



IMMIGRATION PROTECTION SCREENING CHECKLIST¹

PRELIMINARY QUESTIONS:

- Do you speak English? If not, what languages do you speak fluently?
- What is your immigration status?
- Regarding visa applications,
 - Have you already filed for any of the following:
 - VAWA self-petition
 - Cancellation of removal
 - U-visa application
 - Gender-based asylum application
 - T visa application
 - Has anyone filed any of the following on your behalf:
 - I-130 Family-based visa application
 - Work Visa authorization
 - Are you the derivative of someone else in their visa application for any of the following:
 - Asylum application
 - Refugee application
- When did you first arrive in the U.S.? How long have you been here?
- Why did you come to the U.S.?
- What country do you come from?
 - Are you Haitian?²
 - Are you Salvadoran, Guatemalan, or from Eastern Europe?³
 - Are you Cuban?⁴

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² VAWA allows battered spouses and children (or those who have been subjected to extreme cruelty) who would be eligible for lawful permanent residency under the Haitian Refugee Immigration Fairness Act (HRIFA) but have been unable to attain lawful permanent residency due to the abuser's failure or refusal to file for lawful permanent residency under HRIFA, to file their own self-petitions.

³ Under section 203 of NACARA there are three categories of people who are eligible for NACARA suspension of deportation: (1) Salvadorans who entered the United States before September 20th, 1990, and registered for benefits on or before October 31, 1991 or applied for temporary protected status within the same time period; (2) Guatemalans who entered on or before October 1, 1990 and registered for benefits on or before December 31, 1991; and (3) nationals from certain Eastern European countries who filed for asylum before December 1991. The spouse or children of such immigrants are also eligible. Unmarried sons or daughters over 21 are eligible as long as they entered the United States before October 2, 1990.

⁴ VAWA provides relief for spouses and children who have been battered or subjected to extreme cruelty by an abuser who is eligible for relief under the Cuban Adjustment Act of 1966 (CAA).

- Do you have or have you ever had a work permit or work authorization?
- Have you received any of the following assistance:
 - TANF-cash assistance
 - Medicaid
 - Food stamps
 - Public or assisted housing
 - Other assistance, such as counseling
- Is your spouse or parent a veteran?⁵
- Did you meet your spouse through an international matchmaking agency?
- Do you have children? If yes, what is their immigration status?
- Have you ever had a civil protection order against your abuser?
- Did you ever go to a doctor for your injuries or for other treatment, including counseling?
- Did you tell anyone about the abuse, crime, sexual assault, or trafficking? If so, whom?
- Have you ever been detained by anyone? If so, when and by whom?
 - By DHS
 - By the police
- Have you ever been arrested or convicted of a crime?

ELIGIBILITY QUESTIONS FOR CERTAIN OPTIONS:

VAWA Self-Petitions

- Are you:
 - Married to a U.S. citizen or a lawful permanent resident and living with your spouse *or*
 - Divorced from a U.S. citizen or lawful permanent resident spouse within the last two years *or*
 - The child of a U.S. citizen or lawful permanent resident *or*
 - The parent of an adult U.S. citizen son or daughter (If you have children, are they biological, adopted, or step children? Who is the father of each of your children?)

and

- Have you or child been physically hurt or suffered emotional harm you consider to be extreme cruelty? If so, by whom? Describe.

and

- Where do you live and where did the abuse occur?⁶

VAWA Cancellation of Removal

- Are you currently in Deportation or Removal Proceedings?

and

- How lived continuously in the U.S. for at least five years?

and

- How did you enter the U.S.?

⁵ This may affect benefits.

⁶ The abused did not need to take place in the US if client's abuser, spouse, or parent is an employee of the U.S. government or a member of the U.S. armed forces.

Have you or your child been physically hurt or suffered emotional harm you consider to be extreme cruelty? Describe.

and

Was your abuser:

- Your current or former spouse who is a U.S. citizen or lawful permanent resident *or*
- Your citizen or lawful permanent resident parent or step parent if you are under the age of 21 *or*
- The citizen or lawful permanent resident other parent of your abused child?

and

Where did the abuse occur?

and

What would happen to you and your child if you were deported?

Battered Spouse Waiver

What is your spouse's immigration status?

and

How did you and your spouse meet? Did you have a marriage ceremony? Did you reside together? Was your spouse married to anyone else while married to you? Do you have documentation of the marriage?

and

What is your immigration status?

and

Have you or child been physically hurt or suffered emotional harm you consider to be extreme cruelty? If so, by whom? Describe.

U-visa (Crime victims)

Were you a victim of any of the following crimes? Describe the impact of the crime on you.

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual Assault
- Prostitution
- Sexual Exploitation
- Female Genital Mutilation (FGM)
- Being held hostage
- Slave trade, involuntary servitude, or kidnapping
- False imprisonment
- Perjury

and

What do you know about the crime?

and

- Where did the crime occur?

and

- Have you ever made a police report, spoken to police or prosecutors, or participated in any trial before a judge?

T Visa (Trafficking Victims)

- Are you a victim of trafficking⁷?

and

- On account of such trafficking, are you physically present in the U.S., American Samoa, the Commonwealth of the Northern Mariana Islands, or a port of entry?

and

- Have you ever made a police report, spoken to police or prosecutors, or participated in any trial before a judge, or shown willingness to assist a trafficking investigation?⁸

and

- What would happen upon removal to your home country?

Work Authorization for Battered Spouses of Work Visa Holders (INA §106)

- How did you and your spouse meet? Did you have a marriage ceremony? Did you reside together? Was your spouse married to anyone else while married to you? Do you have documentation of the marriage?

and

- What is your spouse's immigration status?⁹

and

- Have you been physically hurt or suffered emotional harm you consider to be extreme cruelty? If so, by whom? Describe.

⁷ The Trafficking and Violence Protection Act defines trafficking as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not 18 years of age; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery."

⁸ Alternatively, the client can satisfy this requirement if the client is under 18. If the client's physical or psychological trauma makes it difficult to cooperate with law enforcement, the client may be eligible for a waiver of this requirement.

⁹ Immigration and Nationality Act §106 states that the spouse should be a principal alien admitted under INA §101(a)(15)(A), (E)(iii), (G), or (H).

Gender Based Asylum

Were you persecuted in your home country or do you have a fear of persecution in your home country?¹⁰

and

Was the persecution motivated, at least in part, by gender?

and

What was your country's role/involvement in your persecution? If the persecution was not by the country, how did your country respond your persecution?

and

Do you have a safe option to relocate within your home country?

and

Did you tell anyone about the sexual assault/persecution?

Deferred Action – For Survivors Brought to the U.S. as Minors

Did come to the United States when you were under the age of sixteen?

and

Have you continuously resided in the United States for at least five years before June 15, 2012? **AND** were physically present in the United States on June 15, 2012?

and

Are you currently in school, have graduated from high school, have obtained a general education development (GED) certificate, OR are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States?

and

You have not have been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety?

and

Are you under the age of thirty one?

DEFENSES TO REMOVAL OR DEPORTATION

Other things you should know to best counsel your client.

Has the Department of Homeland Security, Department of State, or Department of Justice, released your immigration information to anyone?

Has your abuser, trafficker, crime perpetrator, or family members used your immigration information to become part of an enforcement action or other action which had an impact on you?

Have you encountered an immigration officer at any of the following locations:

- Shelter
- Rape crisis center
- Victim services programs

¹⁰ Rape generally meets the standard of persecution. *Ali v. Ashcroft*, 394 F.3d 780, 787 (9th Cir. 2005). Past persecution generally only creates a presumption of a well founded fear of persecution that may be rebutted by the government. Past persecution only qualifies an applicant for relief when there is extraordinary persecution such that the victim should not be required to return to the country for humanitarian reasons regardless of whether or not there is a fear of future persecution. See *Matter of Chen*, 20 I. & N. Dec. 16 (B.I.A. 1989).

- Community based organization
 - Courthouses
 - Supervised visitation center or family justice center
- What led the immigration officials to find/encounter you?¹¹
- If you have filed VAWA, T or U visa in the past, did the government tell anyone about the existence of information obtained in your case?¹²
- Are you a pregnant woman?
- Are you a nursing mother?
- Do you have a medical condition that requires special attention?
- Are you the sole caretaker of minor children?
- Are you the sole caretaker of sick or special needs relatives?
- Do you need to support a spouse with sick or special needs relatives?
- Do you have any other conditions which require humanitarian concern?

IMMIGRATION HISTORY (It is important to ask the following questions in a manner that does not scare or threaten survivors. The vast majority of victims filing for and granted VAWA, T-visa or U-visa relief will be in the U.S. unlawfully due either to unlawful entry or violating the terms under which they were allowed to lawfully enter the United States. Knowing this information is essential to determining which forms or immigration relief are best for each victim.

- How did you enter the United States?
- Did you enter on a visa?
- Are any of the following true in your case?
- Immigration violation
 - Unlawfully present
 - Unlawful entry

RED FLAGS—To figure out if there could be complications:

- Often Resolvable Issues—Do you have a history with of any the following:
- Failing to voluntarily depart the U.S.
 - Issued removal order
 - Departure of U.S. since your original entry
 - Public charge
 - Prostitution
 - Committing domestic violence, stalking, or violation of a protection order
- Health Issues—Do you have a history with of any the following:
- Communicable disease or lack of vaccination record
 - Physical or mental disorder
 - Alcohol or drug abuse

¹¹ If abuser sent the immigration official, it is a VAWA confidentiality violation.

¹² If the answer is yes, this is a VAWA confidentiality violation.

- Child Related Issues—Do you have a history with of any the following:
 - Child Protective Services intervention
 - International child abduction
 - Child abuse or child neglect

- Immigration Violation Issues—Do you have a history with of any the following:
 - Entering the US as an international exchange visitor
 - False testimony for immigration purposes
 - “Alien smuggling”¹³
 - Previously deported or removed
 - Marriage fraud
 - Falsely claimed U.S. citizenship to a government official or documents
 - Removal without further review

- Crime Issues—Do you have a history with of any the following:
 - Drug trafficking
 - Illegal gambling
 - Money laundering
 - Unlawful voting
 - Draft evasion
 - Faced aggravated felony conviction
 - Penal confinement
 - Human trafficking
 - Polygamy
 - Terrorist activities
 - Totalitarian party membership
 - Espionage and sabotage
 - Communist
 - Genocide, torture, killings, violations of religious freedom
 - Nazi persecution, genocide, commission of any act of torture or extrajudicial killing and severe violations of religious freedom

- Have you ever encountered any enforcement actions at a courthouse or shelter?

- Has an enforcement official ever released your protected information?

- Has an enforcement official ever used information provided by your abuser?

¹³ There is a waiver if the person smuggled was a spouse, parent, son, or daughter of the lawful permanent resident subject to deportation. INA §237(a)(1)(E)(iii).