

## Comparison Chart of VAWA and U visa Immigration Relief<sup>1</sup>

By: Emily McCabe & Leslye E. Orloff

June 20, 2014

	Violence Against Women Act (VAWA) Self-Petition	U Visa
<b>ELIGIBILITY</b>		
<b>Applicant</b>		
<b>Typical Recipients</b>	<p>The immigrant (or the immigrant's child or step-child) has been battered or subjected to extreme cruelty by the immigrant's:</p> <ul style="list-style-type: none"> <li>▪ U.S. citizen-               <ul style="list-style-type: none"> <li>○ Spouse</li> <li>○ Former spouse (within 2 years)</li> <li>○ Parent</li> <li>○ Step-parent</li> <li>○ Over 21 year old child, adopted child or step-child</li> </ul> </li> <li>▪ Lawful permanent resident               <ul style="list-style-type: none"> <li>○ Spouse</li> <li>○ Former spouse (within 2 years)</li> <li>○ Parent</li> <li>○ Step-parent</li> </ul> </li> </ul>	<p>Victims of certain criminal activities (i.e. fraud and violent criminal activity), including:</p> <ul style="list-style-type: none"> <li>▪ <i>Direct victims</i>: individuals who experienced substantial physical and mental abuse as a result of the qualifying criminal activity</li> <li>▪ <i>Indirect victims</i>: certain family members* of direct victims where the direct victim is:               <ul style="list-style-type: none"> <li>○ Deceased due to manslaughter or murder, or</li> <li>○ Incompetent, or incapacitated and therefore not able to give information concerning the qualifying criminal activity (i.e. parent of a sexually abused child)</li> </ul> </li> </ul>
<b>*Family Members Who May Qualify as Indirect Victims</b>	Not applicable	<p>If direct victim is over 21: spouse, and children under 21 years old.</p> <p>If direct victim is under 21: parents, and unmarried siblings under 18 years old.</p>
<b>Proof of Good Moral Character</b>	Required for self-petition	Proof of good moral character is not required for the U visa application, but is required to be granted lawful permanent residency.
<b>Applicant's Criminal History</b>	<p>Any arrest,* conviction,* or otherwise criminal involvement* may make the applicant ineligible to obtain an approved VAWA self-petition on good moral character grounds.</p> <p>Many types of convictions may also bar access to lawful permanent residency based on an approved self-petition.</p>	The applicant may apply for a discretionary waiver for crimes they may have committed. No waivers are available for participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.

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<p><b>*Applicant's Criminal History That Is Related to Domestic Violence Suffered</b></p>	<p>In determining good moral character as part of the VAWA self-petition adjudication, crimes related to the domestic violence may not bar victims from being found to have good moral character.</p> <p>Domestic violence convictions are deportable offenses that could also bar access to lawful permanent residency. A domestic violence victim with a conviction for domestic violence may be able to obtain a special domestic violence victim waiver if the battered immigrant was acting in self-defense; was found to have violated a protection order intended to protect the person; or committed, was arrested for, was convicted of, or pled guilty to committing a crime –</p> <ul style="list-style-type: none"> <li>▪ that did not result in serious bodily injury; and</li> <li>▪ where there was a connection between the crime and the person's having been barred of subject to extreme cruelty</li> </ul>	<p>The applicant may apply for a discretionary waiver for crimes they may have committed including domestic violence. No waivers are available for participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings.</p>
<p><b>Criminal Activity Suffered by Victim</b></p>		
<p><b>Qualifying Criminal Activity</b></p>	<p>Not applicable</p>	<p>Any of the following: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, female genital mutilation, felonious assault, fraud in foreign labor contracting, hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, stalking, torture, trafficking, witness tampering, unlawful criminal restraint, other related criminal (including attempt, conspiracy, or solicitation to commit any of the above and other related criminal activity).</p>
<p><b>Proof of Harm</b></p>	<p>Must show battery or extreme cruelty</p> <ul style="list-style-type: none"> <li>• Extreme cruelty includes forms of emotional abuse that do not have to rise to the level of physical violence, sexual violence or criminal activity.</li> </ul>	<p>Must show substantial physical or emotion abuse as a result of the criminal activity.</p>
<p><b>Perpetrator</b></p>		
<p><b>Applicant's Relationship to Perpetrator</b></p>	<p>Applicant must have or had one of the following relationships with the abuser:</p> <ul style="list-style-type: none"> <li>▪ Spouse</li> <li>▪ Former spouse (must file within 2 years)</li> <li>▪ Parent of child victim</li> <li>▪ Step-parent of child victim</li> <li>▪ Parent abused by over 21-year-old son or daughter.</li> </ul>	<p>Any individual</p>
<p><b>*If Applicant Is/Was Married to Perpetrator</b></p>	<p>Applicant must show the couple was legally married in good faith (i.e. not solely to gain immigration status).</p>	<p>Not required</p>
<p><b>Effect of Marriage for Child Applicant</b></p>	<p>Cannot marry until the self-petition is approved and the child receives lawful permanent residency.</p>	<p>No effect</p>

<b>Requirement of Applicant and Perpetrator's Shared Residence</b>	Applicant must currently reside or have resided with the abuser at any point (no specific duration of residence required).	Not required
<b>Perpetrator's Immigration Status</b>	Abuser must be either a United States Citizen or a Lawful Permanent Resident spouse, former spouse, parent or step parent. The abuser may also be an over 21 year old citizen son or daughter.	Any status (including undocumented)
<b>Cooperation with Law Enforcement Requirements</b>	Not required	Applicant must submit a U visa certification (Form I-918 Supplement B) signed by a designated law enforcement officer, judge, prosecutor, or other state or federal government official involved in detection, investigation, conviction, prosecution, conviction or sentencing of a listed criminal activity. Applicant may be certified if she is a victim of a qualifying criminal activity and has been, is being, or is likely to be helpful in the detection, investigation, prosecution conviction or sentencing of criminal activity. Certification is encouraged as soon as possible and certifying helpfulness does not hinge on a case proceeding beyond detection or investigation of a criminal activity.
<b>PROCESS</b>		
<b>What to File</b>	VAWA Self-Petition (Form I-360).	U visa Application. Title: Application for U Nonimmigrant Status (Form I-918; including I-918 Supplement B).
<b>Where to File</b>	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).
<b>Family Members Whom Applicant Can Include in His or Her Application</b>	If applicant is over 21: unmarried children under the age of 21 at the time of filing. If applicant is under 21: children under the age of 21 at the time of filing	If applicant is over 21: spouse and unmarried children under the age of 21 at the time of filing. If applicant is under 21: spouse, children under the age of 21 at the time of filing, parent(s), unmarried siblings under the age of 18 at the time of filing.
<b>Number of Visas Given Out Per Year</b>	No limit.	10,000 each fiscal year.
<b>Average Case Processing Times</b>	As of April 2014, 7 months.	As of April 2014, 7 months.
	Prior to December 2013: research shows that processing times vary between 6-24 months from filing.	Prior to December 2013: research shows that processing times vary between 6-18 months from filing.
<b>How Long Relief Lasts</b>	Indefinitely – must request Deferred Action every year	<u>4 years</u> – may be extended if U visa holder is certified by law enforcement to be required for an investigation, prosecution, exceptional circumstances, or because U visa holder was unable to apply for lawful permanent residence due to a DHS delay in issuing regulations.

<b>What Wait-List Approval Provides</b>	Not applicable	Pursuant to the limit of 10,000 U visas a year, the Department of Homeland Security provides immigrants whose cases are favorably adjudicated with conditional "wait-list" approvals until such time as a U visa becomes available. This classification does not grant the individual with all benefits that come with a U visa status, but it does provide deferred action, which: <ul style="list-style-type: none"> <li>▪ Protects against removal/deportation</li> <li>▪ Provides basis for work authorization</li> </ul>
<b>What Approval Provides</b>	Approval provides deferred action which: <ul style="list-style-type: none"> <li>▪ Protects against removal/deportation</li> <li>▪ Provides basis for work authorization</li> <li>▪ May be renewed until self-petitioner is eligible to apply for lawful permanent residence.</li> <li>▪ Eligibility to apply for lawful permanent residency either <ul style="list-style-type: none"> <li>○ Immediately if the perpetrator is a citizen; or</li> <li>○ When the victim's priority date becomes current, if the perpetrator is a lawful permanent resident. As of April 2014 the wait times for a priority date to come current to apply for lawful permanent residency was 9 months to 2 years depending on the victim's country of origin.</li> </ul> </li> </ul>	Conditional approval provides deferred action, which: <ul style="list-style-type: none"> <li>▪ Protects against removal/deportation</li> <li>▪ Provides basis for work authorization</li> </ul> U visa approval provides <ul style="list-style-type: none"> <li>▪ U visa that lasts for 4 years</li> <li>▪ Ability to apply for lawful permanent residency after 3 years</li> <li>▪ *May be extended if U visa holder is certified by law enforcement to be required for an investigation, prosecution, exceptional circumstances, or because U visa holder was unable to apply for lawful permanent residence due to a DHS delay in issuing regulations.</li> </ul>
<b>BENEFITS</b>		
<b>Immigration Benefits</b>		
<b>Protection Against Deportation</b>	Upon filing, applicant is flagged as "384" in Department of Homeland Security's system as a VAWA confidentiality-protected case. This stops the Department of Homeland Security from taking any enforcement action against the victim, including detention and removal. Cannot rely on information provided by the perpetrator or their family member to harm the victim.	Upon filing, applicant is flagged as "384" in Department of Homeland Security's system as a VAWA confidentiality-protected case. This stops the Department of Homeland Security from taking any enforcement action against the victim, including detention and removal. Cannot rely on information provided by the perpetrator or their family member to harm the victim.
<b>Applicant's Access to Work Authorization</b> <i>It is important to consider WA even for children under the legal working age as it provides eligibility to apply for an SSN</i>	If abuser is a United States Citizen: Employment authorization upon prima facie finding, provided the applicant is admissible and has jointly filed an application for lawful permanent residency (I-485) as an immediate relative of a U.S. citizen.  If abuser is a Lawful Permanent Resident: Applicant receives employment authorization upon approval of VAWA petition.	Work authorization upon conditional approval based on deferred action status if cap is reached.  Work authorization for 4 years upon receipt of the U visa.
	Form to file: Employment Authorization (Form I-765) – fee waiver available.	Form to file: None required for approvals. Application for Employment Authorization (Form I-765) is required for wait-list approvals with deferred action status.

<p><b>Waivers Available for Ineligibility Factors So That Victim Can Receive Lawful Permanent Residency</b></p>	<p>There is an exception to the public charge grounds of inadmissibility.</p> <p>There are a range of inadmissibility waivers that are available specifically for VAWA self-petitioners:</p> <ul style="list-style-type: none"> <li>• <i>Fraud</i> – may be waived if self-petitioner can show extreme hardship to self and/or children, spouse, and parents</li> <li>• <i>Immigration violations</i> – may be waived if self-petitioner can establish substantial connection between the immigration violation and the abuse</li> <li>• <i>Other crimes</i> – may affect the good moral character requirement, unless self-petitioner can show connection between the crime and the abuse suffered.</li> <li>• <i>Domestic violence victim waiver</i> – for self-defense; violation of protection order<sup>27</sup> intended to protect the victim; or committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury; and where there was a connection between the crime and the alien’s having been barred of subject to extreme cruelty</li> </ul>	<p>There is an exception to the public charge grounds of inadmissibility.</p> <p>Discretionary waiver of inadmissibility available if it is in the public or national interest. No waiver available for participants in Nazi persecution, genocide, torture, or extrajudicial killing.</p>
<p><b>Applicant's Access to Lawful Permanent Residency</b></p> <p><i>Also known as a "Green Card"</i></p>	<p>If abuser is a United States Citizen: eligible following approval if admissible.</p> <p>If abuser is a Lawful Permanent Resident and self-petitioner must wait until their priority date becomes current. Wait times vary by the victim’s country of origin and in April 2014 ranged from 9 months to 2 years.</p>	<p>A U visa holder can apply for lawful permanent residence, if the applicant has:</p> <ol style="list-style-type: none"> <li>1. Maintained continuous presence in the U.S. for 3 years;</li> <li>2. Complied with reasonable requests to cooperate in investigation or prosecution;</li> <li>3. Good moral character; and</li> <li>4. Is admissible or qualifies for a waiver of inadmissibility.</li> </ol>
<p><b>Access to Services Not Considered Public Benefits Open to All Immigrants<sup>2</sup></b></p>		
<p><b>Life and Safety Services<sup>3</sup></b></p>	<p>Eligible</p>	<p>Eligible</p>
<p><b>Transitional Housing</b></p>	<p>Eligible</p>	<p>Eligible</p>
<p><b>Emergency Medicaid</b></p>	<p>Eligible</p>	<p>Eligible</p>

<sup>2</sup> Leslye Orloff, Aditi Kumar and Krisztina Szabo, *Public Benefits Toolkit*, NIWAP (March 2014) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/Public%20Benefits%20ToolKit%20FINAL%203%2024%2014%20leo.pdf/view> (Hereinafter “Public Benefits Toolkit”).

<sup>3</sup> For more information about the benefits available to all immigrants regardless of status, see Catherine Longville and Leslye E. Orloff, *Programs Open To Immigrant Victims And All Immigrants Without Regard To Immigration Status*, NIWAP (June 2014) available at <http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/Programs%20Open%20To%20All%20Immigrants%20Regardless%20of%20Status.pdf/view>.

<b>Healthcare from HHS-funded Community Clinics</b> <a href="http://www.HRSA.gov">www.HRSA.gov</a>	Eligible	Eligible
<b>Assistance from a Legal Services Corporation Funded Program</b>	Eligible under <i>anti-abuse regulations</i> for “related legal assistance” including matters related to escaping abuse, ameliorating the effects of the abuse, preventing future abuse, prevention of or obtaining relief from battering or extreme cruelty.  Upon filing an application for lawful permanent residency based on VAWA, VAWA self-petitioners are eligible for all legal assistance offered with no relationship to the abuse required.	Eligible under <i>anti-abuse regulations</i> for “related legal assistance” including matters related to escaping abuse, ameliorating the effects of the abuse, preventing future abuse, prevention of or obtaining relief from any U visa criminal activity.  Upon filing an application for lawful permanent residency based upon a U visa the victim is eligible for all legal assistance offered with no relationship to the abuse required.
<b>Special Supplemental Nutrition Program for Women, Infants and Children (WIC)</b>	Eligible	Eligible
<b>Federal and State Public Benefits<sup>4</sup></b>		
<b>General Access to Public Benefits</b>	VAWA self-petitioners who entered on or after 8/22/1996, are "qualified immigrants," but must wait 5 years before they can access federal means-tested benefits.  VAWA self-petitioners who entered the United States before 8/22/1996, are "qualified immigrants," and are eligible to receive federal public benefits and federal means-tested public benefits.	U visa holders are not "qualified immigrants," and are not eligible to receive federal public benefits or federal means-tested public benefits.
<b>Post-secondary Education</b>	Eligible as qualified immigrants for postsecondary grants and loans.	U visa holders are not able to file for FAFSA or other governmental scholarships, grants, or loans, until they become Lawful Permanent Residents. However, recipients may be eligible to apply for non-governmental scholarships, grants, and loans. <sup>5</sup> Recipients may also be eligible to receive in-state tuition in certain states. <sup>6</sup>

<sup>4</sup> This section highlights some of the public benefits available to qualified immigrants for a more complete list of benefits available see Public Benefits Toolkit, *supra* note 2.

<sup>5</sup> For resources on financial aid and scholarships regardless of immigration status, please see <http://www.nilc.org/eduaccessstoolkit10.html#aid> and <http://www.maldef.org/leadership/Scholarships/>.

<sup>6</sup> For information, see National Conference of State Legislators, *Undocumented Students: State Action* (June 14, 2014), available at <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx>.

<b>Public and Assisted Housing</b>	Eligible as qualified immigrants for Section 8 Subsidized Housing and Public and Assisted Housing.	Not eligible
<b>Child Care<sup>7</sup></b>	<p><u>Child Care Development Fund (CCDF)</u>: Children, who are self-petitioners or included in their parent’s self-petition upon receiving a prima facie determination, are eligible for CCDF child care as qualified immigrants.</p> <p><u>TANF Funded Child Care</u>: Varies by state. Depends on whether the state provides benefits for qualified immigrants during the 5 year bar.</p>	<p>All immigrants, regardless of immigration status, are eligible for Child Care Development Fund (CCDF) child care when:</p> <ul style="list-style-type: none"> <li>• Child care is provided in settings subject to public educational standards, including public or private pre-kindergarten or public and private child care provided after school or during school holidays.</li> <li>• Child care is subject to Head Start performance standards.</li> <li>• Eligibility for child care services is determined by a nonprofit charitable organization.</li> </ul>
<b>State Public Benefits</b>	VAWA self-petitioners are qualified immigrants eligible for state funded benefits. Whether and which state funded benefits states provide to qualified immigrants varies by state and by benefit. <sup>8</sup>	Not available until the U visa holder becomes a Lawful Permanent Resident and completes the 5 year bar. Some states provide state funded benefits to qualified immigrants during the 5 year bar. A very limited number of states provide state funded benefits to U visa applicants who are PRUCOL (present under color of law) or U visa victims with U visas or deferred action status, as U visa victims with conditional approval who are considered lawfully present. <sup>9</sup>
<b>Driver’s Licenses<sup>10</sup></b>	Varies by state. In most states upon receipt of work authorization. Maine: Upon receiving a prima facie determination in a VAWA self-petitioning case	Varies by state. In most states upon receipt of work authorization. Maine: Letter or notice acknowledging that the person is a U visa victim
<b>Access to Means-Tested Benefits<sup>11</sup></b>		
<b>Temporary Assistance for Needy Families (TANF)</b>	Eligible as qualified immigrants to receive TANF after a 5-year bar. Some states provide state-funded TANF.	Not available until 5 years after attaining Lawful Permanent Residency.
<b>Food Stamps (SNAP)</b>	Eligible as qualified immigrants to receive SNAP after a 5-year bar. Children VAWA self-petitioners are eligible for SNAP.	Not eligible
<b>Medicaid/CHIP</b>	<p>Eligible as qualified immigrants to receive after a 5-year bar. Medicaid or CHIP may be available depending on the state without a 5-year bar.</p> <p>As qualified immigrants, VAWA self-petitioners may be able to receive subsidized health care in some states, most often for child health care and prenatal care.</p>	<p>Generally not available.</p> <p>U visa holders and wait-list approved U visa applicants with deferred action status may be able to receive subsidized healthcare for children, and pregnant women as lawfully present immigrants in some states.</p>

<sup>7</sup> Benish Anver and Leslye E. Orloff, *Immigrant Crime Victim Child Care Access*, NIWAP (March 13, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

<sup>8</sup> For an overview of public benefits available by state see Public Benefits Toolkit, *supra* note 2, and NIWAP’s state by state interactive demographics and benefits map available at <http://niwaplibrary.wcl.american.edu/public-benefits/public-benefits-tool-kit/Map%20Document%20backup%202.swf/view>.

<sup>9</sup> *Id.*

<sup>10</sup> Angela Baker and Leslye Orloff, *Acceptable Forms of Identification for State Drivers License/Identification Card*, NIWAP (March 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-issued-drivers-licenses-and-identification/Drivers-License-Access.pdf/view>

<sup>11</sup> For a full discussion of qualified immigrant access to federal means tested public benefits see Public Benefits Toolkit, *supra* note 2.