the relationship and the history and patterns of abuse. This can be done while still keeping the story as much as possible in the victim's own words.

In addition to all the eligibility requirements, immigration officials look for consistency in the affidavit. It is important to include dates, places, and detailed descriptions of events only when the petitioner is certain that the information is correct. When inconsistencies arise between the affidavit and supporting documentation, the affidavit should address the inconsistency. For example, a victim might have denied to a hospital worker that her injuries were caused by domestic violence. The affidavit should acknowledge this inconsistency and explain why she did not reveal to the hospital staff the cause of her injuries. Immigration adjudicators are trained about domestic violence and should understand the legitimate, safety-related reasons why a battered woman may not reveal the domestic violence to a health-care provider. However, failure to explain the inconsistency could call her credibility into question.

The affidavit should include:

- The client's full name, place, and date of birth;
- Proof of good faith marriage: including details regarding how the client and her spouse met, how the relationship developed, why and when they decided to get married and details about the wedding. It should also provide a description about their daily lives (who paid the bills, who prepared meals, cleaned the house, took care of the children) and information about their social life together;
- If the marriage was arranged, it should explain how the marriage was consistent with the practices of either the client's or her spouse's culture;
- Residence with the abusive spouse/parent: the affidavit should state when, where, and for how long the petitioner resided with the abuser, and the nature of the relationship while living together;
- Information about the self-petitioner's children: where and when the client had children, and any plans to have children with her husband, whether she has children from other relationships that she wants to include in her self-petition, and when and where these children were born;
- Citizenship or Lawful Permanent Resident status of abusive spouse or parent: Information she has about her abusive spouse's status, U.S. citizenship, or lawful permanent resident status. This may include a statement that she had seen his passport or green card, or information about his passport or Alien number; or statements made by the abusive spouse or parent to others about his citizenship or resident status;
- A description of how and when the physical and/or psychological abuse began, and the client's fears, hopes, and other feelings about it. Descriptions of his use of intimidation, economic abuse, isolation, immigration-related abuse and sexual abuse to exert power and control over her and perpetuate extreme cruelty;
- A description of the incidents in which the spouse harmed the petitioner and/or her children and his tendencies to attempt to control her. Any threats should be described, as well as, attempts to get help and the results when she did, or her fear for help; observations, reactions, and physical and emotional injuries. Her fear of reporting the abuse to other people or to the police should be explained, including any attempts to seek help both through formal service providers (police, shelter,

courts, hospitals, social service agencies) and informal methods (talking to friends, family members, community members, leaders, elders or clergy);

- The petitioner’s relationship with his family and their role (if any) in the abuse, including whether they pressured the client not to report the abuse to the police;
- The petitioner’s fears for her own personal safety, the safety of her children, or that of her family.
- Good Moral Character – A petitioner who has no arrests should clearly state this in her affidavit. She should also discuss her involvement in community, faith- based organizations, her children’s school, and support groups. A petitioner with any arrests or convictions should immediately be referred to an immigration attorney with experience working on criminal law and domestic violence issues.
- At the end of the declaration, it is important to include the following phrase:

“I affirm, under penalty of perjury, that all the foregoing statements are true to the best of my knowledge.” (the Petitioner’s signature and the date should follow the statement).

### **Affidavits from Witnesses and Advocates**

1) **Corroborating witness affidavits:** if possible these should be obtained from:

a) **Witnesses to the abuse or the effects of the abuse:** The applicant should describe incidents where the witness:

- was present during the incident;
- saw or heard an assault, harassment, threat, act of humiliation, or other form of extreme cruelty;
- saw the battered immigrant’s bruises or injuries; or
- was told by the battered immigrant about abusive incidents.

b) **Domestic Violence Advocates:** including shelter workers, attesting to time spent in the shelter, involvement in programs or receipt of services for domestic violence victims and incidents of abuse disclosed by the woman to the advocate; affidavits of this nature should include:

- the advocate’s experience in the area of domestic violence and/or sexual assault (how long, in what capacity, how many clients served);
- what the petitioner told the advocate about the sexual assault/ domestic violence (including acts of psychological abuse);
- an assessment that the victim seemed credible to the advocate given her experience with victims of domestic violence/sexual assault;
- an explanation of why the treatment experienced by the victim amounts to domestic violence/sexual assault;
- any suggestions or recommendations the advocate provided to the petitioner (safety-planning measures, counseling resources, or any other information related to the domestic violence/ sexual assault she had experienced).

c) **Psychologists, counselors or mental health workers:** (if the applicant attended counseling) explaining the abuse disclosed by the applicant, and asserting that the woman’s behavior follows patterns to be expected of someone who has been abused by a partner, affidavits of this nature should include:

- the number of years the mental health worker has worked in the field;
- the number of battered women the mental health worker has treated or seen;
- the number of counseling visits by the self-petitioner.

d) Co-workers, religious leaders, neighbors, and friends: describing any abuse they witnessed and/or describing their observations about how the abuse has affected the victim and her children. Affidavits of this nature should include:

- the length of time they have known the self-petitioner;
- any knowledge they have about the marital relationship, including documentation of the courtship and/or marriage;
- the fact that the victim and abuser resided together;
- information about any abusive (both physical and emotional) incidents they witnessed;
- a description of any injuries sustained by the self-petitioner or her children that they are aware of as well as any other effects, psychological or emotional, of the abuse on the immigrant victim and her children;
- information about any help they offered the immigrant victim, and
- any concerns/fears for themselves, the victim or her children the witness may have.

e) Affidavits of Children: When children are self-petitioners, or have witnessed abuse, they can file their own affidavit in support of their mother's self-petition. While these affidavits can be useful to the case, preparing them can traumatize the children. It is therefore recommended that only older children prepare affidavits. It is further recommended that children who have witnessed or experienced domestic violence be referred to counseling and treatment. Those involved in counseling can be assisted by their mental health treatment providers in preparing their affidavits.

## Checklist of Suggested Supporting Documents

The regulations interpreting VAWA recommend the submission of certain types of documents with the self-petition.<sup>66</sup> USCIS is required, however, to consider "any credible evidence."<sup>67</sup> The suggested evidentiary documents provided in this section are meant to serve as a guide. These documents are not an exhaustive list of the types of evidence that may be offered to support a petition under VAWA.

### 1) What additional evidence should accompany the application?

In addition to properly completing the self-petition, Form I-360, and preparing the victim's and witness' affidavits, the petitioner should prove each element of her VAWA case through accompanying documentation where possible. The types of additional evidence that could be submitted to support a VAWA self-petition could include the following items, listed by element of proof:

#### a) Marriage to the abuser:

The following documents are acceptable as proof of marriage:

- a marriage certificate;
- self-petitioner's affidavit stating the fact of the marriage, when and where the ceremony occurred, and who performed the ceremony; and/or
- affidavits by persons with knowledge of the marriage.

i) The self-petition must be filed within two years of divorce: where the self-petitioner is divorced from the abuser, the petition must be filed within two years of the date the divorce became final. The following should be submitted:

<sup>66</sup> See 8 C.F.R. § 204.2(c) (2004).

<sup>67</sup> See 8 C.F.R. § 204.4; INA § 204(a)(1)(H), 8 U.S.C. § 1154(a)(1)(H) (2000); see also Memorandum from Paul Virtue, Immigration and Naturalization Service, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (Oct. 16, 1998).

- a divorce order establishing the date the divorce became final;
- an affidavit from the self-petitioner detailing the battery or extreme cruelty and its connection to the divorce;
- other evidence of battery and extreme cruelty, including any protection order issued for her or her children (including any court papers she filed seeking the protection order which outline the abuse in the relationship)<sup>68</sup> medical records, affidavits from health, mental health or domestic violence service providers documenting domestic violence in the marriage.

ii) Marriage in case of bigamy, divorce or death: If the self-petitioner is not legally married to the abuser because of the abuser's bigamy, she may still qualify if she can prove that she believed she legally married the abuser.<sup>69</sup> The following forms of evidence may be used:

- marriage certificate;
- marriage license application;
- photographs of the wedding ceremony;
- affidavits from persons attending the wedding ceremony; and/or
- an affidavit from self-petitioner stating facts supporting why she believed she legally married the abuser, and why she believed her marriage was valid.

iii) Widow of a U.S. citizen who died within the past two years: If the self-petitioner was the spouse of an abusive U.S. citizen (not permanent resident) who died within the past two years, the victim can still file a self-petition.<sup>70</sup> The following documents must be provided:

- marriage certificate;
- death certificate of the U.S. citizen spouse; and
- Proof of U.S. citizenship (including, U.S. passport, birth certificate, or naturalization certificate).

#### **b) Children filing for VAWA:**

i) A child who files a VAWA self-petition must prove that s/he is the natural child, stepchild, or adopted child of a U.S. citizen or permanent resident.<sup>71</sup> This may be proven with:

- a birth certificate or other document establishing that the child is under 21 years of age listing the parents' names;
- the parents' marriage certificate;
- if the child was born out of wedlock, documents showing legitimation (legal acknowledgment or other evidence or proof that the country where the child was born does not distinguish between children born in and out of wedlock)<sup>72</sup>
- for adopted children, an adoption decree, or affidavit of adoption and evidence of the abuser's legal custody and the child's residence with the abuser for two years.

ii) Stepchild of the abuser: In case of an abusive stepparent, the abused child's relationship with the abusive stepparent may be proven by submitting:

<sup>68</sup> When including protection order, divorce, custody or other family court pleadings or findings as part of the documentation for the self-petition it is important to review those documents to make sure they are consistent with the self-petitioner's affidavit. Any inconsistencies should be explained by the petitioner in her affidavit and in the cover letter to the self-petitioner prepared by the attorney.

<sup>69</sup> INA § 204(a)(1)(A)(iii)(II)(aa)(BB) (relating to a U.S. citizenship); *id.* § 204(a)(1)(B)(ii)(II)(aa)(BB) (relating to a lawful permanent resident).

<sup>70</sup> INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa).

<sup>71</sup> INA § 204 (a)(1)(A)(iv), (B)(iii).

<sup>72</sup> These requirements will vary depending on the laws of the country where the child was born. See generally, INA § 101(b)(1)(C), 8 U.S.C. § 1101(b)(1)(C); *Matter of Martinez*, 21 I & N Dec. 1035, 1038 (1997); *Matter of Cabrera*, 21 I & N Dec. 589 (BIA 1996); *Matter of Obando*, 16 I & N Dec. 278 (BIA 1977).

- if either the child's natural parent or step-parent were previously married, evidence that prior marriage or marriages have been terminated;
- child's birth certificate proving the child's relationship with his/her natural parent;
- the marriage certificate of the natural parent and the stepparent.

iii) **Derivative children:** A self-petitioner who wants to include her child/children in the self-petition must prove her parent/child relationship with the children. The children must also be under the age of 21 to be included in the application. The following documentation must be included for each child:

- child's birth certificate, listing the names of the child's parents along with an English translation, where applicable;
- if the self-petitioner is the child's father:
  - Marriage license or certificate documenting the child's parents were married; or
  - Evidence of the child's legitimation; or
  - Evidence of a bona fide parent-child relationship (pictures, letters).

#### c) **Good-faith marriage**

A self-petitioner must demonstrate that she married or she intended to marry in good faith, and not to evade immigration laws. In addition to the evidence listed in the "Residence with the Abuser" section below, she may submit the following:

- description in the self-petitioner's affidavit of courtship, wedding (include pictures), shared residence, and shared experiences (one affidavit describing this and the abuse or other relevant information can be submitted);
- insurance policies listing her spouse, joint leases, jointly filed income tax returns, and/or bank accounts;
- birth certificates of their children;
- photographs of the wedding;
- photographs of the self-petitioner with her spouse and other family members, preferably taken on different dates and at different locations;
- letters or cards exchanged with her spouse and between her family members and spouse;
- names, addresses and phone numbers of people who knew the abuser and the applicant as a married couple;
- photo IDs with the applicant's married name;
- letters from her employer or healthcare provider stating that she changed her name or listed the abuser as an emergency contact.

#### d) **Residence with the abuser**

A self-petitioner is not required to be residing with the abuser at the time of filing, but she must prove that she resided with the abuser at some point in time during the marriage. No specific length of residency with the abuser is required. Evidence may include:

- self-petitioner's affidavit describing residency with the abuser;
- joint auto, health or life insurance, tax returns or bank accounts, lease agreements, property deeds, or rent receipts with both names on them;
- employment or school records that list the names of both the applicant and the abuser at the same residence;
- letters or cards addressed to both the applicant and the abuser at the same residence;
- utility bills, medical records, credit card bills, magazine subscriptions in both names or to each spouse at the same address;
- an affidavit of the landlord, apartment manager or neighbors at the address where the couple

lived attesting to their residence at that location.

**e) Evidence demonstrating the abusive spouse or parent is a U.S. citizen or lawful permanent resident:**

A self-petitioner must prove that her/his spouse or parent is a U.S. citizen or lawful permanent resident. The following is a list of documents that can be used to prove the abuser's U.S. citizenship or lawful permanent resident status:

- abuser's birth certificate indicating birth in the United States;
- abuser's naturalization certificate, green card, 'A' number, or any USCIS document indicating immigration status;
- U.S. passport or passport number;
- a copy of the I-551 stamp in the abuser's passport, indicating lawful permanent resident status;
- or
- upon request, CIS will attempt to electronically verify abusers' citizenship or immigration status from their computerized records.<sup>73</sup>

**f) Battery or extreme cruelty during the marriage**

One of the most important elements of a VAWA self-petition is proof of battering or extreme cruelty. VAWA does not explicitly require any particular quantity of abuse. Proof of one incident of battering or extreme cruelty is legally sufficient.<sup>74</sup> It is strongly recommended, however, that advocates and attorneys work with immigrant victims to include as much of the history of battering and extreme cruelty in the victim's affidavit as possible. Advocates and attorneys should provide evidence for as many incidents as possible to establish a pattern of violence and extreme cruelty. Types of documentation to obtain are:

i) Affidavit of the battered woman telling her story: It is important to focus on the facts of the violence or cruelty, mentioning each incident separately, and in chronological order, listing when each incident occurred, and describing the applicant's fears and injuries (both physical and psychological), and the effect that each abusive incident had on any children.

The history of power, control, and extreme cruelty should also be described as part of the chronology. The effect that this pattern of power and control had on the self-petitioner and her children should be discussed. The affidavit should establish that the self-petitioner is credible, explain why she is entitled to relief, and elicit the reader's sympathy.

Types of evidence establishing abuse or extreme cruelty have occurred are:

- Restraining orders or civil protection orders that are obtained in any state, along with the pleadings (petition/affidavit) signed by the self-petitioner that were filed with the court in the civil protection order case.
- Police reports, records of phone calls to the police, or police visits to the couple's address. This may include phone calls to the police registering a complaint, a log of police runs made to the couple's address, copies of all tapes of calls to the police for help;

<sup>73</sup> 8 C.F.R. § 204.1(g)(3) (2004). This can be useful in cases in which the abuser is a naturalized citizen, a lawful permanent resident or when the abuser is a U.S. born citizen, and at some time in the past filed an immigration case for the self-petitioner or a child.

<sup>74</sup> It is important to note that on this issue of the quantity of abuse, VAWA self-petitioners and VAWA cancellation of removal applicants are not required to prove any specific amount of abuse. In contrast, battered immigrants who can only file for U nonimmigrant visa (Crime Victim Visa) relief must prove that they have suffered substantial physical or mental harm as a result of criminal activity. This is a much higher standard. See the section "Alternative Forms of Relief" in Chapter 3 of this manual for more information on U visas.

- Photographs of any injuries that the victim, has, or that an advocate or someone working with the attorney takes. If possible, for larger injuries, take a photo holding a ruler next to the injury so that the fact-finder can ascertain the size and scale of the injury. Include the woman's face within every photo, or take a full-body photo and then close ups. The local police station may also take photos. Include an affidavit of the person who took the photograph about their observations, the fact that they took the photograph(s), and an attestation to their accuracy. Take several extra photos to be sure you will end up with one of good quality that will be useful to the case.
- Corroborating witness affidavits for each incident of abuse where another person was present, or from witnesses who saw or heard an assault or threat, saw the victim with bruises or injuries, or was told by her about abusive incidents close to the time they occurred. Reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel are very helpful.
- Medical records If the account told by the victim to the health professional differs from her true story (e.g. said she fell down the stairs, rather than revealing that she had been battered), the applicant's affidavit and the cover letter from the attorney or advocates to CIS must address and explain any inconsistencies between the two stories. Advocates and attorney's should develop a specific doctor/patient privilege-waiver form to obtain copies of her medical records and mental health treatment records stating, that the permission extends only for purpose of obtaining documentation to be included in her VAWA self-petition case. VAWA confidentiality and this waiver protect against the records being used in any family, or criminal court case without the victim signing a new release.
- Criminal court records if a batterer was arrested or convicted for any act of violence or destruction of property relating to the applicant (certified copies if possible); a woman's own statements to police or prosecutors may be released to her by the prosecutor's office for this purpose.
- Domestic violence program or shelter records or affidavits attesting to the time the victim spent in the shelter, and the incidents of abuse disclosed to shelter workers. If the applicant attended counseling sessions, records indicating her attendance should also be added.
- Photographs of damaged property If a batterer has damaged any property during a violent incident, such as ripping clothes, smashing sentimental objects, pulling phone cords out of the wall, etc., if possible. The damaged property should be photographed where it was damaged, and then the object should be collected and retained. The woman's affidavit should state that the applicant still has the object and that it can be inspected by the CIS.

### **g) Good moral character**

Convictions for certain crimes, as well as other actions, will bar a self-petitioner from establishing good moral character.<sup>75</sup> To demonstrate good moral character, the petitioner should present:

- information in her affidavit attesting to her own good moral character, lack of a criminal record, and involvement in her community, church, or her children's school;
- local police clearance or state-issued background checks from each locality or state in the United States, or each foreign country, in which she has resided for six months or more during the three years immediately preceding the petition date. A police clearance or "good conduct" letter can be obtained from the local or county police department in each locality where she

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<sup>75</sup> INA § 101(f); 8 U.S.C. § 1101(f).

lives or has lived. If the victim has moved, these letters can be requested in writing, normally with proof of identity and a small fee for the search.

- an explanation of why police clearances or background checks cannot be safely obtained or are not available, submitted along with other evidence of good moral character with her affidavit;
- affidavits from responsible persons who can knowledgeably attest to her good moral character and lack of criminal record may also be submitted; and/or
- **if the battered immigrant was arrested, accused or has committed a crime, it is absolutely necessary to consult with an immigration lawyer prior to filing the self-petition. Failure to do so could place the victim at strong risk of deportation.**

**h) Petitioner’s residence in the U.S. or abroad:**

To file a self-petition, victims must either reside in the United States, have been abused in the United States, or be the abused spouse of a U.S. government employee, or member of the military working or stationed abroad. Self-petitioners residing in the United States may provide proof of current U.S. residence through the following documents:

- employment or school records;
- a property deed with her name on it, rent or mortgage receipts, utility bills, insurance policies, hospital or medical records;
- birth certificates of children born in the United States and children’s school records;
- cards or letters addressed to her address, affidavits by her neighbors, landlords, and friends attesting to her residence in the United States; and/or
- the self-petitioner’s affidavit stating her residence in the United States. No specific length of the residence in the United States is required as long as the victim resides in the United States at the time of filing.

Some self-petitioners may file from abroad if the abusive spouse or parent falls into one of three categories:

- 1) Where the abusive spouse or parent is an employee of the U.S. government:<sup>76</sup> Evidence should include:
  - spouse’s or parent’s employment records, pay stubs, employment identification card, and/or other documentation of the spouse’s employment with the U.S. government;
- 2) Where the abusive spouse or parent is a member of the uniformed services<sup>77</sup>: Evidence should include:
  - Spouse’s or parent’s military identification card, military orders, pay stubs, or documentation that the self-petitioner is a dependent member of the U.S. military of uniformed services;
- 3) Victims subjected to battery or extreme cruelty in the United States who are currently residing abroad, who are filing from abroad should submit documentation of abuse that occurred in the United States.

**i) Loss of citizenship or lawful permanent resident status:**

In cases where the abuser lost or renounced his immigration or citizenship status within the past two years, the abuse victim can still file the self-petition if she demonstrates that the loss of status or

<sup>76</sup> The abuse may have occurred either in the United States or abroad.

<sup>77</sup> The abuse may have occurred either in the United States or abroad. Uniformed services include all branches of the U.S. military, the Coast Guard and the U.S. Public Health Service.

renunciation of citizenship or lawful permanent resident status is related to the domestic violence.<sup>78</sup>

j) When an abuser has renounced his citizenship or given up his lawful permanent resident status:

Self-petitioners should submit evidence proving that the domestic violence predated the renunciation. This is particularly important in cases where lawful permanent resident abusers flee the country after the issuance of a protection order or a warrant in a criminal case.

## Obtaining Lawful Permanent Residence Under VAWA

Obtaining lawful permanent residence status through VAWA involves two steps. USCIS must approve the VAWA self-petition, and once approved, the applicant must apply for lawful permanent residence. There are two ways in which an applicant can obtain her green card, which is proof of lawful permanent residence. These are: 1) adjustment of status and 2) consular processing.

“Adjustment of status” is the procedure for obtaining a green card for applicants presently in the United States. Applicants submit their application for lawful permanent residence to local USCIS District Offices and await an interview with CIS examiners.

“Consular processing” is the procedure for obtaining legal permanent resident status for those who are not in the United States, and those who do not qualify to adjust status (obtain lawful permanent residency) within the United States. Applicants who fall into this category must apply for immigrant visas abroad at a U.S. consulate in their home country.

Battered immigrants with approved self-petitions can obtain their green cards through adjustment of status. They are not required to leave the U.S. and apply for immigrant visas at U.S. consulates abroad.<sup>79</sup> Recent legislation enabled a battered immigrant to adjust her status while in the United States, provided that she has an approved self-petition, that she is not inadmissible,<sup>80</sup> and that she has a visa immediately available to her. This chapter provides basic information on adjustment of status as a means of obtaining lawful permanent residence for battered immigrants with approved VAWA self-petitions.

## ELIGIBILITY FOR ADJUSTMENT OF STATUS

Not everyone who has an approved self-petition is eligible to obtain lawful permanent resident status through adjustment of status immediately following the approval of the petition. **VAWA self-petitioners who are married to, or are the minor unmarried children (under age 21), of U.S. citizens are considered “immediate relatives.”** They may file an adjustment application as soon as their VAWA self-petitions are approved.

**VAWA self-petitioners who are married to (or the children of) lawful permanent residents are subject to a “visa quota” system.** The visa quota system limits the number of visas provided for relatives of lawful permanent residents and in some cases U.S. citizens. Immigrants restricted by the visa quota system must wait for a visa to become available before they can adjust their status and become lawful permanent residents. This process can take up to six years, and is dependent on the applicant’s country of origin, and when they filed their self-petition with the USCIS.<sup>81</sup>

<sup>78</sup> INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb) (relating to loss of U.S. citizenship). § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) (relating to loss of lawful permanent resident status).

<sup>79</sup> All VAWA self-petitioners may now adjust their status in the United States under INA § 245(a) and (c) without having to pay a \$1000 fine. Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1506(a), 114 Stat. 1464, 1527 (2000).

<sup>80</sup> In order to enter the United States or be granted lawful permanent residence, an applicant must not come within the grounds of inadmissibility listed at INA § 212(a). See 8 U.S.C. § 1182(a). These grounds, discussed later in this chapter, are the essential reasons for which the CIS can deny entry or admittance to a person wishing to enter the United States or obtain lawful permanent residence.

<sup>81</sup> If the abusive spouse previously filed a family-based I-130 petition for the immigrant victim, the date of that petition may be used and the wait will be shorter.

## HOW TO APPLY FOR ADJUSTMENT OF STATUS

Once a self-petitioner qualifies for adjustment of status she must submit the application for adjustment of status and supporting documents, along with the filing fee (listed below) to the local USCIS District Office with jurisdiction over the applicant's residence. The documents can be downloaded on the USCIS website at <http://www.uscis.gov> (go to Forms and Fees), or can be ordered by calling 1(800) 870-3676. The self-petitioner and any dependents will each need:

- Form I-485, Application for Adjustment of Status
- the filing fee of \$315 (\$215 if under 14 years of age), or fee waiver request for form I-485 (a sample fee waiver request is included as a appendix to this chapter);
- copy of birth certificate, along with an English translation (**translations of foreign documents must be certified by a competent translator**);<sup>82</sup>
- Form G325A, biographic information;
- a copy of the Form I-797, Notice of Action (showing that the VAWA self-petition, Form I-360 was approved);
- Form I-693, Medical Examination of Aliens Seeking Adjustment of Status (plus supplemental vaccination form);
- 2 color photos taken within the last 30 days (see form I-485 instructions for more details);
- Form I-765 Application for Employment Authorization, if the self petitioner doesn't already have a work permit, along with a filing fee of \$175 or fee waiver request;
- \$50 for fingerprints for applicants 14 to 79 years of age;
- proof of entry into the U.S., if applicable (i.e. I-94 card and copy of passport).

Supplementary forms to include (depending on the circumstances) are:

- Form G-28, Notice of Entry as Appearance as Attorney or Accredited Representative
- Form I-131, Application for Travel Document, along with the filing fee of \$165, if the petitioner needs to travel outside the United States while the application is processed, **but note that applicants who have been out of immigration status should generally not travel because they will be barred from returning to the United States and adjusting their status.**<sup>83</sup>
- Form I-601, Application for Waiver of Grounds of Excludability with filing fee of \$250 (if the applicant is inadmissible for one of the reasons described below).

Each form has its own filing fee. The applicant will need to add up the total cost of the fees for each form and submit that total cost with her application package. If the applicant is unable to pay the filing fees, she can submit a fee waiver request along with her residency application. All fees can be waived except for the \$50.00 fingerprinting fee. After the I-485 Application for Adjustment of Status and supporting documents are filed, USCIS will alert the applicant of the date, time and location of a personal interview with a USCIS examiner. Battered immigrants should be fully prepared for their adjustment of status interviews by having all of the necessary documents available in order to avoid further delaying the adjustment process.<sup>84</sup> Items to bring to the interview:

- original birth certificate of each applicant;
- original marriage certificate;

<sup>82</sup> 8 CFR 204.1(f)(3): "Foreign language documents must be accompanied by an English translation that must be certified by a competent translator."

<sup>83</sup> Before any applicant travels outside the United States, she must consult with an immigration attorney regarding the potential consequences. An applicant who has been out of status for more than six months can be barred from receiving any immigration benefits, including lawful permanent residence, for three years. If an applicant has been out of status for over one year, she will be barred from receiving any immigration benefits for ten years.

<sup>84</sup> The battered immigrant may be able to attend the interview without an attorney or other representative if there are no inadmissibility problems or other foreseeable complications. It is preferable, however, to have the representation of an attorney or accredited representative in preparing for and attending the interview.

- certified copy of Final Dissolution of Marriage (i.e. divorce decree) for all previous marriages, prior to marriage with the battered, or also the divorce decree if she is now divorced to the batterer, within two years;
- original passport, if available;
- original I-94 card, if available;
- certified copies of arrest report and final court disposition (if applicable);
- copy of the approved self-petition – I-360;
- copy of CIS memorandum stating procedures that the local CIS office must follow if they have any questions about the self-petition;<sup>85</sup>
- evidence of the applicant’s income and financial resources – tax returns, pay stubs, letter from employer, proof of receipt of child or spousal support, court orders for child support, etc.

The objective of the adjustment interview is for the USCIS examiner to decide if the applicant is admissible as a lawful permanent resident. Whenever possible, the immigrant victim should consult with an immigration attorney before the adjustment interview to identify potential problems or grounds for inadmissibility. To determine admissibility, the immigration official will assess the application and ask the applicant questions relating to the required medical exam, any criminal history, or any grounds of inadmissibility that may apply, such as fraud, “public charge”, or violations of the immigration laws. In addition, the interview serves as an opportunity for the applicant to update information on the application and correct any minor errors on the forms.

If the application for adjustment of status is approved, the USCIS will later mail a green card to the self-petitioner.

**If the application for adjustment of status is denied, the applicant may be placed in removal (deportation) proceedings before an Immigration Judge.** The applicant may still be eligible to apply for adjustment of status again before an Immigration Judge. However, if one of the inadmissibility factors discussed below applies, it is necessary to consult an immigration attorney **prior to the USCIS interview** in order to avoid being placed in removal proceedings.

## GROUND OF INADMISSIBILITY

The grounds of inadmissibility are a list of reasons that render an applicant ineligible for permanent residence or admission to the United States (meaning the USCIS or an Immigration Judge must generally deny the application for lawful permanent residence).<sup>86</sup> The grounds are listed in Section 212(a) of the Immigration and Nationality Act and include the following:

- “Public charge” grounds;
- Fraud/misrepresentation;
- Health-related grounds (including HIV and tuberculosis);
- Criminal and related grounds;
- aliens previously removed (deported) from the United States/ other violations of the immigration laws;
- security and related grounds; communist/ totalitarian party membership, and terrorist activity.

## WHEN IS INADMISSIBILITY DETERMINED?

Possible grounds for inadmissibility should be identified and addressed as early as possible in the preparation of the VAWA case. Battered immigrants may have committed disqualifying criminal acts, or used unlawful means to obtain immigration benefits, such as entering the country with fake documents or misrepresenting facts for a visa application. These are cases in which the self-petitioner must be represented by an

<sup>85</sup> A copy of this memo is included in the Appendix to this manual at the end of this chapter.

<sup>86</sup> See INA § 212(a), 8 U.S.C. § 1182(a) (2000), “Classes of Aliens Ineligible for Visas or Admission,” for a complete listing of the grounds of inadmissibility. (Note: inadmissibility means the same thing as excludability)

immigration attorney trained in domestic violence, and working collaboratively on the case with an advocate. Immigration attorneys working with battered immigrants should determine any questions of inadmissibility prior to filing the self-petition, and the adjustment of status application.<sup>87</sup> Battered immigrants may be eligible to obtain waivers for many of the grounds of inadmissibility.

## SPECIFIC GROUNDS OF INADMISSIBILITY

Immigrants may be inadmissible for a variety of reasons. This section will outline the more typical grounds identify the relevance to cases of battered immigrant women, and discuss in more detail the grounds most likely to affect battered immigrants when they apply for lawful permanent resident status: misrepresentation, health-related, and public charge. **Immigrants with criminal histories are also potentially subject to different criminal grounds of inadmissibility.** There are waivers available for many types of crimes, and VAWA self-petitioners can qualify for special waivers if there is a connection between the crime and the domestic violence. The criminal grounds of inadmissibility and available waivers are discussed separately in detail in Chapter 9 of this manual.

## VIOLATIONS OF THE IMMIGRATION LAWS

Immigrants who have previously been removed or deported from the United States also face inadmissibility problems, and should be referred to an immigration attorney before applying for relief. An applicant who has been deported and then reentered the United States illegally or who has been unlawfully present in the country for more than 6 months (and has left or now leaves the United States) will be inadmissible and ineligible for lawful permanent residence.<sup>88</sup> There are waivers available and exceptions if there is some connection between the immigration violation and the abuse, but a battered immigrant in this situation **should not apply for adjustment of status without first consulting with an attorney.**<sup>89</sup>

## MISREPRESENTATION<sup>90</sup>

When an individual is seeking to obtain an immigration benefit such as permanent residence, any false statements made to an immigration official will have an impact on their immigration status.<sup>91</sup> Qualified battered immigrants can be barred from becoming lawful permanent residents due to misrepresentation and can even be removed (deported) from the United States.

Battered immigrants who have, through fraud or willful misrepresentation made to an immigration official, sought to obtain admission into the United States, a visa, or any benefit under immigration laws, are inadmissible unless they acquire a waiver.<sup>92</sup> Battered immigrants who falsely represent themselves as U.S. citizens **to any government official** are also inadmissible. There is no waiver for this form of misrepresentation.<sup>93</sup>

<sup>87</sup> If that is not possible, such as in instances where the self-petition must be filed before the abuser obtains a divorce from the self-petitioner, or if the victim of domestic violence fails to mention details that may make her inadmissible, then the immigration attorney should use the interval period while waiting for the self petition to be approved to properly assess any issues of admissibility.

<sup>88</sup> An applicant who has been out of status for more than six months and then left the United States can be barred from reentering the United States and receiving any immigration benefits, including lawful permanent residence, for three years. If an applicant has been out of status for over one year and then leaves, she will be barred from receiving any immigration benefits for ten years. See INA §§ 212(a)(9)(B)(i).

<sup>89</sup> See INA §§ 212(a)(9)(B)(iii)(IV) and (v); 212(a)(9)(C)(ii).

<sup>90</sup> Adapted from American Bar Association Commission on Domestic Violence, *Chapter Seven: Obtaining Lawful Permanent Residency*, in DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000).

<sup>91</sup> INA § 212(a)(6)(C) covers two separate but related grounds of inadmissibility for immigrants making, or who have in the past, made false claims. These grounds should not be confused with the criminal grounds for removal under INA § 237(a)(3) or the civil penalties for document fraud under INA § 274C, which should be reviewed separately.

<sup>92</sup> INA § 212(a)(6)(C)(i); 8 U.S.C. § 1182(a)(6)(C)(i).

<sup>93</sup> INA § 212(a)(6)(C)(ii); 8 U.S.C. § 1182(a)(6)(C)(ii).

Adjustment and immigrant visa applications contain questions that the CIS examiner will ask and review at the interview. The questions asked can relate to how the petitioner entered the U.S. and where she works. It is important for immigration attorneys and advocates to discuss any prior misrepresentation of facts with their battered immigrant clients, to ensure that the prior information does not lead to misrepresentations being made at the adjustment or visa interview.

The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996<sup>94</sup> (IIRAIRA) created a new ground for inadmissibility, preventing battered immigrants from adjustment of their status if they misrepresented themselves as U.S. citizens. The most common form of misrepresentation is when an immigrant signs an I-9 form for employment and checks a box indicating that he/she is a U.S. citizen. Those immigrants that falsely signed the form before September 30, 1996, are not inadmissible, however, those that signed after September 30, 1996, may be found to be inadmissible.<sup>95</sup> Advocates and attorneys should warn their clients not sign any forms or make statements that falsely identify them as U.S. citizens.

### WHAT QUALIFIES AS A MISREPRESENTATION?

Immigration attorneys can best advise battered immigrant clients on whether an action constitutes “misrepresentation” or “fraud” as it has been defined in immigration law. In the context of immigration law, three issues need to be analyzed to determine whether a battered immigrant has committed fraud:

1. Was there misrepresentation?
2. If so, was it “willful?”
3. Was the misrepresentation of a “material fact?”

It is important to understand the context of the statements made, such as when, where, to whom it was made, and whether the misrepresentation was made under oath. Advocates should work closely with battered immigrants to develop a trusting relationship so that advocates can learn whether battered immigrants have ever had any contact with USCIS or Border Patrol agents, or ever provided false information for purposes of obtaining employment. If a battered immigrant has had either experience, her VAWA case could be complicated by that fact. She should be referred to an immigration attorney who can work with the advocate in preparing the victim’s self-petition.

It is important to understand that battered immigrants may not remember making any false claims, or may not consider their actions to be misrepresentation. It is, therefore, important for attorneys to ask comprehensive questions with regard to any interactions their client might have had with immigration authorities, and any forms they may have signed, or false documents they may have used. If the attorney has any doubts, the attorney should do a fingerprint check<sup>96</sup> or Freedom of Information Act (FOIA) Request.<sup>97</sup>

### MISREPRESENTATION WAIVER

For some battered immigrants, a waiver for misrepresentation of material facts might be available.<sup>98</sup> In order to qualify for this waiver in non-VAWA cases, the applicant must be married to – or be the son or daughter of – a United States citizen or lawful permanent resident. The USCIS or State Department must determine that the decision to refuse admission to the immigrant would cause “extreme hardship” to the U.S. citizen or lawful permanent resident spouse or parent involved.<sup>99</sup>

<sup>94</sup> Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) [hereinafter IIRAIRA].

<sup>95</sup> This provision was added by Section 344(a) of IIRAIRA and only applies to misrepresentations made on or after the date of enactment (September 20, 1996).

<sup>96</sup> Fingerprints can be taken at police stations or other accredited locations and then should be sent to: FBI, CJIS Division, Special Correspondence Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306.

<sup>97</sup> To file a FOIA, the battered immigrant’s attorney should send CIS form G-639 to their local CIS office. There is no fee. For more information, see the CIS website at [www.uscis.gov](http://www.uscis.gov)

<sup>98</sup> See INA § 212(i). A false claim to United States citizenship makes an immigrant excludable, and there is no waiver available for this ground.

<sup>99</sup> *Id.*

In a VAWA self-petitioning case, the petitioner must show that denying the waiver will cause extreme hardship to either the abuser or the parent who is a U.S. citizen or lawful permanent resident. This standard, however, will probably be very difficult to meet.

## HEALTH-RELATED GROUNDS

If an immigrant has a communicable disease that is significant to public health, including HIV and tuberculosis, they will not be eligible for admittance to the United States.<sup>100</sup> They will also be inadmissible if they do not prove that they received vaccinations for certain diseases.<sup>101</sup> Those immigrants with certain physical or mental disorders,<sup>102</sup> and substance abuse problems, can also be inadmissible.<sup>103</sup> Any immigrants in such a situation should be referred to an immigration attorney before they file any papers with immigration authorities. There is a waiver available for communicable diseases such as HIV and tuberculosis, and VAWA self-petitioners can apply for the waiver and do not need to have a U.S. citizen or permanent resident spouse, child, or parent “qualifying relative” (normally a requirement for waiver applicants).<sup>104</sup>

## “PUBLIC CHARGE” GROUND

Immigrants, including battered immigrants, are ineligible to become lawful permanent residents of the United States if they are likely to become “public charges.”<sup>105</sup> Deciding whether an immigrant is likely to become a public charge relies not on previous receipt, but rather on the prospect of future reliance on public benefits.<sup>106</sup>

An immigrant who is applying for adjustment of status under a family-based visa petition is required to file an affidavit of support from the immigrant’s sponsor.<sup>107</sup> Sponsors must financially support the petitioner by maintaining him/her at an annual income of not less than 125 percent of the federal poverty guides. VAWA-approved self-petitioners, on the other hand, are not subject to the requirement of obtaining an affidavit of support. They must, however, demonstrate that they are not likely to become public charges. In order to prove this, **self-petitioners should demonstrate during the adjustment interview that they will be employed and are not receiving benefits and/or have other means to support themselves and their children.** The 125 percent requirement does not apply to VAWA cases. Battered immigrants should demonstrate employment but need not prove that their earnings plus any support place them at 125 percent of the poverty line.<sup>108</sup>

IIRAIRA granted access to public benefits to VAWA approved self-petitioners (See Chapter 5 regarding benefits and services available to battered immigrants). Battered immigrants should take advantage of this emergency economic option if needed, but should only rely on benefits for as short a period of time as possible. Once a battered immigrant’s self-petition has been approved, her attorneys or advocate should assist her in obtaining employment authorization. Temporary receipt of public assistance should not result in an approved self-petitioner being denied lawful permanent residence as a public charge. This is particularly true when she has obtained work authorization and employment by the scheduled adjustment interview. VAWA 2000 recognized the desperate need for battered immigrants to survive economically and clarified that a VAWA self-petitioner’s use of public benefits specifically made available under IIRAIRA did not make the immigrant a public charge, or jeopardize her eligibility to receive lawful permanent residence.<sup>109</sup>

## After Becoming a Lawful Permanent Resident

<sup>100</sup> These diseases include: chancroid, granuloma inguinale, gonorrhea, syphilis, human immunodeficiency virus (HIV) infection, leprosy (infectious), lymphogranuloma venereum, and tuberculosis (active). See 42 C.F.R. § 34.2-.3 (2004).

<sup>101</sup> These include mumps, measles, rubella, polio, tetanus, diphtheria toxoid, pertussis, influenza type B, and hepatitis B. See INA § 212(a)(1)(ii); 8 U.S.C. § 1182(a)(1)(ii).

<sup>102</sup> See INA § 212(a)(1)(iii); 8 U.S.C. § 1182(a)(1)(iii).

<sup>103</sup> See INA § 212(a)(1)(iv); 8 U.S.C. § 1182(a)(1)(iv).

<sup>104</sup> See INA § 212(g)(1); 8 U.S.C. § 1182(g)(1).

<sup>105</sup> See INA § 212(a)(4)(A); 8 U.S.C. § 1182(a)(4)(A).

<sup>106</sup> *Id.*

<sup>107</sup> See INA § 212(a)(4) and 213A; 8 U.S.C. § 1182(a)(4) and 1183a.

<sup>108</sup> INA § 212(a)(4)(C); 8 U.S.C. § 1182(a)(4)(C).

<sup>109</sup> Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464, 1526; INA § 212(p).

Once the battered immigrant has obtained her green card, or lawful permanent residence card, she has the right to live and work in the United States. A lawful permanent resident is still subject to immigration laws. She should not, for example, stay out of the United States for more than six months, because she may be found to have “abandoned” her permanent resident status and denied re-entry to the United States.<sup>110</sup> Certain criminal acts can also render a lawful permanent resident deportable. *See Chapter X of this manual for a discussion of these crimes.* The only person who can take away lawful permanent resident status is an Immigration Judge. Threats from abusers to have the battered immigrant deported may continue once she has obtained her green card, but the battered immigrant should be informed that the threats carry no weight, as long as she does not violate criminal or immigration laws.

Children in the United States who have been listed as dependents on the battered immigrant’s I-360 can apply for adjustment to lawful permanent resident status along with their mother. A VAWA-approved lawful permanent resident’s children living outside of the United States may file for an immigrant visa through a process called “following to join.” This will allow these children (under the age of 21) to obtain an immigrant visa (lawful permanent residence) and join the VAWA self-petitioner in the United States.<sup>111</sup> The lawful permanent resident needs to file an I-824 petition with USCIS office that adjusted her status. The immigration authorities will then contact the U.S. consulate where the children are living, and provide the consulate with verification that the battered immigrant self-petitioner’s status was adjusted. The lawful permanent resident should contact that consulate and inform them that they will be receiving verification of the adjustment from USCIS and that the children will be applying for immigrant visas as following to join dependents. The consular officials should grant “following to join” visas based upon proof of the parent-child relationship and should not inquire into, question or reopen the VAWA case in any way. The consulate will inform the lawful permanent resident as to what procedures must be followed in order for the children to receive their visas.

## Conclusion

Once the VAWA self-petition has been approved by USCIS, the self-petitioner can apply for lawful permanent resident status through adjustment of status, while continuing to live in the United States.<sup>112</sup> A self-petitioner whose abuser is a U.S. citizen can file immediately for adjustment to lawful permanent resident status. Those abused by lawful permanent resident spouses or parents will have to wait (often up to 5 to 7 years) to adjust. During their wait for adjustment, battered immigrants with approved self-petitions receive “deferred action status,” which means that ICE agrees not to deport them and USCIS provides them with work authorization. They cannot, however, travel abroad. In addition, it is extremely important to advise these immigrants that they must follow all U.S. laws while waiting, including immigration and criminal laws, payment of income taxes, and not encouraging family members of other to enter the United States unlawfully. Further, it is important for battered immigrants to disclose to advocates and attorneys information about previous encounters with ICE/USCIS, any arrests or criminal convictions, and any false representations or claims of U.S. citizenship. Any case in which this history exists should be referred to an immigration lawyer trained in VAWA immigration cases.<sup>113</sup> Advocates should collaborate with immigration lawyers, particularly in cases where inadmissibility waivers are needed, to ensure that immigrant victims successfully obtain permanent resident status.

<sup>110</sup> See INA § 101(a)(13)(C); 8 U.S.C. § 1101(a)(13)(C).

<sup>111</sup> See 8 C.F.R. § 40.1(a)(1).

<sup>112</sup> See INA 245(a) and (c). Battered immigrants who are out of status should not have to rely on INA § 245(i) or pay a \$1000 penalty fee like many other immigrants who are out of status.

<sup>113</sup> For assistance locating an immigration lawyer trained in VAWA immigration cases, contact the Immigrant Women Program of Legal Momentum at (202) 326-0040 or [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org), or the National Immigration Project of the National Lawyer’s Guild at (617) 227-9727 or [gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org).