

**To:** Domestic Violence Advocates, Family and Immigration Attorneys,  
Immigrant Rights Advocates and Interested Persons

**From:** Leslye Orloff, Janice Kaguyutan, Cecilia Olavarria  
NOW Legal Defense and Education Fund

**Date:** March 2001 (Revised February 2014)

**Re:** **Documentary Requirements for VAWA immigration cases**

## DOCUMENTARY REQUIREMENTS FOR VAWA CASES<sup>1</sup>

Under the Violence Against Women Acts (VAWA) of 1994 and 2013<sup>2</sup>, battered immigrant women may be eligible for two kinds of immigration relief: 1.) VAWA self-petitions and 2.) VAWA cancellation of removal (formerly suspension of deportation). These two forms of relief can lead to lawful permanent residence for the applicant. The following memo lists the requirements that must be met by an applicant, and some suggestions of evidence that may be offered to meet each requirement. The regulations accompanying VAWA recommend the submission of certain types of documents with the self-petition<sup>3</sup>. Some of these are named below. The Immigration and Naturalization Service (INS) is required, however, to consider “any credible evidence”.<sup>4</sup> The suggested evidentiary documents in this memo are meant to be guidelines, and not exhaustive descriptions of the types of evidence that may be offered to support a petition under VAWA. If you have further questions, contact the organizations listed at the end of this memo for more information.

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<sup>1</sup> This document was initially developed at Ayuda Inc., Washington, D.C. and updated in 2001 by Legal Momentum.

<sup>2</sup> Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-1955 (hereinafter “VAWA”) and Victims of Trafficking and Violence Protection Act of 2000, Pub.L. No. 106-386, 114 Stat. 1464 at §§ 1501-1513 (hereinafter “VAWA 2013”).

<sup>3</sup> 8 C.F.R. § 204.2 (c)

<sup>4</sup> Immigration and Nationality Act (INA) Section 204(a)(1)(H) and 8 CFR 204.4. See also, DHS Memo by Paul Virtue on “Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children, October 16, 1998.

## VAWA Self-petitions

### *I. Who are eligible VAWA self-petition applicants?*

- Abused spouses or former spouses married or formerly married to U.S. citizen and lawful permanent residents may apply for themselves (and for their abused or unabused children even though the children are not related to the U.S. citizen or the lawful permanent resident);<sup>5</sup>
- Abused children of a U.S. citizen or lawful permanent residents may apply for themselves (and for their abused or unabused children);<sup>6</sup>
- Unabused spouses who are parents of children abused by the immigrant parent's citizen or lawful permanent resident spouse may apply for themselves. If an abused child is also filing a VAWA self-petition, the unabused parent may only file her VAWA self-petition with her child's petition.<sup>7</sup>

### *II. What are the requirements you need to prove in a VAWA self-petition?*

A self-petitioning spouse applying for lawful permanent residency under VAWA must satisfy seven requirements. A self-petitioning child must satisfy all, but the good faith marriage requirement. To have a self-petition approved under VAWA, the applicant must establish:

1. **Marriage, former marriage, or intended marriage to the abuser or the existence of a parent/child relationship**
2. **That the abusive spouse or parent is a U.S. citizen or lawful permanent resident**
3. **Residence in the U.S., or if living abroad:**
  - **That their spouse or parent is a member of the military or a U.S.**

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<sup>5</sup> INA § 204 (a)(1)(A)(iii) and (B)(ii). 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>6</sup> INA § 204 (a)(1)(A)(iv) and (B)(iii). A self-petitioning child must prove that he/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>7</sup> INA § 204 (a)(1)(A)(iii) and (B)(ii).

**government employee; or**

- **That they were subjected to battery or extreme cruelty in the U.S.**
- 4. **Some period of Residence with the abuser**
- 5. **Battery or extreme cruelty during the marriage or parent/child relationship**
- 6. **Good moral character**
- 7. **Marriage or intended marriage in good faith**

### **III. VAWA Self-petition Documentary Requirements**

While the burden of proof to establish eligibility lies with the applicant, the INS adjudicator “should give due consideration to the difficulties some self-petitioners may experience in acquiring documentation, particularly documentation that cannot be obtained without the abuser's knowledge or consent.”<sup>8</sup> Hearsay rules do not apply to affidavits going to the INS and all information, including affidavits submitted to INS in VAWA cases are protected by INS confidentiality laws from discovery or disclosure to anyone including the abuser.<sup>9</sup> Generally each applicant should present her birth certificate or passport, and those of her children. However, since many victims of domestic violence do not have access to these documents, an applicant should not be deterred if she cannot obtain her birth certificate or passport. Many applicants will be undocumented. Those who have had some contact with INS should present copies of her I-94 form (white card stapled in the passport which indicates dates and place of entry, classification at the time of entry, and the length of her authorized stay in the U.S.) and any documentation filed or received from the INS.

### **IV. Prima Facie Determination and Access to Public Benefits**

It is important for battered women's advocates and attorneys working with battered immigrants filing cases under VAWA to ensure that the self-petitions contain prima facie evidence. Applications which meet the prima facie evidence test will expeditiously result in access to public benefits and for VAWA self-petitioners. The prima facie determination is made after a self-petition has been filed with the INS. If the INS determines that a petitioner has demonstrated a prima facie eligibility, a Notice of Prima Facie Case will be issued. If the prima facie case is established the applicant is a “qualified alien” for purposes of the Personal

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<sup>8</sup> DHS Memo on “Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents,” April 16, 1996.

<sup>9</sup> IRAIRA § 384.

Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and is eligible for public assistance.

In evaluating whether a self-petitioner has established a prima facie case, the INS must receive some evidence in the self-petition that addresses each required element listed in the self-petitioning regulations. (8CFR 204.2(c)(1) and (e)(1)). For each element the applicant must present evidence in her affidavit and through supporting documents that if believed would establish prima facie evidence on that required element. If each element of required proof is addressed with some quantum of evidence in the initial filing of the self-petition, then the application should meet the prima facie evidence test. The quantum of evidence that is required to meet the prima facie evidence test is lower than what will ultimately be required to have the self-petition approved. Each of the below evidentiary issues should be separately addressed in the self-petitioners affidavit in the order listed below, and each section of the affidavit should be labeled with the title of the section listed below.

To submit applications that meet the prima facie evidence test you should include in the affidavit and/or in the accompanying evidence submitted to support the self-petition (ideally both) evidence on each of the following issues. For each factor if the evidence listed below is unavailable petitioner may also present affidavits of knowledgeable persons on the particular evidentiary point (more than one if possible). To be granted an approved self-petition under VAWA, a self-petitioner must provide evidence of the following:

**a.          Marriage to the abuser**

Abused Spouses should present:

- Marriage Certificate.
- Affidavits by persons who have knowledge of the marriage.
- Self-petitioner’s affidavit stating the fact of the marriage, when and where it took place, and who performed the marriage
- See “Good Faith Marriage” for additional documents that should be submitted.

What if the Self-petitioner is currently not married to the abuser by reason of the abuser's bigamy, death or divorce? In addition to the above information, the Self-petitioner may still qualify if she can prove and present the following:

- 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 a marriage ceremony was actually performed.
- Marriage certificate
  - Marriage license application
  - Photographs of the wedding ceremony
  - Affidavits from persons attending the wedding ceremony
  - Affidavit from self-petitioner stating facts supporting why she believed she legally married the abuser and that her marriage was valid.
  - She was the spouse of a U.S. citizen who died within the past 2 years.<sup>11</sup>
  - Death certificate
- She was divorced from the abuser within the past 2 years. The Self-petitioner must demonstrate that she was divorced from the abuser within the past 2 years and that there was a connection between the divorce and the battery or extreme cruelty by the abusive spouse.<sup>12</sup>
  - Divorce order establishing the date the divorce became final

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<sup>10</sup>**Section 1503 (a) and (b) of the Conference Report on Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 , (October 28, 2000), hereafter Conference Report.**

<sup>11</sup> **Section 1503 (b)(1) of the Conference Report.**

<sup>12</sup> Section 1503(b)(1) of the Conference Report.

- Affidavit from self-petitioner detailing the battery or extreme cruelty prior to the divorce
- Any protection order issued for her or her children
- Affidavits of witnesses to the violence or the effects of the violence on the battered immigrant
- Any court documents, orders, filings, or other court papers that contain information on domestic violence
- Any medical records, or affidavits from health, mental health or domestic violence service providers documenting domestic violence in the marriage
- See section on “Battery or Extreme Cruelty” for additional documents

**FOR CHILD SELF-PETITIONERS:** A self-petitioning child must prove that s/he is the natural child, stepchild, or adopted child of a citizen or permanent resident<sup>13</sup> and should also present:

- The child's birth certificate or other document demonstrating that the child is under 21 years old; and
- The child's birth certificate issued by the civil authorities listing the names of the parents
- The parents' marriage certificate or other evidence of the marriage such as affidavits, pictures or other documents
- Depending on the child's relationship to the abuser, the child petitioner must also present evidence of:
  - legitimization, such as a legal acknowledgment, or other affidavit
  - An adoption decree or affidavit of adoption and evidence of the child's residence with the abuser, such as evidence listed below under "Residence with the

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<sup>13</sup> 8 C.F.R. 204.2(e)(2) A and INA § 204 (a)(1)(A)(iv) and (B)(iii).

Abuser," or

- Evidence of a bona fide parent-child relationship, such as pictures of the parent and child together, letters between them, or affidavits by persons who knew the family
- When specific documents are unavailable, the child may also offer affidavits by persons who know the family and knew of the marriage and (of the child's relationship with the abuser
- In the case of an abusive step-parent, evidence of the parents' termination of previous marriages, such as divorce decree, an annulment decree, a death certificate, or affidavits

Derivative Children

When a battered spouse/former spouse or child wants to include their child

under the age of 21 in their VAWA self-petition they must include evidence of the parent relationship with the self-petitioner:

- the child's birth certificate issued by civil authorities listing the names of the parents (original with translation where needed),
- marriage license/certificate of the child's parents,
- evidence of the child's legitimation,
- evidence of a bona fide parent – child relationships (pictures, letters, affidavits),
- an adoption decree showing that the adoption took place

- b. □ **The abusive spouse or parent is or was a U.S. citizen or lawful permanent Resident.**
- Information included in the petitioners affidavit describing facts about the abuser's status.
  - Abuser's birth certificate indicating birth in the U.S.
  - Abuser's naturalization certificate
  - Abuser's U.S. passport

- Abuser's green card or any other INS document indicating immigration status
- Affidavits by persons who have knowledge of the abuser's immigration status
- A statement issued by a Consular Officer certifying the abuser to be a U.S. citizen and the bearer of a currently valid U.S. passport.
- A Department of State Form FS-240, Report of Birth Abroad of a Citizen of the U.S.
- The abuser's Form I-51 or Form I-551 Alien Registration Receipt Card, or other proof issued by INS as evidence of lawful permanent residence
- Upon request, INS will attempt to electronically verify abusers' citizenship or immigration status from their computerized records.<sup>14</sup>
  
- 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 2 years, the self-petitioner must demonstrate that the loss of status or renunciation is related to an incident of domestic violence.<sup>15</sup>
  - Order of deportation by an immigration judge
  - Proof of any absence from the U.S. for more than 1 year.
  - Affidavit from self-petitioner detailing the abuser's history of power and control, including incidents of battery and extreme cruelty that predate the loss or renunciation of citizenship or immigration status.
  - Protection orders or other civil court orders or filings in criminal court containing information about the abuse.
  - Criminal court domestic violence related convictions.
  - Orders issued in contempt and proceedings brought to enforce a civil protection order.

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<sup>14</sup> 8 C.F.R. 204.1(g)(3)

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



- C.          **Residence in the U. S. or abroad.** Most self-petitioners must currently reside in the U.S. Any of the following documents listing self-petitioner’s addresses in the U.S.:
- Current employment, school, or education records
  - Current children’s school records
  - Current rent or mortgage receipts
  - Current utility bills or insurance policies
  - Current hospital or medical records
  - Cards or letters addressed to her current address
  - A property deed of her residence with her name on it
  - Birth certificates of children born in the U.S.
- Affidavits by her neighbors, landlords, friends attesting to her residence in the U.S.
- Information included in the affidavit of the applicant regarding her residence in the U.S. No specific length of the residence in the U.S. is required.

Some Self-petitioners may file from **abroad** if they meet one of the three below requirements:

- The abusive spouse or parent is an employee of the U.S. government; or
  - Spouses or Parent’s employment records
  - Spouse or parent’s pay stubs
  - Spouse or parent’s employment identification card
- The abusive spouse or parent is a member of the uniformed services; or
  - Spouse or parent’s military identification card
  - Copy of spouse or parent’s military orders
  - Spouse or parent’s pay stubs
- The abusive spouse or parent has subjected the immigrant spouse to battery or extreme cruelty in the U.S.
  - Abuser’s arrest records for domestic violence

- Police reports for domestic violence which occurred in the U.S.
  - Protection orders issued by a U.S. court
  - Medical records from U.S. based provider documenting domestic violence related injuries
  - Affidavits from neighbors, landlords, friends attesting to the battery or having witnessed injuries that resulted from battery or extreme cruelty that occurred in the U.S.
  - Affidavits from police officers, prosecutors, victim advocates, shelter workers, battered women’s advocates, counselors or mental health professionals that the violence occurred in the U.S.
  
- d.
  - **Residence with the abuser.**
    - Information included in the affidavit stating the facts describing the self-petitioners residency with the abuser. No specific length of residency together is required.
    - Employment, school, or education records that list the names of both the applicant and the abuser
    - Letters or cards addressed to both the applicant and the abuser
    - Postmarked envelopes from correspondence addressed to each party reflecting the same address at the same period of time
    - Lease agreements or rent receipts with both names on them; the name, address, or a lease agreement listing one parties name with the other party listed as also residing at the same location and the telephone number of the landlord or neighbors at the address where the couple lived,
    - Utility bills
    - Medical records
    - Joint auto, health or life insurance.
    - Joint tax returns
    - Insurance policies naming the spouse as beneficiary

- Credit card bills
  - Joint bank accounts
  - Property deeds in both names
  - Magazine subscriptions in both names
  - Names, addresses, and phone numbers of people who knew the couple lived together or affidavits by each of these persons
  - Birth certificates of children born in the U.S.
  - Photo Albums
  - Letter from an apartment manager or neighbor
  - Other legal documents in both names.
  - Submit two or more documents that, when considered together, establish that the self-petitioner and the abuser were residing at the same location concurrently
- e. □ **Battery or extreme cruelty during the marriage.** The abuse must have occurred during the marriage while the applicant was living with the abuser. The qualifying abuse must rise to the level of "battery or extreme cruelty." The INS definition of these terms include: "Being a victim of any act or threatened act of violence, including detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (of the victim or a minor) or forced prostitution shall be considered act of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but are part of an overall pattern of violence."<sup>16</sup>
- Types of documentation to obtain are:
- Affidavit of the battered woman telling her story. It is important to focus on the facts of the violence or cruelty in each incident, to list approximately when each incident occurred, to discuss the applicant's fears and injuries (both physical and psychological) and the effect that each abusive incident had on the children. At

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<sup>16</sup> 8 C.F.R. § 204. 2(c)(vi).

the end of this section it is a good idea to include a summary statement in the affidavit stating that the abuse began (for example) in 1992 and has continued to date. With incidents occurring on a (weekly/monthly) basis when include hits, slaps, demeaning statements, etc. The affidavit should establish the woman's credibility, explain why she is entitled to relief, and elicit the reader's sympathy; the other evidence should be used to corroborate her story.

- Restraining orders or civil protection orders obtained in any state, and the accompanying affidavits. The affidavit may be used to refresh her memory and avoid contradictory accounts of the violence.
- Police reports and records of phone calls or 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, and reports written by officers responding to a call.
- Photographs of any injuries that the woman has or that an advocate or 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.
- 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 her with bruises or injuries, or was told by her about abusive incidents close to the time that they occurred.
- Medical records, regardless of whether the applicant told the medical attendant the true source of her injuries. If her account told 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 INS must address and explain any discrepancies between the two stories.
- 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 which may be released to her by the prosecutor's office.

- Domestic violence shelter records or affidavits attesting to the time she spent in the shelter and the incidents of abuse disclosed to shelter workers.
  - Counseling/ mental health records if the applicant attended counseling; affidavits explaining the abuse disclosed by the applicant and asserting that her behavior was that consistent with someone who has been abused by their partner. Since all filing with INS are confidential, and cannot be subject to discovery in any criminal or civil court proceeding, submission of an affidavit by a counselor or mental health professional to INS should not breach doctor/patient or victim/counselor privilege
  - Damaged property if a batterer has damaged anything during a violent incident, such as ripping clothes, smashing sentimental objects, pulling phone cords out of the wall, etc. 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 INS.
  - reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel.
- f. □ Good moral character. An applicant who is 14 years old or older must provide evidence of her "good moral character" for the past three years. An applicant lacks good moral character if she has committed a crime named in section 101(f) of the Immigration and Nationality Act or for other reasons according to the discretion of the INS. The petitioner should present:
- Information in her affidavit attesting to her own good moral character, her lack of a criminal record and describing her involvement in her community, church, her children's school and stating that she has no criminal record.
  - Local police clearance or state-issued background checks from each locality or state in the U.S., or each foreign country, in which she has resided for 6 months or

more during the 3 years immediately preceding the petition date (she must obtain these background checks by appearing in person at the local police department in each locality where she has lived), or state issued background checks for each state in which she resided for six months or more during the true years immediately preceding the petition date.

- A set of INS approved finger prints if the self-petitioners can safely get to an INS approved fingerprint location.
- If police clearances or background checks cannot be safely obtained or are not available, she may include an explanation of why they are unavailable and submit 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.
- If the battered immigrant was arrested or has committed a crime, it is strongly recommended that they secure assistance of an immigration lawyer please contact one of the organizations listed at the end of this memo for information & referrals.

**g. □ Marriage in good faith.** A self-petitioning spouse must demonstrate that she

Married her husband in "good faith" and not for the purpose of evading immigration laws. If she unknowingly married a bigamist, the self-petitioner must demonstrate she believed in good faith that she had legitimately married a U.S. citizen or permanent resident. She may use any of the evidence offered above to prove "Residence with the Abuser" and may also use:

- Description in applicant's affidavit of courtship, wedding, shared residence and share experiences
- Marriage certificate
- Wedding pictures, or vacation pictures
- Pictures of the couple together
- Birth certificates of children they had together

- Letters or cards sent to the woman by her spouse
- Letters or cards sent to her family members by her 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 new married) name on them
- Letter from her employer or healthcare provider stating that she changed her name or listed the abuser as a contact in emergencies
- Insurance policies listing other spouse
- Joint leases, income tax forms or bank accounts
- Police, medical or other court documents with information on the relationship.
- Proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts.

#### ***IV. VAWA Suspension of Deportation / Cancellation of Removal***

VAWA cancellation of removal (formerly suspension of deportation) is a form of immigration relief in which the immigration courts waive the grounds for removal.<sup>17</sup> Removal is the new name for what is commonly referred to as deportation. Once cancellation is granted by the immigration judge, the successful applicant is awarded lawful permanent residency.<sup>18</sup> It is important to note that the applicant must currently be deportable / removable, in other words, the applicant must not have legal permission to be in the U.S.<sup>19</sup>

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<sup>17</sup> INA § 240B(a)(2).

<sup>18</sup> Children of applicants granted VAWA cancellation may be granted parole until such time as their family-based visa petition filed by their battered parent can be approved. Section 1504(b) of the Conference Report.

<sup>19</sup> This is an important qualification, because some battered immigrants will not qualify for cancellation if they are in status,

e.g. if they have a current non-immigrant visa (i.e. student or tourist). However, they cannot be deportable for

Cancellation of removal may only be requested while in removal proceedings. For applicants not in removal proceedings, current procedures require a VAWA applicant to turn herself in to the INS and request that she be placed in removal proceedings. This process could take over six months in some jurisdictions, and is unavailable altogether in others. Once the INS issues a charging document, the applicant will have a hearing (master calendar) before an immigration judge in removal proceedings where she will receive permission to file a cancellation application. After the application is filed, she will be eligible for employment authorization.<sup>20</sup>

Cancellation of removal is complex, therefore, **no one should attempt to file for cancellation of removal without the assistance of an immigration attorney or advocate.** To locate an immigration attorney or advocate in your area, please refer to the organizations listed at the end of this memo.

#### V. Who can apply for VAWA Cancellation of Removal?

- Abused spouses, former spouses, or intended spouses of U.S. citizens and lawful permanent residents.
- Abused children of U.S. citizen or lawful permanent resident parents.
- Parents of children abused by the child's citizen or lawful permanent resident other parent.<sup>21</sup>

#### VI. *What do you need to prove to the immigration judge?*

- a. Continuous Residence in the U.S. for 3 years
- b. Battery or extreme cruelty while in the U.S. by their spouse.

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marriage fraud,

certain criminal convictions, or because they are a threat to U.S. national security.

<sup>20</sup>8 C.F.R. 274a.1 2(c)(IO).

<sup>21</sup>When the immigrant is married to the US citizen or lawful permanent resident who abused the child, the abusive parent need not be the natural parent of the abused child.



- c. Good moral character.
- d. Applicant or their child would suffer extreme hardship if deported.

**VII. VAWA Suspension of Deportation/ Cancellation of Removal Documentary Evidence**

**a. Continuous Residence in the U.S. for 3 years**

- See section on “Residence in the U.S.” for suggested documents.

**b. Battery or extreme cruelty while in the U.S. by their spouse.**

- See section on “Battery or extreme cruelty during marriage” for suggested documents.

**c. Good moral character.**

- See section on “ Good moral character” for suggested documents.

**d. Applicant or their child would suffer extreme hardship if deported.**

Cancellation cases require that the applicant prove that her removal would result in extreme hardship to herself, to her children or to her parent. Extreme hardship has a technical legal significance under immigration law, and the following situations alone will not constitute extreme hardship: economic deprivation, loss of employment, and readjustment to life in the native country. Extreme hardship is a fact-based finding. Applicants can prove extreme hardship by including in their cancellation applications evidence demonstrating the following:<sup>22</sup>

**VAWA extreme hardship factors:**

- Nature and extent of the physical and psychological consequences of the battering or extreme cruelty**

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<sup>22</sup> DHS Memo from Paul Virtue, DHS General Counsel on “Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children,” October 16, 1998.

- (1) Affidavits by petitioner, neighbors, community members, co-workers, clergy, etc. about the emotional, physical and social hardship the applicant has suffered
  - (2) Medical records
  - (3) Photographs
  - (4) Reports from community and service groups that assisted the applicant
  - (5) Police reports, criminal convictions of the abuser, protection orders
- **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, maintenance, child custody and visitation)
- (1) Existing, prior, or pending orders of protection which would lose effect if she leaves the U.S. or any other court document. Studies, reports, or affidavits by experts describing the benefits for abuse victims of the court protections the U.S. offers.
  - (2) Existence of laws, social practices, customs that would penalize, ostracize the victim
  - (3) Abuser's ability to travel to the foreign country where U.S. criminal laws do not apply
  - (4) Likelihood that abuser's family, friends, others would harm the victim
  - (5) Laws and practices in customs in the home county that would not offer protection from ongoing abuse. Include any domestic violence laws and describe whether they are enforced. Comment on community reaction if the applicant returned to the home country.
- **Need for social, medical, mental health, or other supportive services** which would not be available or reasonably accessible in the foreign country;
- Documents or letters demonstrating:
- (1) Existence of, petitioner's requests, and petitioner's use of services for the abused,
  - (2) Physical and emotional consequences of the abuse,
  - (3) Need for health care for physical and emotional problems resulting from the abuse, Reports, studies, or affidavits describing the victim's need for these services to overcome

the effects of the violence.

- (4) Impact of deportation on the abused's emotional and psychological health.
- (5) The lack of similar supportive services in the battered immigrants home country and community

□ **Circumstances and conditions in country to which petitioner would be deported:** Affidavits about and studies or reports (such as State Department books on country conditions) documenting:

- (1) Potential abuse or ostracism by abuser's family or friends in the country of deportation,
- (2) Ability of the abuser to travel to the country of deportation (also may submit evidence on abuser's financial ability to travel) and documentation of the abusers past travels abroad and to that country
- (3) Absence of laws or failure by authorities to enforce laws in the home country to protect the applicant from further incidents of abuse,
- (4) Laws or societal practices penalizing or ostracizing the applicant for leaving the abusive spouse or parent or for being abused,
- (5) Lack of support services for abused women in the country to which the abused would be deported.

□ **Behavior of the abuser:**

Affidavits, police records, and other evidence of:

- (1) The behavior of the abuser, including stalking behavior, criminal activity, threats of violence and violent behavior toward the petitioner and others (particularly those seeking to help the petitioner and family members in her home country),
- (2) Abuser's drug or alcohol abuse,
- (3) Immigration petitions previously filed and not completed by the abuser,

- (4) Other use by the abuser of the petitioner's immigration status to perpetuate abuse,
- (5) Abuse of other family members by the abuser,
- (6) Studies and reports of the characteristics of batterers, see for example:
  - (A) Dobash, R.E. & Dobash, R.P., *Violence Against Wives*. New York: Free Press, 1979.
  - (B) Dutton, G., *The Domestic Assault of Women*, Boston: Allyn and Bacon, Inc. 1988.
  - (C) Caesar, P. Lynn & Hamberger, L. Kevin, *Treating Men Who Batter: Theory, Practice, and Programs*. New York: Springer, 1989.
  - (D) Hass, G; Dutton, M, and Orloff, L, "Lifetime Prevalence of Violence Against Latina Immigrants; Legal and Policy Implications in Domestic Violence Global Responses." AB Academic Publishers Great Britain 2000. Copies available from NOW Legal Defense and Education Fund.
  - (E) Dutton, M.A., Orloff, L. and Hass, G., "Characteristics of Help-Seeking Behaviors Resources and Service Needs of Battered Immigrant Latinos: Legal and Policy Implications" Vol. VII No. 2, *Georgetown Journal on Poverty Law and Policy* Summer, 2000.

□ **Effect of abuse on children of the abused**

Records of or affidavits about:

- (1) The existence of children in household during abuse,
- (2) Witnessing of abuse by child,
- (3) Abuse of the child and the spouse,
- (4) Applicant's role as primary caretaker of child,
- (5) Impact of abuse of parent on child,
- (6) Services available for child who has suffered or witnessed abuse,

(7) Studies or reports about the impact of domestic violence on children;

see, for example:

- (A) Goodman, G. and Rosenberg, M. "The Child Witness to Family Violence: Clinical and Legal Considerations."
- (B) In Sonkin, D., Ed. *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence*. New York: Springer, 1987.
- (C) Jaffe, P., Wolfe, D., and Wilson, S., *Children of Battered Women*. Newbury Park, CA: Sage Publications, 1990.
- (D) Bowker, Arvitell, and McFerron. "On the Relationship Between Wife-Beating and Child Abuse." In K. Yllo and M. Bograd (Eds.), *Perspectives on Wife Abuse*. Newbury Park, CA: Sage Publications, 1988.

### **Traditional Factors**

In addition, applicants may provide evidence on the extreme hardship factors relevant in non-domestic violence cases, but where ever possible should for each factor emphasize the nexus between the factor and the violence, the consequences of the violence, the victim's inability to recover from the violence.

Economic deprivation, such as the loss of a job and concomitant financial loss, does not necessarily constitute extreme hardship. Similarly, readjustment to life in the native country after having spent a number of years in the U.S. is usually not the type of hardship that is characterized as extreme. Evidence of the following things has established extreme hardship in suspension of deportation proceedings.

□ **Age of petitioner:**

- (1) Birth certificate, passport,
- (2) Other document that contains birthdate,
- (3) Affidavit of petitioner or other close friend or relative,

- **Age and number of petitioner's children** - their ability to speak the native language and adjust to life in the country of deportation:
  - (1) Birth certificates, passports,
  - (2) Affidavits of teachers, counselors, other persons who know the family and the children.
  
- **Serious illness** of the petitioner or child which necessitates medical attention not adequately available in the foreign country :
  - (1) Medical records evidencing child's illness or disability,
  - (2) Affidavit of doctor or other medical practitioner with knowledge of child's condition,
  - (3) Affidavit of person from home country stating the medical services available in the country.
  
- **Inability to obtain employment in foreign country:**
  - (1) Evidence of country's labor conditions,
  - (2) Affidavit of petitioner, petitioner's employer, supervisor, co-worker stating petitioner's abilities and likely difficulties.
  
- **Length of residence** in United States of petitioner and child:
  - (1) Evidence of residency above dated as far back as possible,
  - (2) Affidavit of petitioner or friend or relative who has known petitioner since her arrival or shortly thereafter.
  
- **Existence of other family** in United States legally:
  - (1) Affidavits of other family members,

(2) Pictures, letters involving other family members.

□ **Irreparable harm as a result of disruption of educational opportunities:**

- (1) Studies or reports of country conditions demonstrating existence of adverse educational situation and opportunities,
- (2) Affidavit of resident or of former resident of the home country describing the educational system of home country.

□ **Adverse psychological impact** of deportation:

- (1) Psychological records of mental and emotional condition of petitioner or children.
- (2) Affidavit of psychologist or other counselor attesting to psychological condition of petitioner or children.
- (3) Affidavit of petitioner describing hardship to children such as lack of language skills, lack of family and friends in the home country and unfamiliarity of the culture.
- (4) Affidavit of the petitioner or studies or reports about the effect on the child of separation from the primary caregiver if only the parent is deported.

## VIII. CONCLUSION

No one should apply for either self-petitioning or cancellation of removal without the assistance of an immigration advocate/attorney who understands the laws. This memo serves as a basic introduction to the immigration protections found in VAWA 1994 and 2013. Many details have been left out and reliance on this memo without first consulting the appropriate advocates or reference materials could result in removal (deportation). At this point, few immigration practitioners or advocates will be familiar with VAWA relief, especially with the new amendments in VAWA 2013. If you have battered immigrant clients you want to assist, we can help you locate an immigration lawyer or advocate in your area. If you have an immigration lawyer or advocate, have them contact any of the persons listed below for expert assistance with the VAWA case.

The following lawyers and advocates are available to answer questions. If you have a client who

is in deportation/exclusion/removal proceedings or has a case pending with DHS please contact one of the following agencies for technical assistance:

- **National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law** (202) 274-4457, [info@niwap.org](mailto:info@niwap.org).
- **Asista** (515)244-2469, [questions@asistahelp.org](mailto:questions@asistahelp.org)

**National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)**  
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