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VAWA Cancellation of Removal¹

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Introduction

Cancellation of removal² (formerly suspension of deportation³) is a type of “waiver” that allows certain immigrants in deportation or removal proceedings to be granted permanent residence if they have established roots in the United States and meet other requirements.⁴ A special form of cancellation of removal for battered immigrants was created as part of the Violence Against Women Act (“VAWA”) and is called VAWA Cancellation of Removal.⁵ Cancellation can only be granted by an immigration judge once a battered immigrant has been placed in removal proceedings.⁶ This means that cancellation is not relief for which every battered immigrant woman can apply. She first must be charged by immigration authorities with an immigration violation – usually being unlawfully present in the United States or overstaying a visa – and ordered to appear before an immigration judge.

If an immigration judge grants the battered immigrant’s application for cancellation of removal, the immigrant is granted lawful permanent residence. If the judge denies the application, the battered immigrant will be ordered deported or removed from the United States.

An immigrant victim of domestic violence placed in removal proceedings after being turned in or discovered by the immigration authorities must secure the assistance of an immigration lawyer knowledgeable about

¹ We wish to gratefully acknowledge the contributions of Kelly E. Hyland of Washington College of Law, American University, Emily Kite of Columbia University Law School, and Janice Kaguyutan in the preparation of this chapter.

² See INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2).

³ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), (hereinafter IIRIRA) replaced “suspension of deportation” relief with “cancellation of removal,” which is similar to suspension but has stricter eligibility requirements.

⁴ See A.B.A. COMMISSION ON DOMESTIC VIOLENCE AND AYUDA, INC., *Chapter Eight: Cancellation of Removal, in DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT* (2000).

⁵ When an applicant is granted VAWA cancellation, her child may be granted parole until the family-based petition filed by the battered parent on the child’s behalf can be approved. INA § 240A(b)(4); 8 U.S.C. § 1229b(b)(4).

⁶ Removal proceedings were called “deportation” proceedings before April 1, 1997. Some individuals who were in deportation proceedings before that date and are still in the U.S. may apply for suspension of deportation under VAWA, which has essentially the same requirements as cancellation of removal.

VAWA.⁷ If a battered immigrant is placed in removal proceedings before an immigration judge, it is important that she find legal representation so she may effectively present a claim under VAWA if she is eligible. Applying for cancellation of removal is a complex process. No one should attempt to file a cancellation application without the assistance of an immigration attorney.

This chapter provides basic information on VAWA cancellation of removal, lists the eligibility requirements that must be met by an applicant, and provides some suggestions of evidence that an advocate may offer to meet each requirement. This chapter is designed to help advocates and lawyers who are not immigration lawyers identify immigrant victims who may be eligible for cancellation of removal. The information provided will also be useful to immigration attorneys who may not have experience with domestic violence cases. This chapter will help them to work in collaboration with advocates and other attorneys assisting immigrant victims. The most successful cancellation of removal cases are those in which advocates and lawyers offering civil legal assistance to victims support the efforts of the immigration attorney.⁸

Who is eligible for VAWA cancellation of removal?

The following immigrants qualify for VAWA cancellation of removal:

- A person who is an abused spouse, former spouse, or intended spouse⁹ of a U.S. citizen or lawful permanent resident;
- A person who is or was an abused child¹⁰ of a U.S. citizen or lawful permanent resident; and
- A person who is the non-abusive parent of a child who is or was subjected to domestic violence or extreme cruelty by a U.S. citizen or lawful permanent resident parent. The parent herself need not be abused.¹¹

The following are examples of battered immigrants who do not qualify to file a VAWA self-petition but do qualify for VAWA cancellation of removal:

- The parent of an abused child who was never married to the child's abusive U.S. citizen or permanent resident parent;
- The abused spouse of a permanent resident spouse who has died or any abused children of a U.S. Citizen or permanent resident parent who has died;
- An abused spouse who was divorced for over 2 years from the abuser;
- An abused stepchild whose immigrant parent has been divorced from the abusive parent for over 2 years;
- An abused spouse or child whose citizen or legal permanent resident parent gave up citizenship or lost lawful permanent resident status more than 2 years previously;

⁷ To locate a VAWA-trained immigration lawyer in your area, contact the Immigrant Women Program, Legal Momentum, (202)326-0040, iwp@legalmomentum.org, 1522 K Street, NW, Suite 550, Washington, DC 20005, or National Immigration Project of the National Lawyers Guild, (617)227-9727, Gail@nationalimmigrationproject.org.

⁸ For a discussion on the benefits of collaboration, see Chapter 1 of this manual.

⁹ See INA § 101(a)(50); 8 U.S.C. § 1101(a)(50), for definition of "intended spouse." An immigrant victim can qualify for relief under VAWA even if the marriage is invalid due to the bigamy of the abusive spouse, provided the immigrant victim was unaware that her intended spouse was still married.

¹⁰ See INA § 101(b)(1); 8 U.S.C. § 1101(b)(1), for definition of child. A person who is now over the age of 21 yet who was abused as a child can also file for cancellation of removal based on the abuse.

¹¹ The abusive parent need not be the natural parent of the abused child and may be a step-child. Further, the parent of an abused child may file for VAWA cancellation whether or not she was ever married to the child's abusive parent.

- Victims of incest or child abuse who were abused while under 21 years of age but who did not file their VAWA self-petition while they were under 21 and who are now over 21 years of age; and
- Victims of child abuse who cannot establish that they have resided with the abuser.

What is the procedure for applying for cancellation of removal?

In order to apply for cancellation of removal, the immigrant survivor must be in removal proceedings before an immigration judge. If she is not, it may be possible in some instances to be placed in removal proceedings in order to apply for VAWA cancellation. To do this, the immigrant must essentially “turn herself in” to the immigration authorities and inform them she is unlawfully present in the United States. This should only be considered when the survivor cannot qualify for a green card in any other way, because if the application for cancellation is ultimately denied, the immigrant will be ordered removed and deported from the United States.

The following is an overview of the different phases of applying for relief in removal proceedings.

REQUESTING ISSUANCE OF A CHARGING DOCUMENT (“NOTICE TO APPEAR”) IF NECESSARY

If an applicant is not already in removal or deportation proceedings, she must secure the assistance of an immigration lawyer to help her turn herself into the U.S. Immigration and Customs Enforcement (“ICE”, formerly INS) and request that she be put in removal proceedings. Each local ICE office has its own procedures and has discretion to decide whether to initiate removal proceedings. In some jurisdictions, this process may occur rather quickly, while in others it may take several months. In some cases, the ICE office might decide not to place the immigrant in removal proceedings.

The immigrant must currently be **out of lawful immigration status** to be placed in proceedings. If, for example, the battered immigrant entered the U.S. without authorization, overstayed her visa, or worked without INS authorization while on an otherwise valid non-work visa, she may be found to be in violation of the immigration laws and removable. If she is still in lawful status under a current non-immigrant visa such as a student, tourist, or work-related visa, such as an H-1B visa, she cannot be placed in removal proceedings.

U.S. ICE initiates removal proceedings by issuing a charging document called a “Notice to Appear” (“NTA”). This charging document formally alleges that the individual is not a citizen or national of the United States and charges the immigrant with violations of immigration law. Examples of the immigration violations with which a potential applicant may be charged are overstaying a tourist visa, unauthorized work while on a student visa, or entering the United States without authorization.¹²

APPEARING BEFORE THE IMMIGRATION COURT AFTER A NOTICE TO APPEAR IS ISSUED BY ICE AND FILED WITH THE COURT

U.S. ICE and the immigration court are separate entities, and ICE, which is part of the Department of Homeland Security, must file the NTA with the immigration court, which is part of the Department of Justice, for removal proceedings to begin. The immigration court will mail a hearing notice to the immigrant once the NTA has been filed. **It is very important to give ICE a safe current address where the battered immigrant can receive mail.** If she does not receive the hearing notice and fails to appear at the hearing, she will be ordered removed in her absence. If this occurs, she cannot apply for cancellation of removal, and there are other severe consequences, including potentially being barred from any type of immigration relief in the future and detention and deportation.¹³

¹² See e.g. INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i); INA § 237(a)(1)(C), 8 U.S.C. § 1227(a)(1)(C).

¹³ INA § 240(b)(5)(A) and (7); 8 U.S.C. § 1229a(b)(5)(A) and (7).

The first hearing will be a preliminary one, called a “master calendar” hearing, where the immigrant must appear and plead to the charges on the NTA. There are normally two or three brief master calendar hearings before the immigrant has a longer individual hearing in which testimony is taken regarding the cancellation application.

PLEADING TO THE CHARGES

As stated above, only immigrants who are currently inadmissible or deportable for violating the immigration laws may be placed in removal proceedings. ICE has the burden to establish that the survivor is not a U.S. citizen.¹⁴ ICE also has the burden to show deportability or inadmissibility, but in many cases, an immigrant, through her attorney, will concede the charges in order to move the process more quickly to the point where a cancellation application may be considered.¹⁵ However, it is very important that the attorney not concede a charge such as fraud or one based on a criminal ground if it will render the victim ineligible for cancellation of removal. If the attorney is in doubt, he or she should speak to an immigration lawyer who has knowledge and experience with VAWA cases.

After pleading to the charges, the attorney will state what relief from removal the immigrant (called the “respondent” in removal proceedings) is seeking. At this time, the attorney must state that the respondent will apply for cancellation of removal. If the attorney fails to request cancellation of removal at this time, the immigrant victim will be precluded from applying for cancellation later in the proceedings. It is therefore very important that the attorney meet with the client and explore whether she qualifies for VAWA cancellation or any other type of relief before this master calendar hearing.

The applicant may request additional time to prepare and file the application or may file it at the master calendar hearing if it is ready. Form EOIR-42B (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents), which can be downloaded from the Executive Office for Immigration Review website (<http://www.usdoj.gov/eoir/formslist.htm>), must be used. This form has instructions that *must be read in detail*. These instructions include all filing requirements concerning fees, fee waivers, photographs, fingerprinting, and accompanying documents. The types of supporting documents that should be submitted with the application are discussed in more detail later in this chapter. After the applicant files the application, she is eligible for employment authorization.¹⁶

THE INDIVIDUAL HEARING ON THE MERITS OF THE APPLICATION

At the immigrant’s master calendar hearing, the judge will schedule a date for the immigrant to return for a longer individual hearing (called a “merits hearing”) where testimony will be taken concerning the cancellation application. The applicant must prove several things to receive cancellation of removal, and these requirements are discussed in detail below. She will answer questions about the abuse, about her moral character (including the circumstances of any arrests if she has a criminal record), her work history in the United States, her ties to the community, how she and any of her children would be affected by being deported, and various other matters. She should also bring witnesses to testify about her moral character and ties to the community, and to corroborate her testimony if necessary. If the judge decides after hearing the testimony to grant cancellation of removal, the applicant receives lawful permanent resident status.

What facts must be established to the immigration judge for VAWA cancellation of removal to be granted?

Relationship to the abuser: The applicant must submit evidence of her relationship to the batterer. If she is applying as a battered spouse, she should submit a copy of her marriage certificate. A battered child

¹⁴ See *Murphy v. INS*, 54 F.3d 605, 608-9 (9th Cir. 1995).

¹⁵ *Woodby v. INS*, 385 U.S. 276 (1966) (concerning deportability); *Molina v. Sewell*, 983 F.2d 676, 678 (5th Cir. 1993) (concerning admissibility). See also 8 C.F.R. 240.8(a).

¹⁶ See 8 C.F.R. 274a.12(c)(10).

applicant must submit his or her birth certificate and, in the case of a stepchild, the marriage certificate of the parent to the abusive stepparent.

Continuous physical presence: The applicant must have lived continuously in the United States for 3 years immediately preceding the filing of the application.¹⁷ A single absence from the United States of 90 days, or aggregate absences over 180 days, breaks continuity of physical presence. However, an applicant is not considered to have failed to maintain continuous physical presence if the absences from the United States were connected to the domestic violence.¹⁸

Battery or extreme cruelty:¹⁹ The applicant must prove that, while she was in the United States, she was battered or subject to extreme cruelty by the United States citizen or legal permanent resident spouse or parent.²⁰

Good Moral Character:²¹ The applicant must prove that she is of “good moral character.” This is a term of art in immigration law. The immigration laws do not precisely define good moral character, but preclude a finding of good moral character if the immigrant has certain criminal convictions or for other reasons.²² The applicant must show good moral character during the 3-year period immediately preceding her application. The immigration judge may be permitted to find good moral character even if there is an act or conviction that would otherwise bar such a finding if the action or crime was connected to the abuse.²³

Extreme Hardship: An applicant must prove that she, her child, or her parent would suffer “extreme hardship” if deported. The following circumstances on their own will **not** constitute extreme hardship: economic deprivation, loss of employment, or difficulty readjusting to life in the native country.²⁴ The best way for victims of domestic violence to prove extreme hardship is to show how experiencing the abuse has been harmful to the survivor and how deportation would impede any progress that the survivor has made to overcome the effects of the abuse. Battered immigrant applicants can rely on both domestic-violence and non-domestic-violence-related extreme hardship factors to support their cancellation applications. The survivor should emphasize how the hardship is related to or exacerbated by the domestic violence, and the steps she needs to take to overcome the effects of the violence.

Extreme hardship is determined based on the facts of each case.²⁵ Demonstrating the following factors will assist in proving the extreme hardship element of the cancellation of removal application:²⁶

- The nature and extent of the physical and psychological consequences of the battering or extreme cruelty;
- The impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, alimony, maintenance, child custody, and visitation);

¹⁷ Unlike other types of cancellation of removal provided for under immigration law, the serving of a Notice to Appear on an immigrant applying for VAWA Cancellation does not stop continuous presence from accruing. INA § 240A(b)(2)(A)(ii); 8 U.S.C. § 1229b(b)(2)(A)(ii).

¹⁸ INA § 240A(b)(2)(B); 8 U.S.C. § 1229b(b)(2)(B).

¹⁹ For full discussion of battering or extreme cruelty, see the section on self-petitioning under VAWA in Chapter 3 of this manual.

²⁰ INA § 240A(b)(2)(A)(i); 8 U.S.C. § 1229b(b)(2)(A)(i).

²¹ For full discussion of good moral character, see the section on self-petitioning under VAWA in Chapter 3 of this manual.

²² See INA § 101(f); 8 U.S.C. § 1101(f).

²³ INA § 240A(b)(2)(C); 8 U.S.C. § 1229b (b)(2)(C). This exception applies to crimes and actions connected to the battering or extreme cruelty and for which a waiver of inadmissibility is also permitted under the immigration laws.

²⁴ *Matter of Anderson*, 16 I. & N. Dec. 596 (BIA 1978).

²⁵ *Matter of Ige*, 20 I. & N. Dec. 880, 882 (BIA 1994); *Matter of Chumpitazi*, 16 I. & N. Dec. 629 (BIA 1978); *Matter of Kim*, 15 I. & N. Dec. 88 (BIA 1974); *Matter of Sangster*, 11 I. & N. Dec. 309 (BIA 1965).

²⁶ 8 C.F.R. §§ 1240.20(c) and 1240.58(c). See also INS Memorandum from Paul Virtue, INS General Counsel, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (October 16, 1998).

- The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, particularly those related to the abuse or surviving the abuse, which would not be available or reasonably accessible in the foreign country;
- The existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the applicant or applicant's child for leaving an abusive situation, or for taking action to stop the abuse;
- The abuser's ability or lack thereof to travel to the foreign country, and the ability, willingness, or lack thereof of foreign government authorities to protect the applicant and/or the applicant's child from future abuse;
- The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the foreign country would physically or psychologically harm the applicant or the applicant's children if they were deported.

Applicants may also seek to support the extreme hardship element of their cancellation of removal cases by providing evidence of the “traditional” types of extreme hardship typically used in non-VAWA cancellation claims. This type of evidence is most helpful when the applicant can make a strong connection between the particular hardship and the domestic violence and its consequences. Some “traditional” hardships present in regular cancellation cases, such as economic hardship caused by deportation, can be exacerbated by the domestic violence. This would be the case, for example, if, because she has left her husband and is believed to have brought shame to the family, an immigrant survivor will be ostracized by her family in her native country and have no economic support.

The following are established factors used to assess extreme hardship:

- Age (youth/old age) of the applicant;
- Ages and number of the applicant's children;
- The children's ability to speak the native language of the foreign country and the children's ability to adjust to life there;
- Serious illness of the person or her child that necessitates medical attention not adequately available in the foreign country;
- A person's inability to obtain adequate employment abroad;
- The person and her children's length of residence in the United States;
- Existence of other family members residing legally in the United States and lack of family in the home country;
- Irreparable harm arising from a disruption of educational opportunities;
- The adverse psychological impact of removal;
- The impact of separation on both mother and children if the mother is removed and the children do not accompany her;
- The extent to which deportation would interfere with court custody, visitation, and child support awards; and
- The extent to which the battered woman is an asset to her community in the United States (i.e., involvement in church/temple/mosque, children's school, community, other service programs).²⁷

How can eligibility for VAWA Cancellation be proven?

The applicant has the burden to prove that she meets all requirements for cancellation of removal. Therefore, it is in the applicant's best interest to have as much supporting documentation as possible. This

²⁷Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,067 (Mar. 29, 1996) (to be codified at 8 C.F.R. pts. 103, 204, 205, and 216).

documentation should be as complete and as detailed as possible. Advocates and attorneys should help the battered immigrant gather as much evidence as possible to document each aspect of her cancellation claim. The following is a checklist of suggested supporting documents.

STATUS OF THE ABUSER AND RELATIONSHIP TO THE ABUSER

- Evidence that the batterer is a U.S. citizen (such as a U.S. birth certificate or naturalization certificate) or permanent resident (such as a green card or other document with the batterer's alien number)
- If the applicant is applying as a battered spouse, a copy of her marriage certificate; if the applicant was previously married to someone other than the abuser, she must submit proof that her prior marriage was terminated
- If the applicant is the battered child of a citizen or resident, a birth certificate; in the case of a battered stepchild, the marriage certificate of the parent to the abusive stepparent must also be submitted
- Documents showing that the marriage was entered into in good faith and not to evade the immigration laws

CONTINUOUS PHYSICAL PRESENCE (Some of these documents, such as joint tax returns, lease agreements, or birth certificates of children born to the marriage, will also help prove good faith marriage.)

- Copy of all income tax returns filed by the applicant or the applicant jointly with the spouse; if the returns were not filed, she will have to file back tax returns
- Birth records of children born in the United States
- Driver's license (if obtained lawfully)
- Copy of lease agreements, rental receipts, or mortgage payments
- Employment records (paycheck stubs, tax forms, etc.)
- Bank statements
- Utility bills and copies of credit card statements
- Copy of insurance policies (automotive, health, life insurances)
- School records of the applicant or her children
- Medical records
- Court records, including protection orders and custody and support orders
- *If the applicant does not have other documentation to establish her continuous presence: affidavits from landlords or neighbors and other persons who can attest to her continuous presence in the United States*

BATTERY OR EXTREME CRUELTY

- Police reports
- Restraining/protective orders
- Photos of bruises, cuts, injuries, etc.
- Medical records
- Hospital records documenting the abuse (even if she did not tell anyone at the hospital that her partner caused the abuse and even if she denied that the cause was domestic violence, in which case the battered immigrant should be prepared to explain why)
- Intake forms from domestic violence shelter or women's community center or both
- Letters from counselors, domestic violence case workers, shelter advocates
- Child Protective Services reports
- Torn clothing or destroyed property or photographs of these
- Transcript from "911" calls

- Psychological evaluations
- Affidavits from neighbors, friends, or family who witnessed the abuse, witnessed any incident of the abuse, saw the survivor's bruises, heard her scream, or witnessed her abuser's threats against her, her children or her family members

GOOD MORAL CHARACTER

- "Police clearance letter" from each jurisdiction in which the applicant has lived for the past 3 years²⁸
- If the applicant has ever been arrested, an arrest report and court disposition for the arrest and an explanation in her affidavit of the circumstances of the arrest
- Affidavits by friends, community members, children's teachers, clergy, etc.
- Awards, certificates of appreciation, etc.

EXTREME HARDSHIP²⁹

- Affidavit from the victim detailing the history of power and control; emotional, physical and sexual abuse; nature and extent of the battering or extreme cruelty; and consequences to her physical and psychological well-being if she's removed from the United States
- Affidavits from experts, such as battered women's advocates, social workers, shelter workers, counselors, or psychologists about the impact of the domestic violence on the victim and her children
- Affidavits from the victim's family members, friends, and co-workers describing how the physical, sexual, and psychological abuse affects the victim or her children
- Affidavits from teachers, counselors, clergy, or day care providers about the impact of the violence on the victim's children
- Documentation on the impact of the loss of access to the U.S. courts, both the civil and criminal systems (including, but not limited to, the ability to obtain and enforce protection orders, secure criminal investigations and prosecutions, and receive assistance offered by family law proceedings, including orders regarding child support, alimony, maintenance, child custody, visitation and property division)³⁰
- Court records (including civil protection orders, custody, child support, and safe visitation orders, as well as copies of the underlying pleadings when useful)³¹
- Police records (including police reports and copies of all call tapes)
- "Victim impact statements" provided by the victim for sentencing in a criminal case³²
- Documentation demonstrating the victim's efforts to seek help from the justice system
- For a victim who may not have sought help from the justice system, or may have not been successful when she tried, affidavits from persons who can document the victim's fears or the abuser's actions that prevented her from seeking assistance from the courts (or the barriers that the victim faced or encountered when she tried to seek help from the justice system)
- Evidence of the VAWA applicant's or her children's needs for social, medical, mental health, victim, or other supportive services that would not be available or reasonably accessible in the foreign country (It is important to note that a VAWA cancellation applicant must prove that parallel services designed for domestic violence victims are lacking in the home country.), including the following:

²⁸ The applicant should contact the local police for each county or locality where she has lived for six months or more during this period and request a police clearance or "good conduct" letter.

²⁹ Adapted from A.B.A. COMMISSION ON DOMESTIC VIOLENCE INC., *Chapter Six: Proving A Case, in DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000)*.

³⁰ The U.S. State Department issues human rights country reports each year that contain a section on the rights of women. These reports will sometimes provide brief information about lack of police and legal protection for victims of domestic violence and sexual assault. These Country Reports can be found at <http://www.state.gov/g/drl/hr/>.

³¹ A protection order that awards custody, safe visitation, and child support can help the victim prove extreme hardship, because deportation will deprive the victim of the protection provided by the court order.

³² Victim impact statements, which are used in criminal cases, provide the crime victim with an opportunity to address the sentencing judge about the effect the crime has had on the victim's life and the victim's opinion about the sentence.

- § Records of counseling programs in which the VAWA applicant or her children have participated and affidavits from the counselors describing the program and the benefit of the program to the applicant;
 - § Copies of medical and mental health records that document the abuse;
 - § Affidavits from battered women’s advocates and shelter workers who have worked with the VAWA applicant or her children;
 - § Affidavits from advocates, experts, university professors, or women’s groups and other documentation confirming that services parallel to those she is receiving in the United States are lacking in her home country.
- Documentation on the existence of laws, social practices, or customs in her home country that would penalize or ostracize the VAWA applicant or the her children for having been the victim of abuse, for leaving the abusive partner, for getting a divorce, for reporting the abuser’s violence to authorities, or for actions by the victim taken to stop the abuse and protect her children, including the following:
 - § Documentation about any laws or the lack of laws in her home country that protect victims of domestic violence from continued abuse and that could hold the abuser accountable for his actions, with particular attention to whether the laws are effective in the particular region of the country to which the victim will return;
 - § Documentation of customs and practices in the battered immigrant’s home country that would harm her or make recovery or healing difficult for the VAWA applicant or her children;
 - § In her affidavit the victim should state her knowledge of laws, customs, and practices in her home country that harm victims of domestic violence, divorced women, and single mothers.
- Documentation of abuser’s ability to travel to the victim’s home country, and the ability and willingness of foreign authorities to protect the VAWA applicant or her children from future abuse, including the following:
 - § Documentation of the abuser’s history of travel outside of the United States, his travel in her home country, contacts in her home country, and his access to funds needed for travel;
 - § Documentation of the abuser’s history of stalking, escalation of violence, and his behavior following the separation;
 - § In the victim’s affidavit, a description of the abuser’s level of contact with friends and family in the country to which the victim would be deported.
- Documentation of the likelihood that the abuser’s family, friends, or others acting on his behalf in her home country would be likely to physically or psychologically harm the VAWA applicant or her children, including the following:
 - § Affidavits from the victim’s family members and others who have been threatened by the abuser or the abuser’s agents in the home country;
 - § Documentation of the abuser’s stalking behavior and his manipulation of third parties to track, harass, and monitor the victim or her children.
- If the abuser is the parent of the VAWA applicant’s U.S.-born children, evidence of this parent-child relationship should be included. An abuser with parental rights could obtain a court order prohibiting the removal of a citizen child from the United States, effectively cutting off a deported victim permanently from access to her children, causing extreme hardship to the victim and her children. Information should be gathered about parental rights and custody laws in the home country, as an abuser who is the father of the victim’s children could obtain control over the children in the home country and cut the victim and her family members off from all access to her children. This is particularly important to emphasize when the children are U.S. citizens and when U.S. courts have determined that it is in the children’s best interests to be in the VAWA applicant’s custody.

TRADITIONAL FACTORS OF EXTREME HARDSHIP

- Age of the applicant at entry into the United States and at the time of application for cancellation of removal
 - § For age to be a significant factor, the battered immigrant would have entered the United States at an early age or have an entire support system (socially and culturally) tied to the United States. Additionally, an immigrant who has lived in the United States for a long time and who may be older might argue that it will be difficult to re-assimilate to a new culture (that of the home country) or find employment.
- Age and number of the applicant's children and their ability to speak applicant's native language and to adjust to life in another country, demonstrated by evidence including but not limited to the following:
 - § Affidavits from the children's teachers, clergy, and child care providers on the following:
 - o The children's ability to speak, read, or write in English and or a native language
 - o The children's current adjustment to life in the United States
 - o The children's likely response to moving to a country in which the language and customs are foreign
 - o The effect that the children's moving to another country would have on their ability to overcome the harmful effects of hearing, witnessing or experiencing domestic violence.
 - § An affidavit from an expert on how the children's exposure to domestic violence has harmed the child. The expert should assess each child's needs for counseling services to address harms suffered due to abuse and the additional harm that would arise from removing each child to a foreign country or separating each child from the battered immigrant parent.
 - § If children are born to an interracial couple or a couple from different ethnic or religious groups, provide information about how this factor might affect each child's adjustment to the country to which the victim might be deported
- Medical condition of the survivor or any of her children that requires medical attention not adequately available in the foreign country, demonstrated by evidence including but not limited to the following:
 - § Documentation of any serious illness of the victim or her children and, if appropriate, description of how the illness was caused by or exacerbated by the abuse;
 - § Description of whether similar medical treatment is available to the victim in the victim's home country or why alternative healthcare services there are likely to be less effective, particularly if such services do not take into consideration treatment needed because of the domestic violence; emphasis should be placed on the need for coordinated services to address the illness, the abuse, and the effects of the abuse.
- The immigrant's inability to obtain adequate employment in the foreign country
- The immigrant and her advocate should address this issue only if the victim's inability to obtain any employment or to obtain adequate employment was a result of or connected to the domestic violence. Examples might include (1) the victim's status as a divorcee precludes employment; (2) the abuser's level of power and influence in the home country prevent employers from hiring the immigrant victim; or (3) adequate employment sufficient to support the victim is not open to women

in her home country.

- The applicant's and her children's length of residence in the United States
 - § The immigrant and her advocate should raise this issue when the immigrant victim is or was married to a United States citizen or lawful permanent resident spouse for a significant period, and the abuser refused to obtain legal residency for the victim or her children.
 - § The immigrant and her advocate should raise this issue also when the battered immigrant applicant was brought to the United States illegally as a child and has lived in the United States for a long time, particularly if the applicant completed high school in the United States.
- Existence of the applicant's other family members legally residing in the United States or/and lack of family (as support system, for employment contacts) in the home country, demonstrated by evidence including but not limited to the following:
 - § A list of each member of the victim's family who legally resides in the United States, including the family members' immigration or U.S. citizenship status and length of time in the United States;
 - § Affidavits from family members (Each family member's affidavit and the victim's affidavit should articulate the role each relative has played providing the victim with emotional support, how they helped the victim escape, survive, and heal from the effects of having suffered abuse while living in the United States).
- Irreparable harm that may arise as a result of disruption of educational opportunities, demonstrated by evidence including but not limited to the following:
 - § Affidavits from teachers, special education counselors, and mental health treatment providers can be used to document potential harm from lost educational opportunities for children. When the children's special educational needs are related to having been victims of or having witnessed domestic violence, this should be emphasized;
 - § Affidavits should highlight lost opportunities and special job training programs and educational opportunities in which the victim is participating or for which she qualifies through her domestic violence program.
- The adverse psychological impact of deportation, demonstrated by evidence including but not limited to the following:
 - § An affidavit from an expert discussing the adverse psychological impact deportation would cause this abused woman. Affidavit of expert describing the nexus between the adverse impact of deportation and the specific abuse this victim has suffered.
- The impact of separation on both the victim and her children if the victim is removed, demonstrated by evidence including but not limited to the following:
 - § Data on the danger to the child of living with an abuser if the victim is deported. Many abusers commit violence against their children, as well as their spouses. Even if the children are not physically abused, living with an abuser is likely to traumatize the children and affect their emotional development. Include the psychological impact on the children of being permanently separated from their non-abusive parent by deportation and being left in the care of the abusive parent;
 - § Description of the extent to which deportation would interfere with court-ordered custody,

visitation, and child support awards;

- § Discussion of the harm to the U.S. citizen and lawful permanent resident children of being forced by their mother's deportation to move to their mother's home country with her as the only option other than having to continue living with the abuser.
- The extent to which the battered immigrant woman is an asset to her community in the United States, demonstrated by evidence including but not limited to the following:
 - § Information regarding the battered immigrant applicant's involvement in a local religious community, the children's schools, community service programs, or immigrant women's or domestic violence prevention programs;
 - § Letters from friends, neighbors, employers, clergy, social workers, and fellow church members attesting to the applicant's strong qualities and contributions to her community;
 - § Any acknowledgment of her children's personal involvement, achievements, contributions, awards, scholarships, etc. is important, as they confirm the unique ways each child has established his or her own bonds to their community.