

## Evidence List

### IMMIGRANT VICTIMS APPLYING FOR VAWA CANCELLATION OF REMOVAL<sup>1</sup>

*This is not a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a VAWA cancellation applicant to be successful in her application.*

#### 1. Proof of applicant's identity and immigration status

| Exists | Brought In |   |
|--------|------------|---|
| _____  | _____      | Birth Certificate of applicant and her children                                     |
| _____  | _____      | Copies of passport and I-94 card on behalf of applicant and her children            |
| _____  | _____      | Other documents received from or sent to the Immigration and Naturalization Service |

#### 2. Evidence of spouse's/parent's immigration status

| Exists | Brought In |   |
|--------|------------|---|
| _____  | _____      | Birth Certificate (if spouse/parent was born in the United States)  |
| _____  | _____      | Naturalization Certificate  |
| _____  | _____      | Lawful Permanent Resident Card (i.e.- "Green Card")   |
| _____  | _____      | Copies of spouse/parent's U.S. passport   |
| _____  | _____      | US State Department Form FS-240 reporting the birth of a U.S. Citizen outside of the U.S.                                 |
| _____  | _____      | I-551 Stamp in Spouse/parent's passport showing evidence of lawful permanent residence                                    |
| _____  | _____      | Declaration for U.S. Consulate official certifying that spouse/parent is a U.S. Citizen and possesses a valid US passport |

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<sup>1</sup> This document has been updated and adapted from one developed jointly by Legal Momentum, Organization en California de Lideres Campesinas, and the Iowa Coalition Against Domestic Violence that was included in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Legal Momentum, Washington, D.C. 2004) and *Legal Momentum and Organization en California de Lideres Campesinas, "Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual"* (Legal Momentum, Washington, D.C. 2002).

This project was supported by Grant No. 2005-WT-AX-K005 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this web library and its publications are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

### 3. Evidence of the marital relationship<sup>2</sup>

| Exists | Brought In |                       |
|--------|------------|-----------------------|
|        |            | Marriage Certificate. |

### 4. Termination of previous marriages

| Exists | Brought In |  |
|--------|------------|--|
|        |            | Divorce decree/ Final order of divorce       |
|        |            | Annulment decree                             |
|        |            | Death certificate of deceased abusive spouse |

### 5. Proof of good faith marriage

| Exists | Brought In |  |
|--------|------------|--|
|        |            | Marriage Certificate   |
|        |            | Affidavit from the official who conducted the wedding ceremony   |
|        |            | Birth Certificates of children born or the marriage  |
|        |            | Affidavit from the applicant recounting the story of the engagement and wedding ceremony, include stories about the home and experiences the two shared  |
|        |            | Photographs of the wedding, vacations and other experiences the two shared before and after the wedding  |
|        |            | Correspondence including love letters  |
|        |            | Cards or letters from the abusive spouse to the applicant's family   |
|        |            | Names, addresses, telephone numbers of people that knew the applicant and the abusive spouse as a couple   |
|        |            | Letters from the applicant's employer or health care provider asserting that the applicant changed her name after the wedding  |
|        |            | Forms of identification (driver's license) indicating the change in applicant's surname after the wedding  |
|        |            | Police, court, medical, school or any other documents that provide information reflecting that the applicant and the abuser are or have been a married couple and the time period they resided together. |
|        |            | Signed affidavits from landlords, neighbors, friends, attesting to the fact that the parties reside or resided together.   |
|        |            | Insurance policy statements including names of parties and children covered type of coverage (auto, health, life insurance).   |
|        |            | Copies of jointly filed tax forms during the marriage  |
|        |            | Bank statements with both the applicant's and the abusive spouse's names   |
|        |            | Copies of the housing lease with both the applicant's and the abusive spouse's names   |

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<sup>2</sup> Needed for abused spouses and for abused step-children (evidence of marriage between non-abusive immigrant parent and abusive citizen step-parent).

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|       |       |  |
|-------|-------|--|
| _____ | _____ | Mail addressed to both individuals as a couple   |
| _____ | _____ | Proof of vacations taken together (copies of plane tickets showing they traveled together and sat together, photographs, receipts) |
| _____ | _____ | Receipts or payments from large jointly purchased items (cars, house, household appliances, etc.)                                  |
| _____ | _____ | Copies of joint membership applications (gym, pool, other organizations)   |
| _____ | _____ | Automobile registration for jointly owned vehicles   |
| _____ | _____ | Statements from friends, neighbors or family members, etc.   |
| _____ | _____ | Copies of utility bills—gas, telephone, electricity, water, etc.   |
| _____ | _____ | Academic bills or records naming the applicant and abusive spouse as the children’s parents  |
| _____ | _____ | Children’s medical bills naming the applicant and the abusive spouse as the parents  |

**6. If abusive spouse has died within the last two years, the following is required:**

|       |       |                   |
|-------|-------|-------------------|
| _____ | _____ | Death Certificate |
|-------|-------|-------------------|

**7. If the applicant has divorced her abusive spouse within the last two years, the following is required:**

| Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Final Declaration of Divorce demonstrating the date of final divorce                             |
| _____  | _____      | Copies of the relevant law that the criminal activity has violated                               |
| _____  | _____      | Copies of any arrest warrants  |
| _____  | _____      | Copies of any complaint reports  |
| _____  | _____      | Copies of any police reports   |
| _____  | _____      | Copies of any domestic violence incident report  |
| _____  | _____      | Affidavit of the pertinent law enforcement officer regarding the nature of the criminal activity |

**8. If the abusive spouse is engaged in a bigamous relationship, the following is required:**

| Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Marriage Certificate   |
| _____  | _____      | Copies of the application for the marriage license   |
| _____  | _____      | Photographs of the wedding ceremony  |
| _____  | _____      | Affidavit signed by the witnesses present at the wedding ceremony  |
| _____  | _____      | Affidavit signed by the self-petitioner indicating why she believed that she was legally married to the abuser |

and that to the best of her knowledge the wedding was legal

## 9. Proof of parent child relationship

## 10. Proof of residence with abusive spouse/former spouse

| Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Birth certificates of children born both in the United States and/or in other countries  |
| _____  | _____      | Family photographs with family members together  |
| _____  | _____      | Cards or letters mailed to the petitioner at the residence shared with the abuser (including cancelled postmarks)  |
| _____  | _____      | Cards or letters mailed to the abuser at the residence shared with the Petitioner (including cancelled postmarks).   |
| _____  | _____      | Testimony or statements from family friends, landlords, neighbors who knew the family when they lived together. Include names, telephone numbers, and addresses of people that knew the couple |
| _____  | _____      | Copies of tax forms  |
| _____  | _____      | U.S. legal documents with both of the names of the petitioner and the abuser   |
| _____  | _____      | Documents that indicate the names of the abuser and self-petitioner: employment, school registration, or children's school records   |
| _____  | _____      | Mail including both the names of the self-petitioner and abuser  |
| _____  | _____      | Mail separately addressed to the petitioner and the abuser, received on the same day and to the same address   |
| _____  | _____      | Mortgage payments, rental contracts, receipts from rent payment and related documents  |
| _____  | _____      | Utility bills  |
| _____  | _____      | Medical documents or medical bills   |
| _____  | _____      | Car insurance, health or life insurance that include both names  |
| _____  | _____      | Credit card bills  |
| _____  | _____      | Bank statements  |
| _____  | _____      | Rental agreements, property deeds, or lease agreements indicating jointly owned property   |
| _____  | _____      | Any correspondence in both names (magazines, newsletters)  |

## 11. Proof of battering or extreme cruelty

| Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Personal Statement—Using the wheel of power and control describe specific examples in each section if possible. You must prove that you are a victim of violence. Most importantly there |

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|       |       |   |
|-------|-------|---|
| _____ | _____ | need be proof that the abuser took advantage of your legal status in order to isolate, abuse, control, and assert power over the petitioner. The statement is an opportunity to establish your credibility and sincerity. The statement should explain why you need assistance and should gain the sympathy of the reader |
| _____ | _____ | Police reports and documented police visits to the residence  |
| _____ | _____ | Copies of phones bills indicating phone calls made by the petitioner  |
| _____ | _____ | Official protection order or restraining orders obtained in any U.S. state  |
| _____ | _____ | Letters of support from priests, teachers, or friends from work   |
| _____ | _____ | Medical reports or psychological examinations   |
| _____ | _____ | Statements from witnesses of the abuse or people who knew or learned of any form of abusive behavior. (children, neighbors, family members, friends, etc.)  |
| _____ | _____ | Photographs of the inflicted wounds taken by the petitioner or any other person (lawyer, social worker, or police officer).   |
| _____ | _____ | The abusive spouse/parent/over 21 year old citizen child's criminal record documenting criminal conviction for aggression, property destruction or other acts of domestic violence  |
| _____ | _____ | Records from shelters or affidavits stating the date when petitioner entered the shelter and an account of the events that lead to seeking the refuge   |
| _____ | _____ | Damaged items or photographs of damaged items (clothes, telephones, etc.)   |
| _____ | _____ | Any document, report or affidavit signed by a police officer, judge, social worker or service provider  |
| _____ | _____ | Court orders regarding custody, visitation rights or child care   |
| _____ | _____ | Criminal court records for fiscal citations or indictment for domestic violence   |
| _____ | _____ | Medical records for treatment sought due to domestic violence, records of previously existing medical condition   |

## 12. Good moral character

| Exists | Brought In |   |
|--------|------------|---|
| _____  | _____      | Statement of self-petitioner  |
| _____  | _____      | Local or state police clearance records from the past three years of every city the petitioner has lived in for more than six months. |
| _____  | _____      | Fingerprints (may be used as an alternative to the above; should be taken at an official DHS location).                               |

The following additional forms of evidence may also submitted. However, this is in addition to the evidence listed above.

|       |       |  |
|-------|-------|--|
| _____ | _____ | Statements from friends, family members, Church members or |
|-------|-------|--|

religious leaders, employer, etc. affirming that the applicant is a good person, mother, friend, employee, etc.

\_\_\_\_\_      \_\_\_\_\_  
A letter from the applicant's instructor if she is taking English lessons; include any awards or certificates received.

\_\_\_\_\_      \_\_\_\_\_  
Documents from teachers at the applicant's children's school, affirming that you are a good mother and if you volunteer your time at the school.

### 13. Dependent Children To Be Included in the Victims VAWA Self-Petition

\_\_\_\_\_      \_\_\_\_\_  
Birth certificates of the petitioner's children who are not U.S. citizens or lawful permanent residents

### 14. EXTREME HARDSHIP<sup>3</sup>

Below is a list of factors to establish extreme hardship, but this is by no means an exhaustive list.

#### TRADITIONAL FACTORS OF EXTREME HARDSHIP

##### DOCUMENTS TO PROVE HER CONNECTION TO THE UNITED STATES

| Exists | Brought In |   |
|--------|------------|---|
| _____  | _____      | Documentation or Information about Her Age (this may include a copy of her birth certificate, an affidavit of birth, or another official document containing her date of birth)   |
| _____  | _____      | Documentation or Information Establishing the Length of Time She Has Resided in the United States (for example a stamped passport, an expired visa, tax returns, employment stubs, mortgage or leases, etc.) <sup>4</sup> |
| _____  | _____      | Documentation or Information about Her Relatives Who Lawfully Reside in the United States (except for her children do not   |

<sup>3</sup> Extreme hardship is a balancing test, balancing the hardship that would result to the battered immigrant if she were to be deported against DHS' interest in deporting her because of an immigration violation. The immigration judge determines if the hardship to the immigrant is so *extreme*, she should not be deported to her home county, but instead be able to obtain lawful permanent residence to remain in the United States.

The battered immigrant has the burden to give enough evidence to prove she would face extreme hardship if deported to her home country. However if the battered immigrant victim is also a NACARA applicant, the presumption is that extreme hardship is established and DHS must prove otherwise. See 8 C.F.R 240.64(d). The battered immigrant may present 'any credible evidence,' which includes both primary and secondary documents and affidavits. This standard recognizes the fact that it is difficult for her to obtain primary documents because her abuser may have hid or destroyed them as part of the abuse he perpetrated against her. However, more weight will be given to primary documents. Any assertions should be supported by documentation or affidavits. Each case is evaluated on an individual basis after a review of all the evidence and circumstances particular to her case. A factor does not have to be unique to a particular person. One factor alone may not be determinative of extreme hardship, but in conjunction with other factors it may be established. For instance, extreme hardship is 'more than mere economic deprivation.' Please also note, although establishing battery or subjection to extreme cruelty is required for a VAWA self-petition, it is not dispositive of a finding of extreme hardship. However establishing battery or subjection to extreme cruelty is typically strong evidence supporting extreme hardship.

<sup>4</sup> If she entered the United States at an early age, residence during her critical 'formal years' may be important.

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|       |       |  |
|-------|-------|--|
| _____ | _____ | include family members who are undocumented) <sup>5</sup>  |
| _____ | _____ | Documentation or Information about Her and Her Children's Support System in the United States  |
| _____ | _____ | Documentation or Information about the Necessity of Family Support for Survivors of Domestic Violence  |
| _____ | _____ | Documentation or Information about Family Unification as a Primary Goal of Immigration Law   |
| _____ | _____ | Documentation or Information about Participation in Community, Civic, or Religious Organizations   |
| _____ | _____ | Documentation or Information about Honorable Military Service  |
| _____ | _____ | Affidavits from Friends, Family, Neighbors, Co-Workers, or Community Members About Her Character and Connection to Community                           |
| _____ | _____ | Documents or Information about Her Having Helped, Helping, or that She Will be Helpful in the Future to Any Investigation or Prosecution of Her Abuser |
| _____ | _____ | Documentation or Information about Ownership or Investment in Any United States Businesses   |

**DOCUMENTS TO ESTABLISH ANY ADVERSE EFFECTS OF UPON HER WHICH WOULD RESULT IF SHE WERE DEPORTATED TO HER HOME COUNTRY**

| Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Documentation or Information on the Economic and Political Conditions in Her Home Country <sup>6</sup> (this should include information about widespread abuse of women and children, domestic violence, poverty, civil war, or other human rights abuses)   |
| _____  | _____      | Documentation or Information about Her Ability to Secure Adequate Employment in Her Home Country (this should include her age, education, skills, availability of employment for which she is qualified, her lack of language skills in her native language, disabilities affecting employment and if her status as a woman or divorcee precludes her from employment) |
| _____  | _____      | Documentation or Information About Any Educational   |

<sup>5</sup> If she has United States citizen children, this alone will not constitute extreme hardship. See Matter of Kim, 15 I & N Dec. 88 (BIA 1974).

<sup>6</sup> Good sources of this information might include: Department of State Country Reports on Human Rights Practices, CIA World Factbook, Human Rights Documentation Exchange, research centers associated with Universities, periodicals, or Non-Governmental Organizations documenting abuses.

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|       |       |  |
|-------|-------|--|
| _____ | _____ | Opportunities and/or Irreparable Harm to Her Caused by Disruption in Education   |
| _____ | _____ | Documentation or Information about Any of Her Achievements or Participation in Activities  |
| _____ | _____ | Documentation about the Stress for Domestic Violence Survivors to Leave Behind Family, Friends, Community, and the Familiar in the United States |
| _____ | _____ | Documentation or Information on Her Absence of Connection to Her Home Country  |
| _____ | _____ | Documentation or Information about Any Adverse Psychological Impact Deportation Will Have Upon Her   |

**DOCUMENTS TO ESTABLISH HER INABILITY IMMIGRATE TO THE UNITED STATES IN ANOTHER WAY**

|        |            |   |
|--------|------------|---|
| Exists | Brought In |   |
| _____  | _____      | Documentation or Information about Her Immigration History <sup>7</sup> |

**DOCUMENTS TO PROVE ADVERSE AFFECT ON HER CHILDREN IF SHE IS DEPORTED TO HER HOME COUNTRY (THE CHILD REMAINS IN THE UNITED STATES)**

|        |            |   |
|--------|------------|---|
| Exists | Brought In |   |
| _____  | _____      | Name and Age of Each of Her Children  |
| _____  | _____      | Documentation or Information About the Immigration Status of Her Children   |
| _____  | _____      | Documentation or Information About Each of Her Children's Length of Residence in the United States  |
| _____  | _____      | Documentation or Information about Whether She Will Be Able to Maintain a Relationship with Her Child if She is Deported  |
| _____  | _____      | Documentation or Information about the Child's Age and Length of Residence in the United States and Lack of Language Skills in the Language of Her Home Country |
| _____  | _____      | Documentation or Information about Trauma, Both Physical and Mental the Child Has Suffered  |
| _____  | _____      | Documentation or Information about the Trauma the Child Would Suffer if Her/His Mother is Deported to Her Home Country  |
| _____  | _____      | Custody Order or Documentation of Pending Proceedings   |

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<sup>7</sup> If there is another way for her to get remain in the United States, the immigration judge will not find she has established extreme hardship. See Matter of Anderson, 16 I & N 596 (BIA 1978).

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(include information about the likelihood the children will be in the sole custody of the abuser or put in foster care)

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information of Her Role as the Primary Caretaker

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information about the Each of the Children's Health Problems

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information about Family Unification as a Goal of Immigration Law

**DOCUMENTS TO PROVE ADVERSE AFFECT ON HER CHILDREN IF THEY ARE DEPORTED OR JOIN HER IN HER HOME COUNTRY**

\_\_\_\_\_      \_\_\_\_\_      Name and Age of Each of Her Children

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information About the Immigration Status of Her Children

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information About Each of Her Children's Length of Residence in the United States

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information about Her Children's Ability to Speak the Native Language and Adjust to the Culture of Her Home Country

\_\_\_\_\_      \_\_\_\_\_      If the Children Were Born to Different Racial or Ethnic Groups  
Documentation or Information Explaining How This Would Impact Their Assimilation or Effect Their Treatment in Her Home Country

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information About Any Educational Opportunities and/or Irreparable Harm Caused by Disruption in Education

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information about Each of Her Children's Achievements or Participation in Activities

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information about the Each of the Children's Health Problems

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information about Unavailability, Inaccessibility, Or Inadequacy of Medical Facilities in Her Home Country to Treat Her Children's Health Problems

\_\_\_\_\_      \_\_\_\_\_      Documentation or Information about Any Adverse Psychological Impact Deportation Will Have Upon Each of Her Children

**VAWA FACTORS OF EXTREME HARDSHIP****DOCUMENTS TO PROVE NATURE AND EXTENT OF PHYSICAL AND PSYCHOLOGICAL ABUSE**

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| Exists | Brought In |   |
|--------|------------|---|
| _____  | _____      | Sworn Declaration Documenting Abuse in Detail <sup>8</sup>  |
| _____  | _____      | Medical Records (for treatment of both physical injuries and psychological trauma to her or her children)   |
| _____  | _____      | Hospital Records Documenting abuse (even if she did not tell anyone at the hospital that her partner caused the abuse or even if she denied the injury was a result of domestic violence)   |
| _____  | _____      | Police Reports or Call Logs (the police may not have filed a report if she did not press charges)   |
| _____  | _____      | Transcripts from 911 Calls  |
| _____  | _____      | Photographs of Any Injuries (include her face in each photo or get an overall photo of her body and up close shots of individual injuries)  |
| _____  | _____      | Torn Clothing or Destroyed Property, or Photographs of These Items  |
| _____  | _____      | Domestic Violence Shelter Records (if no records exist, affidavits From shelter workers)  |
| _____  | _____      | Immigration Petitions Filed by the Abuser, but Not Completed  |
| _____  | _____      | Approved VAWA Self-Petition   |
| _____  | _____      | Convictions (limited to those that demonstrate the abuser's propensity towards domestic abuse)  |
| _____  | _____      | Certified Copies of Protection Orders, or Proof of Pending Protection Orders  |
| _____  | _____      | Victim Impact Statement Read During Criminal Sentencing   |
| _____  | _____      | Documentation or Information about the Abuser's History of Mental Illnesses or Threats of Suicide   |
| _____  | _____      | Documentation or Information about the Abuser's History of Substance and Alcohol Abuse  |
| _____  | _____      | Information about the Abuser's Access to Weapons  |
| _____  | _____      | Affidavits of Witnesses to Abuse (anyone who saw or heard the battery or assault, assisted her in fleeing, or even if near the incident evidence of an excited utterance may be admissible) |
| _____  | _____      | Affidavits of Family, Friends, Neighbors, Clergy, Community Members Attesting to the Impact of the Abuse on Her or Her Children or Other Family Members                                     |
| _____  | _____      | School Records (may document injuries or affect of abuse on her or her children)  |
| _____  | _____      | Affidavits or Reports from Police, Judges, Medical Personnel, School Officials, or Social Services about the Abuse  |

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<sup>8</sup> This is the most important piece of evidence. This evidence must be consistent with all will the evidence presented.

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|       |       |   |
|-------|-------|---|
| _____ | _____ | Documentation or Information on the Inability of the Victim to Obtain Help (this may include social isolation, language barriers, lack of access to phone/transportation/money, evidence police do not respond to DV calls in her home country, her lack of familiarity or misconception about the law, dual arrest policy) |
| _____ | _____ | Studies and Reports on the Characteristics of Abusers (including the power/control wheel)   |

**DOCUMENTS TO PROVE IMPACT OF LOSS OF ACCESS TO THE UNITED STATES COURTS AND CRIMINAL JUSTICE SYSTEM**

This includes but is not limited to the victim's ability to obtain and enforce orders of protection, participate in criminal investigations, and prosecution of court orders regarding child support, maintenance, child custody, and visitation.

| Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Copies of Family and Criminal Laws in Her Home Country (laws demonstrating they do not offer adequate protection or orders from the United States are not enforceable) <sup>9</sup>  |
| _____  | _____      | Documentation or Information that Comparable Assistance Available To Her from United States Courts is Not Available in Her Home Country (United States Courts may order maintenance, child Support, counseling for the abuser, right to/use and possession of family home, police assistance, custody with stipulations, or grant protection orders) |
| _____  | _____      | Pending Proceedings in the United States <sup>10</sup> (both criminal and civil)   |
| _____  | _____      | Immigration Status of Abused (likelihood he will be deported back to her home country)   |
| _____  | _____      | Proof of Necessity to Remain in the United States to Aid in an Ongoing Investigation (affidavits from police and/or prosecution)   |
| _____  | _____      | Proof of Existing, Prior, or Pending Orders Which Would Lose Effect in Her Home Country (may include protection orders, child support, maintenance, or alimony)  |
| _____  | _____      | Documentation or Information about Violence Against Women in Her Home Country (this should include both the country's inaction to protect women from their abusers and the prevalence of violence against women particularly domestic violence)  |

<sup>9</sup> You can get certified copies of foreign law from the Library of Congress at (202) 707-5065. Another source for foreign law is findlaw.com.

<sup>10</sup> Experts note child custody disputes are compelling hardship factors. A grant of custody is meaningless if the parent, and not the child, is deported and an abusive parent remaining in the United States would be free to open the custody decision without challenge.

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|       |       |   |
|-------|-------|---|
| _____ | _____ | Documentation or Information about Parental Rights in Her Home Country  |
| _____ | _____ | Documentation or Information Children Will Be Unable to Accompany Her to Home Country and Will Be Left in the Care of the Abuser or Foster Care <sup>11</sup>   |
| _____ | _____ | Affidavits from Persons from Her Home Country Attesting to the Lack of Enforcement of Certain Family or Criminal Laws   |
| _____ | _____ | Documentation or Information about the Abuser's Custody or Potential to Gain Custody; Thereby, Depriving Her of Access to Her Children  |
| _____ | _____ | Documentation or Information Demonstrating Her Efforts to Seek Help from the Justice System (if the victim did not seek help or was unsuccessful in seeking help, her own affidavit or an affidavit from another person about her fears of the abuser or unfamiliarity of the law or inability to access the law, etc.) |

**DOCUMENTS TO PROVE EXISTENCE OF LAWS AND SOCIAL PRACTICES OR ATTITUDES IN HER HOME COUNTRY THAT PUNISH HER OR HER CHILDREN BECAUSE THEY ARE SURVIVORS OF DOMESTIC VIOLENCE AND HAVE TAKEN STEPS TO LEAVE AN ABUSIVE HOUSEHOLD**

Exists            Brought In

|       |       |   |
|-------|-------|---|
| _____ | _____ | Copies of Laws in Her Home Country Which Punish Domestic Violence Survivors or Single Women or Mothers in Her Home Country (this may include laws effectively preventing her from gainful employment, owning property, getting or enforcing a support order, having custody of her children, or remarriage) |
| _____ | _____ | Documents or Information of Practices or Customs Which Punish Her or Her Children   |
| _____ | _____ | Documentation or Information on Cultural Attitudes About Domestic Violence, Marriage, and Families in Her Home Country  |
| _____ | _____ | Affidavits from Domestic Violence Survivors in Her Home Country Attesting to the Treatment of Survivors   |

**DOCUMENTS TO PROVE ABUSER'S ABILITY TO TRAVEL TO HER HOME COUNTRY AND INABILITY OR UNWILLINGNESS OF THE AUTHORITIES OF HER COUNTRY TO PROTECT HER OR HER CHILDREN:**

Exists            Brought In

|       |       |  |
|-------|-------|--|
| _____ | _____ | Documentation or Information about Abuser's Immigration Status |
|-------|-------|--|

<sup>11</sup> Courts have held the rights of a United States citizen child are not violated when his or her parent is deported, even if the deported parent is the child's primary caretaker. See Martha R. Mahoney, Legal Images of Battered Women, 90 Mich. L. Rev. 1, 39-40 (1991).

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|       |       |  |
|-------|-------|--|
| _____ | _____ | in the United States and Abroad (this should include whether the abuser is also a citizen in her same home country)  |
| _____ | _____ | Copies of Abuser's Foreign Travel Documents  |
| _____ | _____ | Documentation or Information about Abuser's Application for a Passport or Visa   |
| _____ | _____ | Abuser's Financial Information (this information should include abuser's access to funds for travel)   |
| _____ | _____ | Documentation or Information about Abuser's Connections to or Position in Her Home Country (for example if her husband is a diplomat or military leader the system may protect him)  |
| _____ | _____ | Documentation or Information about Abuser's Ability to Locate Her or Her Children in Her Home Country (this may include abuser's ability to speak the native language, existence and level of contact between abuser and residents of her home country, and abuser's status in her home country) |
| _____ | _____ | Documentation or Information about Abuser's Stalking Behavior or Monitoring of Her or Her Children   |
| _____ | _____ | Affidavits From Her or Her Family Member's About the Abuser's Threats  |
| _____ | _____ | Documentation or Information about Abuser Traveling to Her Home Country to Continue Perpetrating the Abuse   |

**DOCUMENTS TO PROVE THE LIKELIHOOD THE ABUSER'S FAMILY, FRIENDS, OR OTHERS ACTING ON HIS BEHALF IN HER HOME COUNTRY WOULD PHYSICALLY OR PSYCHOLOGICALLY HARM HER OR HER CHILDREN**

| Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Documentation or Information of Social or Cultural Practices <sup>12</sup>   |
| _____  | _____      | Documentation or Information Abuser Has Family or Friends in Her Home Country and Description of Abuser's Level of Contact With Each Person (include in particular if the abuser's family or friends live in the same area as her support network and she is unable to avoid them) |
| _____  | _____      | Documentation or Information about Abuser's Manipulation of Third Parties to Perpetrate his Abuse, Harass, or Monitor Her or Her Children  |
| _____  | _____      | Affidavits Documenting Threats or Acts of Violence,  |

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<sup>12</sup> Good sources for this information are the Department of State Country Reports on Human Rights published annually and the Central Intelligence Agency World Factbook updated every other week online.

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Harassment, or Monitoring Perpetrated by the Abuser's  
Family, Friends or Other Third Party's Acting on His Behalf

**DOCUMENTS TO PROVE HER AND/OR HER CHILDREN'S NEEDS FOR SOCIAL, MEDICAL,  
MENTAL HEALTH OR OTHER SUPPORTIVE SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE  
THAT ARE EITHER UNAVAILABLE, INADEQUATE OR NOT REASONABLY ACCESSIBLE IN HER  
HOME COUNTRY**

| Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Documentation or Information of Lack of Unavailability,<br>Inaccessibility, or Inadequacy of Services in Home Country (may<br>include affidavits from service providers, experts, advocates, university<br>professors, or persons residing in her home county who have knowledge of the<br>services) |
| _____  | _____      | Documentation or Information about Services Her or Her Child<br>is Currently Utilizing (this should include information about any<br>trust relationships that have developed with service providers)   |
| _____  | _____      | Documentation or Information of the Existence of Child in the<br>House During the Abuse  |
| _____  | _____      | Psychological Evaluations of Her or Her Child Who Was Either<br>Abused or Witness to the Abuse (evidence can include<br>affects of abuse, such as behavioral problems, lowered grades,<br>depression, or other health problems, etc.)  |
| _____  | _____      | Medical Reports (for treatment of both physical injuries<br>and psychological trauma to her or her children)   |
| _____  | _____      | Hospital Records Documenting abuse (even if she did not tell<br>anyone at the hospital that her partner caused the abuse or even<br>if she denied the injury was a result of domestic violence)  |
| _____  | _____      | Studies and Reports about Effect of Domestic Violence on<br>Victims and/or Witnesses of Abuse  |
| _____  | _____      | Affidavits about Impact of Domestic Violence on Her or Her<br>Children   |

**15. 3 YEARS CONTINUOUS PHYSICAL PRESENCE<sup>13</sup>**

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<sup>13</sup> The battered immigrant victim must establish 3 years continuous, physical presence in the United States as one of the requirements for being granted cancellation of removal. Continuous, physical presence is defined as not leaving the United States for either "more than 90 days at one time," or "more than 180 days total" in the past 3 years. See INA 240A(b)(2)(B), 8 U.S.C §1229b(b)(2)(B). Brief periods of absence from the United States for less than 90 days, or 180 days total do not interrupt continuous, physical presence. Any absence from the United States, which is "brief, casual, and innocent, not meaningfully interruptive of physical presence," will not stop the accumulation of continuous, physical presence. The term 'brief' is not clearly defined as any fixed term, so it would be evaluated based on her individual circumstances. The purpose for the trip would be

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The following is a comprehensive list of evidence to establish continuous, physical presence in the United States.

**DOCUMENTS ESTABLISH CONTINUOUS PHYSICAL PRESENCE IN THE UNITED STATES**

| Exists | Brought In |   |
|--------|------------|---|
| _____  | _____      | Her Own Declaration Attesting to 3 Years Continuous Physical Presence in the United States (include a list of all her residences for the past 3 years)  |
| _____  | _____      | Copy of All Income Tax Returns Filed Either by Her or Jointly Her Spouse (if tax returns were not filed she will have to file back taxes)   |
| _____  | _____      | Copies of Lease Agreements, Rental Receipts or Mortgage Payments (if her name is not on any of these documents provide information establishing she resided with her spouse or another person at these times) <sup>14</sup> |
| _____  | _____      | Any Mail Addressed to Her at her Residence  |
| _____  | _____      | Utility Bills in Her Name or Same Address as Her Residence  |
| _____  | _____      | Employment Records (this may include W-2's, paystubs, or affidavits from employers or co-workers) <sup>15</sup>   |
| _____  | _____      | Copies of Bank Statements   |
| _____  | _____      | Copies of Credit Card Statements  |
| _____  | _____      | Insurance Policies  |
| _____  | _____      | Birth Records of Children Born in the United States   |
| _____  | _____      | Copy of Driver's License, if Lawfully Obtained  |
| _____  | _____      | Medical Records (should include her address)  |
| _____  | _____      | Court Records (including protective, custody, or support orders with her address)   |
| _____  | _____      | School Records  |

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particularly important. See *Rosenberg v. Fleuti*, 74 U.S. 449 (1963).

If a battered immigrant victim must flee the United States in order to flee the abuse, her absence does *not* interrupt her continuous, physical presence in the United States. If the battered immigrant victim is absent from the United States because of the abuse, the clock on accruing continuous, physical presence stops and will resume when she returns to the United States. Even if her absence is over 180 days total, it will not interrupt her continuous, physical presence so long as the absence is connected to the abuse. INA 240A(b)(2)(B), 8 U.S.C. §1229b. "Illegal entry or re-entry does not necessarily render a departure meaningfully interruptive." See *Catholic Social Services v. Meese*, 85 F. Supp. 1149, (E.D. Cal. 1988). If she has entered the United States illegally and fled because of the abuse it will not meaningfully interrupt continuous, physical presence. However, a person who leaves the United States in violation of the law, for example to avoid arrest, is not absent for an innocent reason and this will stop the accumulation of continuous, physical presence. The 3 years continuous, physical presence must be accrued by the beginning of removal proceedings. A battered immigrant may continue to accrue continuous physical presence after she is issued her Notice to Appear until the day her removal proceedings begin. See INA §240A(b)(2)(A)(ii), 8 U.S.C. §1229b(b)(2)(A)(ii).

<sup>14</sup> Please note she is not required to have co-habitated with the abuser during the 3 years.

<sup>15</sup> You must account for any periods of unemployment so there are no gaps in the timeline. For example, if she stayed at home to raise her children indicate this.

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|       |       |   |
|-------|-------|---|
| _____ | _____ | Affidavits from Landlords, Neighbors, Friends, Family, or Shelter Workers Who Can Attest to Her Continuous Physical Presence in the United States |
| _____ | _____ | Immigration and Travel Documents  |
| _____ | _____ | Documentation or Information about Her or Her Children's Abuse <sup>16</sup>  |

**15.**

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<sup>16</sup> This documentation about the abuse is very important if she had to flee the United States for any length of time, which would interrupt her continuous, physical presence in order to protect herself or her children from the abuser.