

VAWA Red Flags¹ July 16, 2015

Although your client may have a qualifying relationship to a United States citizen or lawful permanent resident and may further qualify for VAWA relief because of battery or extreme cruelty, the following “red flags” are grounds for concern. Any of the following may be cause for denial of a self-petition, a bar to lawful permanent residency, a ground for removal or a bar to cancellation of removal.² If any of the following have ever applied to your client, consultation with an immigration attorney who is experienced with VAWA immigration relief is recommended:

<p>Previously deported/removed</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 237(a)(1)(A) • May be bar to lawful permanent residency or admission; May be exception available INA 212(a)(9)(A) • May be ground for removal INA 237(a)(1)(A) and (B) 	<p>Entry as an international exchange visitor</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be bar to lawful permanent residency or admission INA 101(a)(15)(J) • Exceptions INA 212(e) • Waiver available INA 237(a)(1)(A) • May be ground for removal INA 240A(c)(2)
<p>Failure to Voluntarily Depart</p> <ul style="list-style-type: none"> • May be ineligible for cancellation of removal; May be exception available INA 240B(d) 	<p>Removal Order Issued</p> <ul style="list-style-type: none"> • Removal order must be rescinded before attaining lawful permanent residency
<p>Immigration violation (violation of law or conditions)</p>	<p>Departure since original entry</p>

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² Most crime victims eligible for relief under VAWA immigration protections will be immigrants who either unlawfully entered the United States or are persons who may have entered the United States lawfully but who are currently unlawfully present in the United States. The most common reasons for unlawful presence among victims will be overstaying a visa or violating the terms of their visa by changing employers, working when not authorized or not remaining in school when they are in the United States on student visas. Advocates and attorneys working with immigrant victims will need to learn about a victim's unlawful entry or unlawful presence as an important part of preparing a victim's immigration case. Unlawful entry and unlawful presence will not bar approval of a VAWA, T or U visa petition. Filing a VAWA, T or U visa application will offer the victim protection from the risk of removal based on unlawful entry under INA 237(a)(1)(B) or based on unlawful presence under 237(a)(1)(B) or (C). Unlawful entry or unlawful presence may also bar access to lawful permanent residency for victims. There are exceptions to unlawful entry that could assist some victims in INA 212(a)(6)(A) and unlawful presence in 212(a)(9)(B). Advocates and attorneys who are not immigration experts can assist immigrant victims in filing for VAWA, U and T visa applications for victims with unlawful entry or unlawful presence issues. Advocates and attorneys are strongly encouraged to call for technical assistance to discuss the case with an immigration and crime victim expert who can assist in determining which forms of immigration relief will be the best for the victim to pursue and for case preparation tips. Technical assistance is available to advocates and attorneys by contacting NIWAP at (202) 274-4457 or niwap@wcl.american.edu.

<ul style="list-style-type: none"> • Not a bar to petition approval • May be ground for removal INA 237(a)(1)(B) and (C) • Not a bar to cancellation of removal 	<ul style="list-style-type: none"> • May trigger previous bar to lawful permanent residency
<p>Falsely claiming citizenship (U.S.)</p> <ul style="list-style-type: none"> • Not a bar to petition approval • Bar to lawful permanent residency or admission; No waiver; Extremely limited exception INA 212(a)(6)(C)(2) • Ground for removal; No waiver; Extremely limited exception INA 237(a)(3)(D) • Bar to cancellation of removal; No waiver; Extremely limited exception INA 240A(b)(2)(A)(iv) 	<p>False testimony for immigration purposes</p> <ul style="list-style-type: none"> • May be a bar to petition approval; May be an exception available INA 101(f)(6) • May be a bar to approval; May be a waiver available INA 212(a)(6)(C) • May be a bar to cancellation of removal; May be an exception available INA 240A(b)(1)(B) and (2)(A)(iv)
<p>Misrepresentation for immigration purposes</p> <ul style="list-style-type: none"> • May be a bar to petition approval INA 101(f) • May be bar to lawful permanent residency or admission; May be waiver available INA 212(a)(6)(C) • May be ground for removal; May be waiver available INA 237(a)(3)(C) • May be bar to cancellation of removal; May be exception available INA 240A(b)(2)(A)(iv) 	<p>Public charge</p> <ul style="list-style-type: none"> • Not a bar to petition approval • Will not bar for victims receiving lawful permanent residency through the VAWA, T or U visa programs • May be bar to lawful permanent residency or admission for other forms of immigration relief; • May be exceptions available INA 212(a)(4) • May be ground for removal; May be exception available INA 237(a)(5)
<p>Expedited Removal (Removal without further review)</p> <ul style="list-style-type: none"> • Limited administrative review INA 235 • Limited judicial review INA 242 	<p>International child abduction</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 101(f) • May be bar to lawful permanent residency or admission; May be exception available INA 212(a)(10)(c) • May be bar to cancellation of removal; May be exception available INA 240A(b)(1)(C) and (2)(A)(iv)
<p>Crime of child abuse</p> <ul style="list-style-type: none"> • May be ground for removal; Waiver not available INA 237(a)(2)(E)(i) • May be bar to cancellation of removal INA 240A(b)(1)(C) and (2)(A)(iv) 	<p>Child Protective Services intervention (child neglect-no conviction)</p> <ul style="list-style-type: none"> • May be a bar to petition approval; Exception may be available INA 101(f)
<p>“Alien” smuggling</p> <ul style="list-style-type: none"> • May be bar to petition approval; May be exception available INA 101(f)(3) • May be bar to lawful permanent residency or admission; May be exception or waiver available INA 212(a)(6)(E) • May be ground for removal; May be exception or waiver available INA 237(a)(1)(E) • May be bar to cancellation of removal; May be exception available INA 240A(b)(1)(C) and (2)(A)(iv) • 	<p>Marriage fraud</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 204(a) and (c) • May be bar to lawful permanent residency or admission INA 212(a)(6)(c)(i) • May be ground for removal INA 237(a)(1)(G) • May be bar to cancellation of removal INA 240A(b)(2)(A)(iv)
<p>Penal confinement (result of conviction)</p>	<p>Polygamy</p>

<ul style="list-style-type: none"> • May be a bar to petition approval; May be an exception available INA 101(f) 	<ul style="list-style-type: none"> • May be a bar to finding of bona fide marriage INA 204 • May be a bar to lawful permanent residency
<p>Any criminal convictions</p> <ul style="list-style-type: none"> • May be bar to petition approval; May be exception available INA 101(f)(3) • May be bar to lawful permanent residency or admission; May be waiver available INA 212(a)(2) • May ground for removal; Limited exceptions and waivers available INA 237(a)(2) • May be bar to cancellation of removal INA 240A(b)(2)(A)(iv) 	<p>Aggravated felony conviction</p> <ul style="list-style-type: none"> • May be bar to petition approval; Limited possibility of exception INA 101(f)(8) • May be bar to lawful permanent residency or admission; Waiver available (limited) INA 212(a)(i) • May be ground for removal INA 237(a)(2)(A)(iii) • May be subject to expedited removal; INA 238 • May be limited judicial review to removal INA 242 • May be bar to cancellation of removal INA 240A(b)(2)(A)(iv) • Identify any criminal convictions (some state misdemeanors are aggravated felonies under immigration law)
<p>Crimes of domestic violence, stalking or violation of protection order</p> <ul style="list-style-type: none"> • May be ground for removal; May be waiver available, INA 237(a)(2)(E) • May be bar to cancellation of removal; May be exception INA 240A(b)(1)(C) and (2) (A)(iv) 	<p>Human trafficking</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 101(f) • May be bar to lawful permanent residency or admission INA 212(a)(2)(H) • May be ground for removal INA 237(a)(2) • May be bar to cancellation of removal INA 240A(b)(1)(C) and (2)(A)(iv)
<p>Habitual Drunkard (Alcohol abuse)</p> <ul style="list-style-type: none"> • May be a bar to petition approval INA 101(f)(1) 	<p>Prostitution</p> <ul style="list-style-type: none"> • May be bar to petition approval; • May be exception available INA 101(f)(3) • May be bar to lawful permanent residency or admission; May be waiver available INA 212(a)(2)(D) • May be ground for removal INA 237(a)(2) • May be bar to cancellation of removal; May be exception available INA 240A(b)(1)(C) and (2)(A)(iv)
<p>Physical or mental disorder</p> <ul style="list-style-type: none"> • May be a bar to lawful permanent residency; May be a waiver available INA 212(a)(1)(A)(iii) 	<p>Communicable disease</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be a bar to lawful permanent residency or admission or admission; May be a waiver available INA 212(a)(1)(A)(i)
<p>Drug abuse or addiction</p> <ul style="list-style-type: none"> • Not a bar to petition approval unless there has been a conviction for possession (limited exception) • May be a bar to lawful permanent residency or admission INA 212(a)(1)(iv) • Ground for removal INA 237(a)(2)(B)(ii) • Bar to cancellation of removal INA 240A(b)(2)(A)(iv) 	<p>Lack of vaccination record</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be a bar to lawful permanent residency or admission; May be exception or waiver available INA 212(a)(1)(A)(ii)
<p>Controlled Substance Traffickers (Drug trafficking)</p>	<p>Unlawful voting</p>

<ul style="list-style-type: none"> • Bar to petition approval; No waiver INA 101(f) • Bar to lawful permanent residency or admission; No waiver INA 212(a)(2)(C) • Ground for removal; No waiver INA 237(a)(2)(B)(i) • Bar to cancellation of removal; No waiver INA 240A(b) (2)(A)(iv) 	<ul style="list-style-type: none"> • May be a bar to petition approval; May be an exception available INA 101(f) • May be bar to lawful permanent residency or admission; May be an exception available INA 212(a)(10)(D) • May be ground for removal; May be an exception available INA 237(a)(6)
<p>Money laundering</p> <ul style="list-style-type: none"> • May be bar to petition approval, INA 101(f) • May be bar to lawful permanent residency or admission, INA 212(a)(2)(I) • May be ground for removal; INA 237(a)(2) • May be bar to cancellation of removal; INA 240A(b)(1)(C) and (2)(A)(iv) 	<p>Illegal gambling</p> <ul style="list-style-type: none"> • Income principally from gambling INA 101(f)(4) • Two(2) convictions for gambling INA 101(f)(5) • May be a bar to petition approval
<p>Stowaway</p> <ul style="list-style-type: none"> • Not a bar to petition approval • Bar to lawful permanent residency or admission INA 212(a)(6)(D) • May be ground for removal INA 237(a)(1)(B) • Not a bar to cancellation of removal 	<p>Draft evasion</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be bar to lawful permanent residency or admission; No waiver if there is a bar INA 212(a)(8)(B) • May be ground for removal INA 237(a)(1)(A)
<p>Nazi persecution, genocide, commission of any act of torture or extrajudicial killing and severe violations of religious freedom</p> <ul style="list-style-type: none"> • Bar to petition approval INA 101(f)(9) • Bar to lawful permanent residency or admission; No waiver for immigrants INA 212(a)(3)(E) and (2)(G) • Ground for removal; No waiver INA 237(a)(4)(D) and (E) • Bar to cancellation of removal INA 240A(b)(1)(B) and (2)(A)(iv) 	<p>Totalitarian Party Membership (Communist)</p> <ul style="list-style-type: none"> • May be bar to lawful permanent residency or admission; Exceptions available; INA 212(a)(3)(D)
<p>Terrorist activities</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 101(f) • Bar to lawful permanent residency; No waiver available INA 212(a)(3)(B) • May be ground for removal INA 237(a)(4)(B) or (1)(A) • May be ineligible for cancellation of removal INA 240A(c)(4) 	<p>Espionage and Sabotage</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 101(f) • May be bar to lawful permanent residency or admission; Waiver only available for nonimmigrants INA 212(a)(3)(A) • May be ground for removal INA 237(a)(4)(A) • May be ineligible for cancellation of removal INA 240A(c)(4)