

## *Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms<sup>12</sup>*

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Since 1990 there have been dramatic changes in the immigration options available for immigrant<sup>3</sup> victims of violence against women. Between 1990 and 2013 a number of legal immigration options were created that helped immigrant victims of domestic violence, sexual assault, trafficking and other criminal activity. Women who were undocumented and had no option to attain legal immigration status became eligible to file for legal immigration status due to her victimization.<sup>4</sup> In 1994, Congress passed the Violence Against Women Act

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<sup>2</sup> In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

<sup>3</sup> For the purposes of this manual, an "immigrant" is defined as an individual born outside of the United States who is now present in the United States with the intention of remaining here indefinitely. Immigrants can be either documented or undocumented. (See glossary of terms).

<sup>4</sup> For a history of the evolution of legal immigration relief for immigrant victims of violence against women and an explanation of the purpose of the legislation, see Leslye E. Orloff & Janice V. Kaguyutan, *Offering a helping hand: Legal protections for battered immigrant women: A history of legislative responses*. 10 AM. U. J. GENDER SOC. POL'Y & L. 95-183 (2002).

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

(VAWA), which included specific provisions to help immigrants abused by their U.S. citizen or lawful permanent resident spouses or parents to obtain immigration relief.<sup>5</sup> This relief was designed to remove dependency on the abusive U.S. citizen or permanent resident for immigration status. The Battered Immigrant Women Protection Act of 2000 (VAWA 2000) created new forms of immigration relief for other immigrant victims of violent crime, including victims of sexual assault or trafficking where the perpetrator was either a family member or a non-family member. The Violence Against Women Act of 2005 (VAWA 2005) then expanded protections to include, among others, some victims of elder abuse.<sup>6</sup>

It is crucial to have a basic understanding of immigration law when assisting immigrant victims of sexual assault. Access to legal immigration status enhances a victim's safety, economic security, and the range of options available to her that can help her survive after abuse. Victims should be informed about every option for immigration relief available to them as early as possible, including violence against women relief they may be entitled to receive. Moreover, failure to identify and address issues affecting a victim's immigration status leaves victims who qualify for immigration relief protection vulnerable to deportation. All victims must be screened for facts that could either make their immigration case more complex or result in their deportation.<sup>7</sup> (See *Red Flags List* at the end of the chapter).

This chapter will provide a brief overview of the immigration laws and potential immigration options available to immigrant victims of sexual assault.<sup>8</sup> Other chapters of this manual will discuss specific forms of immigration relief in more detail.

A key goal of this manual is to help advocates and attorneys identify the various forms of immigration relief that may be available to help immigrant victims of sexual assault. Victims of sexual assault may qualify for forms of immigration relief based on their victimization by a family member who is a citizen or lawful permanent resident, they may qualify for other forms of relief based on victimization by a non-family member, and/or they may qualify for other legal immigration status wholly unrelated to the abuse or victimization (e.g. student visas, work visas). Which options they qualify for is a complex determination and the decision to file for relief must include analysis of the risk of deportation resulting from the filing. For these reasons, advocates and attorneys working with immigrant sexual assault victims should consult an immigration legal expert who is experienced in working with immigrant victims and who can help identify complexities that exist in your client's case, as well as the range of immigration relief available to her.<sup>9</sup> Victims should be informed about every option of immigration relief available to them as early as possible.

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<sup>5</sup> See Violent Crime Control and Law Enforcement Act ("VAWA 1994"), Pub. L. No. 103-322, §§ 40701-40703, 108 Stat. 1796 (1994).

<sup>6</sup> See Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"), [Pub. L. No. 109-162](#), Title II, §205, 119 Stat. 2960 (2006). See § 216(c)(4) INA; 8 U.S.C. 1186a(c)(4); VAWA § 806(a) & (b). These provisions extended the bigamy exception that has been available to battered spouses filing self-petitions and applications for cancellation of removal to battered spouse waiver applicants. This was accomplished by adding a new "hardship waiver" which allows battered immigrant spouses of U.S. citizens who received conditional residence, who "unknowingly" married bigamist U.S. citizen spouses and who had a formal marriage ceremony, to apply for a battered spouse waiver. The immigrant spouse is required to demonstrate that following the marriage ceremony they were battered or subjected to extreme cruelty by the immigrant's intended spouse. These waivers like all other hardship waivers are granted at the discretion of Department of Homeland Security.

<sup>7</sup> The immigration laws are administered and enforced by the Department of Homeland Security (DHS). On March 1, 2003, the agency formerly known as the Immigration and Naturalization Service (INS) was divided into three separate agencies and became part of the DHS. The U.S. Citizenship and Immigration Services (USCIS or CIS) is the agency responsible for affirmative applications including VAWA self-petitions. The two other agencies are U.S. Immigration and Customs and Enforcement (ICE), which handles immigration enforcement, detention, and removal; and U.S. Customs and Border Protection (CBP), which oversees the borders and ports.

<sup>8</sup> The information in this chapter also applies for immigrant victims of domestic violence, trafficking and other crimes.

<sup>9</sup> To identify an expert on immigrant victims in your state and to obtain technical assistance on cases of immigrant victims contact: National Immigrant Women's Advocacy Project at [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu) or call (202) 274-4457; or ASISTA. Once victims have been screened, if it is determined that she qualifies for a U-Visa or a VAWA self-petition and that no complex (Red Flags) issues exist in her case, the victim can be assisted in her application by an advocate or an attorney who is not an immigration expert using the information in this manual. We recommend that advocates and attorneys helping immigrant victims in VAWA and U-Visa cases identify an immigration attorney in their state experienced in working with immigrant victims who can help screening and who can offer advice and answer questions. The technical assistance providers located above can help you identify these resources.

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

There is a range of relief and assistance that immigrant victims are legally entitled to receive whether or not they have or qualify to attain legal immigration status. Both documented and undocumented immigrant victims are for example entitled to access victim services, emergency health care, police protection, protection orders, custody, child support and a range of services necessary to protect their health and safety.<sup>10</sup>

### Overview of Immigration Options for Immigrant Victims of Sexual Assault and Domestic Violence

The following is an introduction to potential immigration options for immigrant women who are victims of sexual assault.<sup>11</sup> These brief descriptions are not meant to provide an exhaustive list of all possible immigration options, but rather to serve as an issue-spotting guide for advocates and attorneys working with immigrant sexual assault victims. Each of these options is discussed further in another chapter of this manual. An attorney should weigh all of the above-mentioned remedies in light of specific facts of the client's case to determine the best strategy in the individual victim. Importantly, most of these remedies may be used alone or in combination with one another. For example, an immigrant victim of sexual assault who has also been a trafficking victim who attains a U-Visa may also qualify for and later receive a T-Visa.

### Options Related Primarily to Crime Victimization

#### U-VISA – Crime Victim Visa<sup>12</sup>

The U-visa provides immigration relief for immigrants who suffer substantial physical or mental abuse as a result of criminal activity perpetrated against them.<sup>13</sup> A U-visa grants victims a temporary four-year visa, employment authorization, and protection against removal from the United States.

The U-visa is an important option available to immigrant victims of domestic violence and sexual assault. A victim's qualification to receive a U visa is not affected by –

- Whether or not the victim has any prior relationship with the perpetrator; or
- The citizenship or immigration status of the perpetrator.

The sexual assault perpetrator may be an intimate partner, non-intimate partner, acquaintance, family member or a stranger. U visas are useful to immigrants who are ineligible to file VAWA self-petitions (described later in this chapter), especially immigrant victims not married to U.S. citizens or lawful permanent residents, because the perpetrator's immigration status and relationship to the victim is irrelevant. Moreover, the U-visa provisions give DHS the discretion to waive many of the grounds of inadmissibility that might otherwise prevent a victim from attaining lawful immigration status (See inadmissibility in the glossary section of this chapter). For example, in U visa cases, DHS has the discretion to grant lawful permanent residency to an immigrant victim who may have plead guilty to a criminal conviction for shoplifting baby food needed to feed her children when she was fleeing abuse or a victim who plead guilty in a domestic violence case when she was acting in self-defense.

In order to qualify for a U visa, the immigrant must be a victim of one of the crimes listed in the statute or of a similar crime. The crimes covered under the U-visa are:

- rape
- torture,

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<sup>10</sup> See also Chapter 16, "Access to Programs and Services That Can Help Immigrant Victims: Public Benefits Access for Immigrant Victims of SA," and Chapter 17, "Critical Issues in Healthcare for Immigrant Victims of Sexual Assault," of this Manual for further information

<sup>11</sup> There is a range of relief and assistance to which immigrant victims are legally entitled whether or not they have or qualify to obtain legal immigration status. Both documented and undocumented immigrant victims are for example entitled to access victims' services protections, emergency health care, police protection, protection orders, custody orders, child support and a range of services necessary to protect their health and safety.

<sup>12</sup> See also Chapter 10 of this Manual "U Visa Victims of Criminal Activity "

<sup>13</sup> INA § 101(a)(15)(U) (i); 8 U.S.C. § 1101(a)(15)(U) (i).

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

- trafficking
- incest
- domestic violence
- sexual assault
- abusive sexual contact
- prostitution
- sexual exploitation
- female genital mutilation
- being held hostage
- peonage
- involuntary servitude
- slave trade
- kidnapping
- abduction
- unlawful criminal restraint
- false imprisonment
- blackmail
- extortion
- manslaughter
- murder
- felonious assault
- witness tampering
- obstruction of justice
- perjury
- stalking<sup>14</sup>
- fraud in foreign labor<sup>15</sup>
- attempt, conspiracy, or solicitation to commit any of above mentioned crimes.<sup>16</sup>

The criminal activity must have occurred within the United States or must have been in violation of U.S. law.

To apply, the immigrant victim must obtain certification from a law enforcement agency that the victim is being, will be, or is likely to be helpful in criminal investigation and prosecution. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution as long as they are helpful in an investigation. For an immigrant under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U Visas based upon the immigrant crime victim's receipt of U visa. For an immigrant 21 years of age or older, the spouse and children of the immigrant can also receive U-visas.<sup>17</sup>

When a U-Visa application is approved by DHS, the victim receives a "U-Visa." The U-Visa grants the victim legal permission to live and work in the United States. It also by operation of law results in the dismissal of any case in immigrant court filed against the immigrant.<sup>18</sup> The U-Visa lasts for four years.<sup>19</sup> A U-Visa grants victims temporary legal immigration status, employment authorization and protection against removal from the United States. A U-visa holder who has been physically present in the U.S. for three years can attain lawful

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<sup>14</sup> See VAWA § 801 and INA § 101(a)(15)(U)(iii) 8 U.S.C. 1101(a)(15)(U)(iii) which Amends U visa definition by adding "stalking" to the list of qualifying crimes, included after "sexual exploitation."

<sup>15</sup> See VAWA §1222 and INA §101(a)(15)(U)(iii) of 8 U.S.C. 1101 (a)(15)(U)(iii) these provisions add fraud in foreign labor contracting," as defined by 18 U.S.C. 1351, to the list of qualifying crimes for which immigrant victims may be eligible to apply for a U visa under the Immigration National Act

<sup>16</sup> INA § 101(a)(15)(U) (iii); 8 U.S.C. § 1101(a)(15)(U) (iii)

<sup>17</sup> INA § 101(a)(15) (U) (ii)(II); 8 U.S.C. § 1101(a)(15)(U)(ii)(II).

<sup>18</sup> New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

<sup>19</sup> The application filed by the immigrant victim can be revoked in limited circumstances including the withdrawal of the certifying official, error in the approval or evidence of fraud in the application. In the case of a family member whose application is dependent on the immigrant victim, the family member's application will be revoked if the family relationship is terminated or immigrant victim's application is revoked. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

permanent residency if they can prove that remaining in the U.S. is connected to humanitarian need, will promote family unity, or is in the public interest.

The DHS regulations implementing the U-visa program were published on September 17, 2007 and went into effect on October 17, 2007. Prior to the effective date of the regulations, Citizenship and Immigration Services (CIS) was issuing interim relief to victims who qualify to receive U visas. This provided them with some protection until CIS published U visa regulations and could grant victims a U visa. The primary status granted under interim relief was deferred action, which offered protection from deportation and access to employment authorization. U-visa interim relief was valid for one year and had to be renewed annually. As of October 17, 2007, DHS is accepting and adjudicating U-visa petitions.

### T VISA <sup>20</sup>

The T visa was created to provide immigration relief to victims of severe forms of trafficking in persons. A “severe form of trafficking” is defined as –

- (1) Sex trafficking in which a commercial sex act is induced by fraud, force, coercion, or in which the victim has not attained 18 years of age; or
- (2) 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 or slavery.<sup>21</sup>

Many trafficking victims are also victims of sexual assault or domestic violence either as a consequence or independent of the incidents of trafficking. Trafficking involves both labor and sex exploitation. Sex trafficking victims are forced to perform commercial sex acts and thus by nature are sexual assault victims. In labor exploitation, victims perform labor under force, fraud, or coercion and the methods of control may include sexual assault.

Immigrants will be eligible for T-visas if they:

- Are a victim of a severe form of trafficking in persons;
- Are physically present in the U.S.<sup>22</sup> on account of the trafficking<sup>23</sup>;
- Assist law enforcement officials in the investigation or prosecution of their traffickers (unless they are under the age of 18, in which case they are exempted from this requirement); and
- Can demonstrate that they will suffer extreme hardship involving unusual and severe harm upon removal.

In adjudicating applications for T-visa, DHS is statutorily granted the ability to waive a broad range of factors that would, in an immigration case not involving a trafficking victim, result in denial of lawful immigration status on “inadmissibility” grounds (e.g. health related, public charge)<sup>24</sup> (See glossary discussion on inadmissibility). Attaining a DHS waiver of some inadmissibility factors (e.g. criminal grounds) may require proof that the crime was caused by or incident to the trafficking.<sup>25</sup>

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<sup>20</sup> See also Chapter 11 of this Manual, “Human Trafficking and the T Visa”

<sup>21</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 103, 114 Stat 1464, (2000).

<sup>22</sup> This includes presence in American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry. INA §101(a)(15)(T)(i)(II), 8 U.S.C. § 1101(a)(15)(T)(i)(II).

<sup>23</sup> DHS regulations recognize that some victims are brought into the United States as part of the trafficking scheme and that some individuals are already in the United States when they are victimized. DHS interprets the requirement that the victim be in the United States on account of the trafficking to reach both categories of victims where: (1) the individual is currently being held in some sort of trafficking situation; (2) was recently liberated; or (3) was subject to severe forms of trafficking in persons at some point in the past and remains in the United States for reasons directly related to the trafficking. The regulation cites trauma, injury, lack of resources, and lack of travel documents as the kinds of circumstances that might be attributable to the trafficking. 8 C.F.R. 214.11(g).

<sup>24</sup> INA § 245(l)(2), 8 U.S.C. § 1255(l)(2).

<sup>25</sup> INA §212(d)(13)(B)(ii). 8 U.S.C. §1182(d)(13)(B)(ii).

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

T-visa recipients are protected from removal and are given work authorization. T visa holders are entitled to apply for T-visa benefits for their spouse and children. T visa holders under the age of 21 may also apply for T-visas for their unmarried siblings under 18 and their parents.

One advantage of applying for a T-visa versus other forms of immigration relief is the expanded access to social service benefits that are available to trafficking victims. *Bona fide* T-visa applicants are statutorily granted access to the same benefits as refugees. These benefits can include cash assistance, food stamps, job training, and a host of other benefits and services. DHS reviews T visa applications and issues a *bona fide* determination when they believe the victim has filed a valid case. Upon determining that a case is *bona fide*, DHS directly notifies the Department of Health and Human Services, Office of Refugee Resettlement (ORR) and ORR sends the applicant a certification letter, which allows access to benefits.

Another advantage of a T-visa over some other forms of immigration relief is that T visa holders are eligible to become lawful permanent residents. They can apply for this status as early as the conclusion to the investigation or prosecution and as late as after four years of holding a T visa. In order to be eligible they must:

- be physically present for a three-year continuous period,
- maintain good moral character, and
  - have continued to comply with requests from law enforcement; or
  - demonstrate that they would suffer extreme hardship if they were removed from the United States.<sup>26</sup>

### Continued Presence

In order to provide immediate assistance to trafficking victims, federal law enforcement officers may request that DHS authorize “Continued Presence” for a trafficking victim who is cooperating with their investigation or prosecution. Continued presence is technically not an immigration status, but rather refers to the government’s use of a variety of mechanisms to protect a victim from removal in the short-term. It provides access to deferred action or parole, both of which allow the victim to remain in the United States while they are cooperating with law enforcement. It also allows the victim to receive work authorization during the period they have “Continued Presence”. Like *bona fide* T visa applicants, victims with Continued Presence are eligible for public benefits and other trafficking victim services through certification from the Department of Health and Human Services. As noted above, Continued Presence may only be requested by a federal law enforcement official -- an individual may not apply for continued presence directly. Many victims for whom federal law enforcement has obtained “Continued Presence” go on to later file an application for a T-visa.

### VAWA IMMIGRATION RELIEF<sup>27</sup> – Battered Spouse Waivers, VAWA Self-petitioning, VAWA Cancellation of Removal

In addition to the legal remedies discussed above that are available for immigrant victims of sexual assault and trafficking who may not have been victimized by a spouse, parent or adult child, individuals whose victimization occurred within the family context may have additional options through which they can attain legal immigration status. In order to understand these options, a brief description of family-based petitioning is helpful.

The most common form of obtaining lawful permanent residence in the U.S. is through sponsorship by certain citizen and permanent resident family members. The citizen or permanent resident relative, also known as the

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<sup>26</sup> INA §245(l), 8 U.S.C. § 1255(l).

<sup>27</sup> For an overview on VAWA immigration relief, see Chapter 7 of this Manual “Preparing the VAWA Self-petition and Applying for Residence”. See also Gail Pendleton & Ann Block, “Applications for Immigration Status Under the Violence Against Women Act,” in *Immigration and Nationality Law Handbook* (2001-02 ed.), Vol. 1, American Immigration Lawyers Association, 2001.

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

petitioner, files a family-based petition on behalf of the relative (also known as the beneficiary) who wants to immigrate to the U.S.

After the family-based petition is filed and approved, the next step is for the beneficiary to apply for lawful permanent resident status. However, Congress only allows a certain number of family members to apply for lawful permanent resident status in any given year. Beneficiaries who are immediate relatives of U.S. Citizens may apply for lawful permanent resident status immediately.<sup>28</sup> Relatives of lawful permanent residents and adult sons and daughters and siblings of U.S. Citizens are assigned a priority date on a waitlist and must wait until an immigrant visa becomes available in order to apply for permanent residence. This can take five years, and for some categories much longer.<sup>29</sup>

Under normal circumstances, a citizen or lawful permanent resident petitioner will generally file a family-based petition on behalf of their beneficiaries without delay so that the family members can reside and work in the U.S. as soon as possible. However, some abusive petitioners delay, revoke, or never file these family-based petitions. Because of the petitioner's total control over the family-based petitioning process, many beneficiaries in this situation remain trapped and isolated in violent homes, afraid to turn to anyone for help.

Congress recognized the problems that could result when an abusive spouse has complete control over a victim's immigration status and since 1990 has passed a series of reforms to immigration laws that reflect an evolving understanding of the dangers that domestic violence poses to society as a whole, and to all individual victims -- citizens, and non-citizens alike. This has led to the passage of critical legal immigration protections for a broad array of battered immigrant women and their children who have been or are being abused in the United States.<sup>30</sup>

### Battered Spouse Waiver<sup>31</sup>

To ensure that lawful permanent resident status is granted only when there is a valid marriage, federal law requires applicants who have been married less than two years at the time DHS grants their application to fulfill a two year conditional residence requirement before being granted full lawful permanent residence.<sup>32</sup> In order to convert the conditional status to permanent status, both spouses must file a joint petition with DHS ninety days before the expiration of the two-year conditional resident status, and be prepared to appear for a joint interview with a CIS official.<sup>33</sup>

For immigrant victims of domestic violence, the joint filing requirement proved problematic. Some immigrant victims felt compelled to stay in dangerous and abusive relationships in order to fulfill the joint filing requirement and some abusers refused to sign the joint petition as a means of control. In 1990, Congress enacted the "battered spouse waiver."<sup>34</sup> The waiver allows the battered immigrant to file an application for the purpose of removing the conditions on her permanent residence without the assistance of her abusive spouse.<sup>35</sup> VAWA 2013 extended to battered spouse waiver applicants the ability to obtain full lawful permanent residency if they were abused and they had "married" a U.S. citizen who was a bigamist. This protection is modeled after the relief that has been available to battered spouses filing self-petitions and applications for cancellation of removal. This was accomplished by added a new "hardship waver" which allows battered

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<sup>28</sup> Immediate relatives include, in general, parents, spouses, and children under 21 of a U.S. Citizen, including step-children. See INA § 201(b)(2)(A)(i); 8 U.S.C. § 1151(b)(2)(A)(i).

<sup>29</sup> INA § 203(a); 8 U.S.C. § 1153(a); See Glossary for definition of children; See also United States Department of State's Visa Bulletin, <http://travel.state.gov/visa/frvi/bulletin/bulletin1360.html> (Click on "Current Bulletin").

<sup>30</sup> Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 99 (2002).

<sup>31</sup> See also Chapter 3.5 of the Breaking Barriers Manual, "Additional Remedies Under VAWA: Battered Spouse Waiver"

<sup>32</sup> Immigration and Nationality Act (INA) § 216(a), 8 U.S.C. § 1186a(a).

<sup>33</sup> Immigration and Nationality Act (INA) § 216(c), 8 U.S.C. § 1186a(c).

<sup>34</sup> Immigration Act of 1990, Pub. L. No. 101-69, § 701(a)(4), 104 Stat. 4989 (1990) (codified as amended at 8 U.S.C. § 1186a),

<sup>35</sup> See VAWA § 806(a) & (b) and INA § 216(c)(4) 8 U.S.C. 1186a(c)(4) which vests the Secretary of Homeland Security with discretion to remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements for of timely petition and interview for removal of condition if the alien demonstrates that the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

immigrant spouses of U.S. citizens who received conditional residence, who “unknowingly” married bigamist U.S. citizen spouses and who had a formal marriage ceremony, to apply for a battered spouse waiver. The immigrant spouse is required to demonstrate that following the marriage ceremony they were battered or subjected to extreme cruelty by the immigrant’s intended spouse. These waivers like all other hardship waivers are granted at the discretion of the Department of Homeland Security. These waivers allow battered spouses to bypass the two-year waiting period that the spouse of a US citizen or lawful permanent resident must traditionally undergo before applying for lawful permanent residency status.

### VAWA Self-Petition<sup>36</sup>

To qualify for a VAWA self-petition an immigrant victim must have suffered from battery or extreme cruelty, which includes sexual assault, incest, and child abuse, perpetrated by an abusive U.S. citizen or lawful permanent resident spouse, parent, or adult son or daughter. The VAWA self-petition enables an immigrant victim of domestic violence and/or sexual assault to obtain lawful permanent resident status without the cooperation of his or her abusive spouse, parent, or adult son or daughter. The abused immigrant spouse, child or parent must have resided with the abuser at one time to be able to file the self-petition. However, they do not have to currently be residing with the abuser in order to file. Conversely, the VAWA self-petition was designed to not require separation. It allows the immigrant victim to confidentially file the self-petition and attain lawful permanent residency based upon the self-petition, without separating from the abuser. This promotes victim safety by allowing the victim to attain legal immigration status and then to later explore when and whether they can safely leave their abuser.

A VAWA self-petition is available to spouses, former spouses, and intended spouses<sup>37</sup> of abusive U.S. citizens or lawful permanent residents. Termination of the marriage (through divorce or annulment) will not hinder an abused spouse’s ability to file a VAWA self-petition so long as the termination was related to the abuse. The self-petition, however, must be filed within two years of the termination of the marriage. Moreover, self-petitioners have up to two years to file a self-petition after an abusive U.S. citizen or Lawful Permanent Resident spouse has lost status due to an incident of domestic violence. Children of abused spouses are eligible to receive deferred action and an immigrant visa because they are included in their parent’s application, as long as they are under 21 years, regardless of their relationship to the perpetrator.

Children of abusive citizens or lawful permanent residents are also eligible to self-petition. Victims of child abuse, battering or extreme cruelty (including incest) must file their VAWA self-petitions before they turn age 25. Under immigration law a child includes a naturally born child (in or out of wedlock, whether or not legitimated), an adopted child, and a step-child (the child of a person’s spouse even when not adopted; marriage to the child’s other parent is sufficient).<sup>38</sup> Thus a child abuse victim whose perpetrator is their U.S. citizen step-parent (their mother’s new husband) can self-petition, but must file their self-petition before the child’s mother and their abusive step-father divorce.

An immigrant parent whose citizen or lawful permanent resident spouse abuses the immigrant parent’s child may file a self-petition even when the immigrant parent is not themselves abused. The immigrant parent of an abused child may self-petition without regard to the immigration status of the abused child. That child may be a citizen, a lawful permanent resident, may have another form of legal immigration status or may be undocumented. A self-petition may also be filed by an immigrant parent if a step-child is being abused. The goal is to allow the immigrant parent to come forward and help protect the child without risking deportation. If an immigrant parent files a self-petition based on abuse of one of their children, their other immigrant children may be included in the petition.

In addition to proving abuse, a self-petitioner must also prove --

- good faith marriage if the abuser is a spouse or step-parent,
- the spousal, parental, or parent-child relationship;

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<sup>36</sup> See also Chapter 7 of this Manual “Preparing the VAWA Self-petition and Applying for Residence”

<sup>37</sup>An intended spouse is someone who believed she was married but was not because of the bigamy of her abuser whom she believed to be her spouse. See INA § 101(a)(50), 8 U.S.C. §1101(a)(50).

<sup>38</sup> INA § 101 (b)(1), 8 U.S.C. § 1101(b)(1).



## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

- the immigration status of the citizen or lawful permanent resident spouse, parent, son or daughter;
- good moral character, and
- that they have resided with the abusive family member.

The adjudicators review applications using the *all credible evidence* standard of proof. This standard is purposely broad and is not limited to specific forms of documentation traditionally required in immigration cases. This standard was designed to preclude DHS or immigration judges from denying a victim's immigration case because she cannot access a particular document or form of proof that may be in an abuser's control. Victims are allowed to provide any form of credible evidence in support of each element of required proof in their VAWA immigration case. This standard improves victim safety by not requiring her to confront her abuser or travel to his city or state to obtain evidence in his possession.

An approved self-petition entitles a person to work authorization, deferred action, and an approved immigrant petition. The approved immigrant petition makes the petitioner eligible to apply for lawful permanent residence status. The timing of when an approved self-petitioner will be able to file for lawful permanent residency varies based on the type of family relationship and the immigration status of the abuser. Spouses and children of citizens may apply immediately. Spouses and children of lawful permanent residents are placed on a waitlist along with spouses and children of lawful permanent residents who were sponsored by a non-abusive family member and have gone through the standard family based petitioning process. This wait can be as long as 7 years.

### VAWA Cancellation of Removal and Suspension of Deportation<sup>39</sup>

VAWA cancellation of removal (prior to 1996 this remedy was called suspension of deportation) is a form of humanitarian immigration relief designed to keep battered immigrants abused by citizen or lawful permanent resident spouse or parents from being deported or removed from the United States. It is a defense that immigrant victims raise in immigration court after they have been placed in removal (deportation) proceedings before an immigration judge. VAWA cancellation of removal and suspension of deportation, if granted, results in lawful permanent resident status for the immigrant victim. If an immigrant victim is granted cancellation of removal, their children can receive parole into the United States and can ultimately receive lawful permanent residency through their abused parent.

If the immigration judge does not grant cancellation of removal or suspension of deportation and there is no alternative form of relief, the immigrant will be ordered removed (deported) from the United States.

To qualify for VAWA cancellation of removal a victim must prove:<sup>40</sup>

- That they (or their child) has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent;
- That they have been physically present in the United States for 3 years (some limited absences are allowed);
- That they are of good moral character;
- That their deportation would cause extreme hardship; and
- That certain specific inadmissibility grounds do not apply to them, or that they qualify for a waiver of inadmissibility.<sup>41</sup>

VAWA cancellation is an important remedy because it is available to some categories of people who are not eligible to file VAWA self-petitions. In addition to the relationships covered under VAWA self-petition, cancellation provides relief to the following people:

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<sup>39</sup> See also Chapter 9 of this Manual "VAWA Cancellation of Removal"

<sup>40</sup> INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2).

<sup>41</sup> For more information see Chapter 9 of this Manual "VAWA Cancellation of Removal".

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

- The parent of a child abused by the child's other lawful permanent resident or U.S. citizen parent where the parents are not married;
- An abused spouse or the stepchild whose marriage from the abuser has been terminated for over two years;
- An abused spouse of a lawful permanent resident or an abused spouse or child of a citizen or lawful permanent resident who has died;
- A spouse or child of an abusive citizen or lawful permanent resident who lost or gave up status over two years before; and
- An abused child who did not live with the abusive citizen or lawful permanent resident parent.

A person who is not eligible to self-petition but is eligible for VAWA cancellation and is not already in removal proceedings, can request to be put in removal proceedings. However, it is important that an expert in VAWA immigration relief be consulted and involved in the case because denial of relief will automatically result in removal from the United States.

### VAWA HRIFA, VAWA NACARA, VAWA Cuban Adjustment Act – Self-Petitioners

There are several eligible VAWA self-petition applicant categories. Those who otherwise would have been eligible to attain lawful permanent residency under HRIFA, NACARA and Cuban adjustment, are also eligible to self-petition for that status without the support of their abusive spouse or parent. The end result of a VAWA self-petition is deferred action and an approved immigrant petition creating eligibility to apply for lawful permanent residency.<sup>42</sup>

#### VAWA HRIFA

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 file for lawful permanent residency under HRIFA, to file their own self-petitions. In order to be eligible, the battered spouse or child must be a Haitian national, and must have been physically present in the United States for a continuous period from before December 1, 1995 up until the date the application is filed. (See Appendix A).

#### VAWA NACARA<sup>43</sup>

**VAWA NACARA 203:** 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 20<sup>th</sup>, 1990, and registered for benefits<sup>44</sup> 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<sup>45</sup> who filed for asylum before December 1991. The spouse or children of such immigrants are also eligible.

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<sup>42</sup> Memo from Leslye Orloff, Janice Kaguyutan, Cecilia Olavarria, Legal Momentum, March 2001, *Documentary Requirements for VAWA immigration cases available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-self-petition-and-cancellation/articles/Memorandum%20Re%20Documentary%20Requirements%20for%20VAWA%20immigration%20cases.pdf/view>*

<sup>43</sup> See Appendix B.

<sup>44</sup> Pursuant to the settlement agreement in *American Baptist Churches. v. Thornburgh (ABC)*, 760 F. Supp. 796 (N.D. Cal. 1991)

<sup>45</sup> A national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

Unmarried sons or daughters over 21 are eligible as long as they entered the United States before October 2, 1990.

Under VAWA, spouses or children subjected to battering or extreme cruelty by an abusive Guatemalan, El Salvadoran or Eastern European NACARA 203 applicant may directly apply for NACARA 203 benefits. To qualify, the petitioner must be a spouse or child of the NACARA 203 applicant at the time the NACARA 203 applicant –

- was granted suspension of deportation or cancellation of removal;
- filed an application for suspension of deportation or cancellation of removal; or
- registered for benefits under the settlement agreement in American Baptist Churches, etc. al. v. Thornburgh (ABC), applied for temporary protected status, or applied for asylum.

VAWA NACARA 203<sup>46</sup> provides battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant or the spouse or child filed an application to suspend to cancel the removal. Spouses or children do not have to demonstrate that they are residing with the principle filer to receive temporary protection from removal. Relief is also available under NACARA 203 for battered immigrants who applied for VAWA suspension of deportation and against whom deportation proceedings were initiated before April 1, 1997.

### VAWA Cubans

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). Where the abuser has failed to attain lawful permanent residence, the spouse or children are allowed to file their own petitions for residency directly with DHS. Spouses and children of Cuban abusers can receive protection even when they are not themselves Cuban. The battered spouse or child does not have to be residing in the United States with their abusive Cuban spouse or parent in order to receive lawful permanent residency as VAWA CAA self-petitioners. This allows immigrant victims to separate from, stop residing with and divorce abusers without losing access to Cuban Adjustment Act relief. Where there has been a divorce or the abuser has died, the battered spouse or child must file the petition for permanent residency within two years. (See Appendix C)

### Gender-Based Asylum, Withholding of Removal and Convention Against Torture Claims and Withholding of Removal <sup>47</sup>

Victims of domestic violence, sexual assault, or other gender-based violence may also apply for asylum. Asylum is an immigration remedy that can be granted when the applicant shows a well-founded fear of persecution in their home country. The fear must be on account of race/ethnicity, religion, nationality, political opinion or membership in a particular social group.<sup>48</sup> Successful asylum applicants may remain in the United States in asylum status and may obtain asylum status and benefits for their spouse and/or children. Asylees are eligible to apply for lawful permanent resident status after one year.

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<sup>46</sup> Please note that VAWA NACARA 202 has now expired as a form of relief. The deadline for applying for VAWA NACARA Section 202 has passed; this is only a summary of the past law. Section 202 of NACARA provided for adjustment of status to lawful permanent residency for all Nicaraguans and Cubans who have been in the United States continuously since December 1, 1995 through the date of filing their NACARA application. NACARA 202 applicants were permitted up to 180 days absence from the United States without losing their ability to prove continuous presence. They also had to fulfill the general requirements for lawful permanent residency. Under NACARA, unmarried sons and daughters who were continuously present before December 1, 1995 were also eligible to apply for lawful permanent residency under NACARA if they were Nicaraguan or Cuban and physically present in the United States on the date of the filing. They were also permitted up to 180 days of absence from the United States. Spouses and children are not required to demonstrate continuous presence. Under VAWA, spouses and children subjected to battering or extreme cruelty were eligible to apply for NACARA 202 adjustment if the abuser was eligible for NACARA 202 benefits, even if he never filed for benefits. (See VAWA section at end of this chapter).

<sup>47</sup> See Chapter 12 of this Manual “Sexual Assault Survivors and Gender Based Asylum”

<sup>48</sup> See INA § 101(a)(42)(A), 8 U.S.C. §1101(a)(42)(A); INA § 208(b)(1), 8 U.S.C. § 1158(b)(1). 1158(b)(1)

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

Asylum applicants must file within one year of arriving in the United States unless they can demonstrate extraordinary circumstances causing the filing delay or a change in circumstances creating a basis for filing. Therefore, it is important to determine quickly, whether or not a client may be eligible for asylum.

Gender is not a protected category under asylum law and currently, there are no final regulations on how to interpret gender-based asylum claims in the context of the other protected categories. As such, asylum law is interpreted differently across the U.S, and a claim should not be filed without enlisting the help of an immigration attorney experienced in gender asylum cases. Some courts have granted asylum in cases involving domestic violence, sexual assault, and other forms of violence against women, but others have rejected such asylum claims.

Victims of sexual assault may also file for withholding of removal. Withholding of removal has higher standards of proof than asylum. It requires the petitioner to prove that her “life or freedom would be threatened” on account of membership in the above listed protected categories.<sup>49</sup> Unlike asylum, there is no one-year filing deadline. This form of relief, however, does not provide an opportunity to apply for lawful permanent residence in the United States.

Where asylum or withholding relief are not a viable options, a second option may be a claim under the Convention Against Torture (CAT). The treaty prohibits a person’s return to a country where there are substantial grounds to believe that person would be in danger of being subjected to torture.<sup>50</sup> A victim can make a CAT claim along with her asylum claim, but the benefits that can be obtained are different. While an approved asylum claim gives the applicant the opportunity to later apply for lawful permanent resident status in the United States, an approved CAT claim only ensures that the applicant is not returned to the country where the torture would occur.<sup>51</sup> People whose CAT claims are approved do not become lawful permanent residents. CAT relief may, however, be available to persons who cannot qualify for asylum for various reasons, including the commission of certain crimes or failure to apply within the one-year filing deadline<sup>52</sup>.

### Special Immigrant Juvenile

Sexual Assault victims may also be eligible to apply for Special Immigrant Juvenile Status. As the term implies, this status is available to those who have been declared to be a dependent in a juvenile court because of abandonment.<sup>53</sup> In order to qualify, the applicant must have a court finding that it is not in her best interests to be returned to her home country<sup>54</sup>. This visa is typically used in situations where the minor is unaccompanied in the United States or the parents have abandoned or abused the minor. Since family members often enter the United States at different times, minors often find themselves in the position of making an unlawful entry across the border alone. Women and girls are vulnerable to sexual assault during unlawful border crossings. As such, Special Immigrant Juvenile applications may be the logical option for minors sexually assaulted while entering the United States.

### CONFIDENTIALITY CONCERNS

Advocates for immigrant women should emphasize the confidential nature of the relationship with their clients and work to create a relationship of trust and security. Lack of immigration status often deters many immigrant women who are victims of sexual assault from seeking assistance and support.

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<sup>49</sup> 8 C.F.R. § 208.26(b).

<sup>50</sup> [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85, *reprinted in* 23 I.L.M. 1027 (1984), *modified in* 24 I.L.M. 535 (1985) (entered into force June 26, 1987).

<sup>51</sup> *See generally* 64 Fed. Reg. 8478 (Feb. 19, 1999).

<sup>52</sup> Advocates and attorneys should consult with an immigration attorney experienced in violence against women issues.

Contact Legal Momentum or ASISTA for assistance and references for your state. An attorney should weigh all of the above-mentioned remedies in the context of specific facts in their client's case to determine the best strategy. Importantly, most of these remedies may be used alone or in combination with one another.

<sup>53</sup> I.N.A. §101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J).

<sup>54</sup> This includes the applicant's or the parent's previous country of nationality or last habitual residence. *See* I.N.A. §101(a)(27)(J)(ii), 8 U.S.C. 1101(a)(27)(J)(ii).

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

Non-profit and charitable organizations are under no legal obligation to inquire about the immigration status of persons who seek their services, nor do they have a legal obligation to report this information to the DHS.<sup>55</sup> Regardless of their immigration status, immigrant women who are victims of sexual assault, domestic abuse, stalking, dating violence, and trafficking are eligible to receive services and support from rape crisis centers, women's shelters, victim's services programs and to receive assistance in criminal prosecution.<sup>56</sup> In addition, service agencies can protect a survivor from being detained or put in removal proceedings by doing immediate screening for immigration issues and by working with an immigration attorney to address the legal needs of a victim. Immigrant victims are also entitled to VAWA confidentiality protections.<sup>57</sup>

### DETERMINING A CLIENT'S IMMIGRATION STATUS

Before deciding on which immigration option to pursue, an attorney or advocate should attempt to determine the individual's immigration status. Sometimes the individual will have a Resident Alien Card ("green card"), passport stamp, or other document that clearly establishes her legal immigration status. In other cases, the immigrant victim will not be certain of her status and the advocate or attorney must ask a series of detailed questions and review all available immigration papers, such as filing receipts or copies of applications filed. If your client does not have access to these documents the abuser may be ordered to turn them over to her as part of a protection order or the police can help her retrieve immigration documents during a stand by and exchange of property. The safety of these interventions should be assessed with the victim before they are undertaken as this could provide the abuser with information that she may be pursuing independent immigration status. This could increase the danger of retaliation against her.

It is important to remember that anyone who is not a U.S. citizen or U.S. national may be subject to permanent removal from the United States, including lawful permanent residents. For this reason it is extremely important to screen all immigrant victims to determine any prior immigration history or contact in their case and to specifically identify whether any "red flag" problem issues may make their case more complicated. Filing for a VAWA self-petition, U-Visa, T-Visa or any other form of immigration relief without identifying "red flag" issues could trigger removal proceedings against the victim. However, not filing for legal immigration status that a victim is entitled to receive may also lead to detention and removal. This is particularly true if an abuser or crime perpetrator is threatening to have the victim deported. For most victims identifying problematic issues early in the case will allow an immigration attorney the ability to identify and address issues in a manner that will help many immigrant victims access VAWA's immigration protections.

**The following questions can be asked to try to ascertain an individual's immigration status and eligibility for VAWA relief.** An advocate or attorney, though, should always reassure the immigrant victim that the following questions are merely being asked to better understand the situation. Many immigrants may fear disclosing their immigration status, so an advocate or attorney should make every effort to calm those fears.

*Questions to ask to help determine immigration status and next steps after interviewing a client include the following:*<sup>58</sup>

- Where were you born?
- What is your full birth name?
- Have you ever used a different name?
- Why did you leave your country?
- Where did you enter the United States?
- When did you enter the United States?

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<sup>55</sup> See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA"), § 201(e)(1) Pub. L. No. 104-208, §384, 110 Stat. 3009 (1996) (codified at 8 U.S.C. § 1367 (1996)).

<sup>56</sup> AG Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

<sup>57</sup> For a complete discussion of VAWA confidentiality see Chapter 3 of this Manual "VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections "

<sup>58</sup> Adapted from: Ann Benson, *Getting Technical Assistance on Immigration Issues* (unpublished manuscript, on file with the Washington Defenders Immigration Project). Not all clients will be able to answer all questions, these are suggested questions to help evaluate an individual's case.

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

- How did you enter the United States?
- When you entered the United States, did you speak to or see an immigration official?
- What kind of visa did you come over under? (for example, a tourist visa<sup>59</sup>, student visa<sup>60</sup>, H1-B temporary worker visa<sup>61</sup>)
- Did you receive a small card (Form I-94) when you entered the United States?
- Do you still have the I-94 card (it may be stapled in your passport)?
- Do you know if you or someone else has filed papers on your behalf with the U.S. Citizenship and Immigration Services?
- Have you ever been to an interview at U.S. Citizenship and Immigration Services? Or appeared in Immigration Court in front of a judge?
- Where were your parents born?
- Was either of your parents a U.S. citizen at the time of your birth abroad?
- Did either or both of your parents become U.S. citizens through naturalization prior to your 18<sup>th</sup> birthday?
- Do you work in the United States?
- If you have a job, do you have a card that you presented when you began your job?
- Are you married?
- If yes, when did you get married?
- Did you come to the United States with your husband?
- What's your spouse's immigration status?
- Do you have children?
- If yes, were the children born in the United States?

### VAWA Red Flags<sup>62</sup>

Although your client may have a qualifying family 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 attaining lawful permanent residency, a ground for removal or a bar to cancellation of removal. Identifying these “red flags” early will also help an immigrant victim who qualifies for a T or U visa who will need to request waivers early in their case for identified issues. If any of the “red flags” apply to your client, consultation with an immigration attorney who is experienced with VAWA immigration relief is very important and strongly recommended.

Questions to ask that may be grounds for concern:

- Have you ever been a stowaway?
- Have you entered as an international exchange visitor (for example, scholars, teachers, professors, leaders in a field, among others, coming to the United States temporarily)?
- Have you ever been in deportation or removal proceedings?
- Have you ever been previously deported or removed?
- Have you committed marriage fraud, possibly by paying a U.S. citizen to marry you?
- Are you evading a draft?
- Are you unlawfully present here?
- Have you committed domestic violence, stalking or have you violated a protection order?
- Do you have any criminal convictions?
- Have you committed prostitution?
- Have you misrepresented your immigration status?
- Have you abused drugs or do you have a drug addiction?

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<sup>59</sup> See INA § 101(a)(15)(B), 8 U.S.C. § 1101(a)(15)(B).

<sup>60</sup> See INA § 101(a)(15)(F), 8 U.S.C. § 1101(a)(15)(F).

<sup>61</sup> See INA § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

<sup>62</sup> See the VAWA Red Flags Section of this manual for a complete list of grounds for concern and legislative citations.

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

- Has child protective services ever come in and intervened with your childcare?
- Have you ever committed child abuse?
- Have you committed espionage and sabotage?
- Have you ever committed acts of torture, severe violations of religious freedom, or genocide?
- Are you a public charge?
- Have you ever voted unlawfully?
- Do you have a physical or mental disorder?
- Are you habitually drunk?
- Do you have a communicable disease?
- Are you polygamous?
- Have you gambled illegally?
- Do you lack a vaccination record?
- Have you falsely claimed citizenship?
- Have you laundered money?
- Have you ever been a member of the communist party?
- Have you been involved with international child abduction?

## Glossary of Terms <sup>63</sup>

To understand immigration law, it is crucial for an attorney or advocate to understand the most commonly used terminology. The following brief descriptions of terms are relevant to assisting battered immigrants. Terms are organized alphabetically.

**Adjustment of Status** – An individual with an approved immigrant visa (family, employment, diversity lottery, special immigrant juvenile, special immigrant religious worker), or an approved self-petition under VAWA may, under certain circumstances, file an application (Form I-485) for permanent resident status without leaving the United States. This process is called adjustment of status. In all cases, DHS has discretion whether or not to grant lawful permanent residence. If DHS grants adjustment of status, the individual will then receive a Resident Alien Card (*commonly referred to as a “green card”, see definition below*) and will become a lawful permanent resident.

**A-File** – This is the immigration case file created by DHS. It contains the immigrant’s “Alien Registration Number.” which is the immigration case file number. This number always starts with the letter “A”. All foreign born persons who have attained legal immigration status, naturalized or ever been detained or placed in immigration court proceedings will have “A” numbers. Finding a safe way to attain or copy down this number can be very helpful when an immigrant victim is abused by an immigrant spouse, parent or family member.

**Alien** – This is a term that is offensive to some, but should be understood in the context of how the term is used in the Immigration and Nationality Act, other statutes, the code of federal regulations, and the Department of Homeland Security or other government policy memoranda. The Immigration and Nationality Act defines the term ‘alien’ as any person who is not a citizen or national of the United States. Practically speaking, this term covers a broad group of people including but not limited to permanent residents, refugees, asylees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

**Asylum** – Asylum is humanitarian immigration relief given to individuals present in the United States who meet the requirements for “refugee” status. (*See “Refugee” definition below.*) In general, asylum seekers must file within one year of first entering the U.S. although an applicant may qualify for an exception to this rule. If an asylum seeker’s application is not approved by DHS, she will automatically be referred to immigration enforcement authorities and placed in removal proceedings where she will have the opportunity to renew her asylum application before an immigration judge. Denial of an asylum application by an immigration judge results in an order of removal from the United States. See Chapter \_\_\_\_ on Asylum.

**Attorney General** – A reference that may, in fact, actually mean the Secretary of Homeland Security. While the Homeland Security Act of 2002<sup>64</sup> transferred functions of the Immigration and Naturalization Service (INS) from the Department of Justice to the Department of Homeland Security, it did not change every authority-delegation reference in the Immigration and Nationality Act (INA) and other laws. Instead, it included a savings provision<sup>65</sup> stating that statutory, regulatory, and other references relating to an agency that is transferred to DHS, or delegations of authority that precede such transfer shall be deemed to refer, as appropriate, to DHS (and its officers), or to its corresponding organizational units.

**Battered Spouse Waiver** – Conditional permanent residents who are victims of abuse may be able to get a waiver to exempt them from needing their spouse’s signature on their petition to remove the conditions on their status and become a lawful permanent resident. The applicant must also prove that their marriage to a United States citizen was entered into in good faith. They must submit an affidavit containing information about their relationship and a declaration regarding the abuse. They should also submit any other evidentiary support for the abuse that they may have.<sup>66</sup> [See “Conditional Permanent Residence”].

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<sup>63</sup> Some of the entries on this list were adapted from and reprinted with the permission of the Immigrant Legal Resource Center.

<sup>64</sup> Pub. L. No. 107-296, 116 Stat. 2135 (2002) See INA §245, 8 USC §1255 with respect to bases of eligibility and ineligibility.

<sup>65</sup> Homeland Security Act at §1512(d)

<sup>66</sup> See *also* Chapter 3.5 of the Breaking Barriers Manual, “Additional Remedies Under VAWA: Battered Spouse Waiver”



**Battery or Extreme Cruelty** – This is the term used in United States immigration law to define domestic violence. Victims of battery or extreme cruelty can be eligible to receive the special immigration relief available to victims of domestic violence. “*Battery or extreme cruelty*” is a form of abuse inflicted upon another person that includes, but is not limited to, any actions that cause or threaten to cause physical, mental, psychological, or emotional harm, and any actions or inaction that is a part of an overall pattern of abuse, power, or control.<sup>67</sup> These include acts that destroy the peace of mind and happiness of the injured party or cause distress and humiliation to the injured party. Rape, molestation, forced prostitution, incest, and other forms of sexual abuse are also considered forms of battery.<sup>68</sup>

**Bona Fide T-Visa**<sup>69</sup> -- The bona fide determination is a DHS determination that a T-visa application is complete and establishes prima facie eligibility for a T visa. DHS makes this determination early on in the adjudication. Receipt of a bona fide determination allows T visa applicants to obtain certification from HHS which allows them to access public benefits.

**Cancellation of Removal** – Cancellation of removal is a discretionary form of relief that certain non-citizens in removal proceedings may request.<sup>70</sup> If granted, cancellation of removal accords the applicant permanent resident status. Under VAWA, certain abused spouses, children, and parents of abused children are eligible for a special form of cancellation of removal when the abuser is a U.S. citizen or a lawful permanent resident.

**Child** – Under immigration laws the definition of child is different than under many state family law statutes. The immigration law definition of child is important because children can be eligible to receive legal immigration status based upon their relationship to a parent who is a citizen or lawful permanent resident or who received legal immigration status. Under immigration law a person qualifies as a child of someone if they are:

- Under the age of 21;
- Unmarried; and
- Biologically the child, whether legitimated or not;
- A stepchild as long as the marriage creating the step-relationship occurred before the child attained 18 years of age; or
- A child adopted while under the age of 16; or when the child was an orphan.<sup>71</sup>

**Civil Protection Order (CPO)** – A justice system family court remedy initiated by a victim to protect herself/himself from future abuse. All persons are entitled to this protection regardless of immigration status. It is a particularly valuable remedy for battered immigrant women because it can be crafted to uniquely address and counter abuse, power, and control in her relationship.<sup>72</sup> Since the victim initiates the process, she need not rely on the criminal courts and may obtain a CPO regardless of whether there is a criminal prosecution of her abuser. Protection orders may contain a wide range of remedies aimed at reducing ongoing abuse, control, and harassment. These may include: granting the victim custody of children and ordering the abuser to pay child support, ordering that the abuser leave the family home, prohibiting the abuser from contacting or harassing the victim’s other family members, directing him to hand over important documents, including immigration documents to the victim, and not interfering with her immigration application. A victim can obtain an emergency or temporary protection order (also called TPO) that typically lasts 14- 30 days, as well as a full protection order that usually lasts 1-3 years and is renewable. (Please note: law differs by state).

**Conditional Permanent Residence** – When immigrants who are spouses of U.S. citizens are married for less than two years at the time of their interview with DHS to receive permanent residency, DHS grants them

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<sup>67</sup> See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (holding any act of physical abuse constitutes domestic violence while “extreme cruelty” refers to “all other nonphysical manifestations of domestic abuse”)

<sup>68</sup> See 8 C.F.R. § 204.2(c)(1)(vi) for CIS regulations defining “battery and extreme cruelty”. See also Chapter 3.5 of the Breaking Barriers Manual, “Additional Remedies Under VAWA: Battered Spouse Waiver”

<sup>69</sup> 8 C.F.R. §214.11

<sup>70</sup> ICE is the agency charged with the enforcement of immigration laws.

<sup>71</sup> INA §101(b)(1), 8 U.S.C. §1101(b)(1) Not only are these terms of art as defined in the statute, but there is substantial case law interpretation with respect to these different categories.

<sup>72</sup> See also Chapter 14 of this Manual “Protection Orders for Immigrant Victims of Sexual Assault.”

conditional permanent residency instead of full, unrestricted lawful permanent residency. This requirement was created to prevent marriage fraud. While most conditional permanent residents immigrate to the U.S. through marriage to a U.S. citizen, some immigrant investors are also given conditional permanent residence and are also subject to the two-year filing requirement.

A conditional permanent resident has all the privileges of a lawful permanent resident, but has only a temporary status for two years. A conditional permanent resident must file a petition to remove conditions two years after becoming a conditional permanent resident. This petition is filed using Form I-751. Generally the petition to remove conditions must be filed jointly with both spouses signing the form. However, if a joint petition is not possible due to divorce, domestic violence, or extreme hardship, the conditional permanent resident may file a request for a waiver of the joint-petition filing requirement.<sup>73</sup> (See “battered spouse waiver”). Spouses of lawful permanent residents generally do not receive conditional permanent status because by the time their priority date comes up (see definition below), they usually have been married for more than two years, and thus receive full lawful permanent residency.

**Continuous Physical Presence** – This term refers to the requirement that an immigrant must show that they have continuously lived in the United States, without leaving the country, for a specified period of time in order to qualify for certain forms of relief. Continuous Physical Presence must be proven in order to establish eligibility for various forms of immigration relief, including adjustment of status to a lawful permanent resident based on a T visa, U visa, and cancellation of removal (including VAWA cancellation of removal).

**Continued Presence** – Continued Presence is a temporary form of protection provided to certain victims of a severe form of trafficking. Continued presence is technically not an immigration status, but rather refers to the government’s use of a variety of mechanisms, such as deferred action and parole, to protect a victim from removal in the short-term. Victims can not directly request Continued Presence, but rather it must be requested by federal law enforcement officials on behalf of the victim. Continued Presence allows the victim to receive work authorization as well as certification through HHS for access to public benefits and social services.

**Cuban Adjustment Act of 1966** – The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and the general requirements for lawful permanent residency must be met. Spouses and children are also eligible to receive lawful permanent residency through the Cuban Adjustment Act, regardless of their citizenship and/or place of birth provided that they are residing with their spouse or parent who is a Cuban Adjustment Act applicant in the United States. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban even if he never applied for lawful permanent residency under the Cuban Adjustment Act. VAWA CAA self-petitioners are not required to show that they are currently residing with the spouse or parent in the United States.<sup>74</sup> (See VAWA section at end of this chapter).

**Customs and Border Patrol (CPB)** – This is the division of the Department of Homeland Security that oversees borders and ports.

**Deferred Action Status** – Deferred Action Status is an agreement by Department of Homeland Security personnel that they will not take action to remove (deport) an individual from the United States. It is an exercise of prosecutorial discretion making the immigrant’s case a lower priority for removal. Deferred action does not however, give the immigrant victim any form of legal immigration status.<sup>75</sup> In VAWA self-petitioning cases this status is often granted along with approval of the VAWA self-petition. U visa victims receiving

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<sup>73</sup> INA § 216(c)(4), 8 U.S.C. § 1186(c)(4).

<sup>74</sup> “An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or 2 years after the date of enactment of VAWA 2005, whichever is later), or for 2 years after the date of termination of the marriage (or 2 years after the date of enactment of VAWA of 2005, whichever is later) if there is demonstrated a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien. VAWA 2005, §823.

<sup>75</sup> “New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status.” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

interim relief are also granted deferred action status. In trafficking cases deferred action is assessed as part of continued presence. Once a victim obtains their U visa, T visa or their lawful permanent residency based on their approved VAWA self-petition, they no longer need deferred action status to avoid deportation and remain legally in the United States. Deferred action status in cases of VAWA, T and U visa victims is granted by the VAWA unit at the Vermont Service Center. (See VAWA Unit).

**Department of Homeland Security** – Formerly the Immigration and Nationality Service, this agency administers and enforces immigration laws. United States Citizenship and Immigration Service (“USCIS”), a division of DHS, oversees adjudications of immigration benefits. Another division of DHS, called the United States Immigration and Customs Enforcement (“ICE”), handles immigration enforcement, detention, and removal. United States Customs and Border Patrol (“CBP”) is the division that oversees borders and ports.

**Derivative** – The “derivative” is a term describing specified family members that an applicant for immigration relief can as a matter of law ask DHS to grant legal immigration status as part of the immigrant’s application. These family members are able to obtain lawful immigration status by virtue of the immigrant applicant’s qualification for immigration relief. Each type of immigration benefit specifies in the statute which family relationships, if any, can gain legal immigration status based on the immigration application being filed. Which family members can apply varies depending on the type of immigration benefit or benefits that a victim qualifies to receive. The family relationships that often qualify for immigration benefits as “derivatives” typically include the applicant’s spouse or child. If the applicant is under 21 years old, the family members they most often could include in their applications are their parent and/or their siblings who are under 21 years of age and unmarried. VAWA self-petitioners and T and U visa applicants can help certain family members attain legal immigration status through their immigration case. When victims qualify for multiple forms of immigration benefits, which family members can apply along with the victim can be a factor in the victim’s decision about which immigration benefit to apply for.

**Department of Homeland Security (DHS)** – This department administers and enforces the immigration laws. There are seventeen components to the department, including Immigration and Customs Enforcement (ICE), Citizen and Immigration Services, (CIS), and Customs and Border Protection (CBP).

**Deportation** – This term was used prior to 1996 to describe what is now called removal. (*See “removal” explanation below*).

**Documented immigrants** – They reside in the U.S. pursuant to a valid visa, and either entered the U.S. with valid visas or obtained status after entry. Those entering on immigrant visas are often petitioned for by a family member or an employer. Some obtain visas to become lawful permanent residents. Other examples of documented immigrants<sup>76</sup> include individuals holding tourist visas, student visas, exchange visitor visas, or employment visas.

**Emergency Medicaid** – Emergency Medicaid is available in all cases where a person needs treatment for medical conditions with acute symptoms that could place a patient’s health in serious jeopardy, result in serious impairment of bodily functions, or cause dysfunction of any bodily organ or part.<sup>77</sup> This definition includes all labor and delivery during childbirth. Emergency medical assistance must be provided to all immigrants regardless of their immigrant status.

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<sup>76</sup> Immigration experts may refer to immigrants with these visas as “non-immigrants.”

<sup>77</sup> Social Security Act, Title XIX § 103(v)(3), 42 U.S.C. § 1396b(v)(3).

**Employment Authorization** – All non-U.S. citizens and those who are not lawful permanent residents are required to receive permission from the Department of Homeland Security in order to accept employment. Some temporary forms of legal immigration statuses, such as H-1B visas, T-visas, and U-visas allow the status holder to work. Some other forms of temporary legal immigrant statuses, such as tourist visas and student visas, do not allow for employment. If an immigrant is in a status that allows for work only with a specific employer, he or she will not need anything other than the visa approval notice as evidence of employment authorization. If he or she is in a status that allows for work without restrictions, he or she generally may obtain an employment authorization card by filing a request on a Form I-765. Employment authorization documents are normally valid for one year. Employment authorization is not a “stand alone” benefit. It is only granted to a person who has demonstrated eligibility for some type of temporary or pending immigrant status. There is special employment authorization available for battered spouses of immigrants who come to the United States under specified work related visas – “A” visas (diplomats); “E(iii)” visas (Australian Investor); “G” visas (international organization); or “H” visas (temporary workers).<sup>78</sup>

**Employment Based Petitions**<sup>79</sup> – The eligible categories based on employment, as described by USCIS,<sup>80</sup> are:

**EB-1 Priority workers**

- Foreign nationals of extraordinary ability in the sciences, arts, education, business or athletics
- Foreign national that are outstanding professors or researchers
- Foreign nationals that are managers and executives subject to international transfer to the United States

**EB-2 Professionals with advanced degrees or persons with exceptional ability**

- Foreign nationals of exceptional ability in the sciences, arts or business
- Foreign nationals that are advanced degree professionals
- Qualified alien physicians who will practice medicine in an area of the U.S. which is underserved. Read more about this particular program.

**EB-3 Skilled or professional workers**

- Foreign national professionals with bachelor's degrees (not qualifying for a higher preference category)
- Foreign national skilled workers (minimum two years training and experience)
- Foreign national unskilled workers

**EB-4 Special Immigrants**

- Foreign national religious workers
- Employees and former employees of the U.S. Government abroad

*From the USCIS website “Immigration Through Employment”<sup>81</sup>*

Only a limited number of employment visas can be issued each year. Applicants may therefore have to wait several years between filing the application and the issuance of an employment based visa.

**Executive Office for Immigration Review (EOIR)** – A branch of the Department of Justice that includes the Board of Immigration Appeals (BIA), Office of the Chief Immigration Judge (and all the immigration judges), and the Office of the Chief Administrative Hearing Office (OCAHO).

**Extreme Hardship** – Suffering extreme hardship is a requirement to obtain several different types of immigration relief,<sup>82</sup> such as cancellation of removal under VAWA. These forms of relief require proof of hardship over and above the general economic and social disruptions in an immigrant’s home country. The applicant must show that they would suffer extreme hardship if removed from the United States.<sup>83</sup>

<sup>78</sup> INA § 106, 8 U.S.C. § 1106.

<sup>79</sup> INA §101(a)(15)(E), 8 U.S.C. §1101(a)(15)(E) (2008).

<sup>80</sup> USCIS website: “Immigration through Employment” (last visited August 13, 2008),

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=84096138f898d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>

<sup>81</sup> *Id.*

<sup>82</sup> E.g. hardship waiver of the two-year joint filing requirement INA §216(c)(4), 8 U.S.C. § 1186a(c)(4); See also Chapter 9 of this Manual “VAWA Cancellation of Removal”

<sup>83</sup> See Chapter 9 of this Manual “VAWA Cancellation of Removal” for more information including the factors that can prove extreme hardship non-VAWA immigration cases.

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

Victimization related factors can be used as proof of extreme hardship for immigrant victims.<sup>84</sup> Proof of extreme hardship is needed before an immigration judge will grant cancellation of removal under VAWA.

**Family-Based Petition** – A U.S. citizen or lawful permanent resident files a family-based visa petition to start the process that will enable his or her family member (spouse, child, parent, adult son or daughter, sibling) to immigrate, or lawfully remain, in the United States and become a lawful permanent resident. Family and employment based immigration applications have long processing times. When an application is filed for an immigrant visa the applicants are assigned a priority date for the immigration case (usually the date they filed). They must wait for their priority date to become current before they can apply for lawful permanent residency.

**Fiancé(e)s of U.S. Citizen (K-1 visa)** – An immigrant granted a fiancé visa (K-1 visa) is allowed to come to the United States to conclude a valid marriage with a U.S. citizen within 90 days after entry.<sup>85</sup>

**Food Stamps** – The Food Stamps program provides vouchers to low-income individuals so that they can use the benefits to buy food. Food Stamps eligibility for most non-citizens was eliminated by PRWORA as of August 22, 1996. Battered immigrants who entered after August 22, 1996 must be in “qualified immigrant” status for five years in order to receive food stamps. All “qualified immigrant” children under 18 are immediately eligible for food stamps regardless of date of entry. It is important to note that for immigrant victim self-petitioners this means that undocumented children included in their mother’s self-petition are eligible to receive food stamps once their mother’s VAWA self-petition has received a prima facie determination.

**Freedom of Information Act** – The U.S. Freedom of Information Act (FOIA) is a law ensuring public access to U.S. government records. FOIA carries a presumption of disclosure. If the government refuses to disclose information, it has the burden of explaining why that information may not be released. Upon written request, agencies of the United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in the FOIA. This right of access is ultimately enforceable in federal court. As part of a protection order, a family court case, or a bond order, courts can order an abuser who has filed immigration papers for his spouse, child, or parent to complete a FOIA request that releases information in the immigration case that was filed on the victim’s behalf by the abuser to the victim, her representative or lawyer.

**Good Moral Character (GMC)** – For many immigration remedies, it is necessary to show that a person has “good moral character” and has not committed certain crimes or engaged in other activities such as prostitution or illegal gambling. Good moral character is not precisely defined in the immigration laws, but Section 101(f) of the Immigration and Nationality Act lists certain acts that preclude someone from establishing good moral character.

**Green Card (Lawful Permanent Resident Card)** – Popular term for the I-551, the card that shows a person is a lawful permanent resident. Lawful permanent residency cards may be permanent “10-years”. Although these cards on their face state that they end in 10 years, lawful permanent residency does not end at that time. The immigrant with lawful permanent residency needs only to file to receive a new card once every 10 years. The application for a new card needs to be filed before the old card expires. Some immigrant victims seeking

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<sup>84</sup> The following list of abuse related factors is provided in the VAWA cancellation regulations. 8 C.F.R. §§ 1240.20(c) and 1240.58(c): The nature and extent of the physical and psychological consequences of abuse ; the 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); The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, which would not be available or reasonably accessible in the foreign country; The existence of laws and social practices in the home country that would penalize the applicant or applicant's child for having been victims of domestic violence or have taken steps to leave an abusive household; The abuser's ability to travel to the home country, and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's child from future abuse; The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the home country would physically or psychologically harm the applicant or the applicant's children. Other factors can also contribute to Extreme Hardship (See Cancellation of Removal Chapter) See also INS Memorandum from Paul Virtue, INS General Counsel, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (October 16, 1998).

<sup>85</sup> INA §101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i); 8 CFR §214.2(k).

help will have a lawful permanent residency card with an end date two years after the card was issued. These immigrant victims have “conditional permanent residency”, and may qualify for a “battered spouse waiver” and will not need to file a “VAWA self-petition.” See “adjustment of status,” “conditional permanent residency,” “Self-petition,” and “battered spouse waiver.”

**Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)** – HRIFA provides that Haitians (natives, citizens, and nationals) who were continuously physically present in the United States since before December 1, 1995, can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and the general requirements for lawful permanent residency are met. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA if they are Haitian and in the United States on the date the application is filed. HRIFA allows applicants to prove continuous presence even when they were absent from the United States for a time period of up to 180 days. (See “continuous presence”). Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian even if the abusive Haitian spouse or parent never applied for lawful permanent residency under HRIFA. (See VAWA section at end of this chapter).

**The Hague Convention on the Civil Aspects of International Child Abduction Convention**<sup>86</sup> - the “Hague Convention” is a treaty that was created to assist in the prevention of *international* child abduction and the return of abducted children. Currently, at least 54 member countries have signed the Convention.<sup>87</sup> The treaty only applies between countries when both countries are parties to the Convention. If a country has not formally joined the Hague convention, the treaty does not apply, and a parent must use alternate methods to have the child returned. Parents, rather than governments, must institute legal proceedings on their own to seek the safe return of their children. To invoke the convention, a child must be “wrongfully removed or retained” from his or her “habitual residence”, the abduction must be reported within one year of the abduction, and the child must be below the age of sixteen. The parent must then file an application seeking the return of the child with authorities of the foreign country and seek legal representation in the country where the child has been abducted to pursue legal action through that country’s legal system.

**Immediate Relative** – For the purposes of a family-based visa petition and a self-petition under VAWA, this term means the children under 21 years, spouse and parent of a U.S. citizen, or the parents of an adult U.S. citizen (21 years and over). Because of their close relationship to U.S. citizens, they are allowed to immediately file for lawful permanent residence once they have an approved immigrant visa, and are exempt from the numerical limitations (that cause waiting lists) imposed on immigration to the United States.

**Immigration and Customs Enforcement (ICE)** – This is the largest investigative arm of the Department of Homeland Security. Its officers are involved with immigration enforcement, detention, and removal within the interior of the nation. Composed of functions of the former Customs Service, Federal Protective Service, and the investigative and enforcement functions of the former INS (other than those border functions assumed by CUSTOMS AND BORDER PROTECTION (CBP), ICE is a subdivision of the Directorate of BORDER AND TRANSPORTATION SECURITY, the other two being CBP and the Transportation Security Administration. Additionally, trial attorneys who represent DHS in removal proceedings before immigration judges are ICE employees.

**Immigrant Visa** –An individual born outside of the United States, who is eligible, may apply for an immigrant visa, allowing him or her to legally enter the U.S. and remain here indefinitely as a permanent resident. (See “non-immigrant visa” for legal immigration status to remain temporarily).

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<sup>86</sup> Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89

<sup>87</sup> For an up-to-date list, see [http://travel.state.gov/family/abduction/hague\\_issues\\_1487.html](http://travel.state.gov/family/abduction/hague_issues_1487.html). . Member States include: Argentina, Australia, Austria, Bahamas, Belgium, Belize, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China (Hong Kong and Macau only), Columbia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mauritius, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine, United Kingdom (Bermuda, Cayman Islands), United States, Uruguay, Venezuela, and Zimbabwe.

**Immigration and Nationality Act (INA)** – The primary federal statute that governs the process of immigration and the treatment of immigrants in the United States.

**Immigration Judge (IJ)** – The person responsible for presiding over immigration court proceedings.<sup>88</sup> Immigration judges are employed by the Executive Office for Immigration Review (EOIR); a division of the Department of Justice.

**Inadmissibility (INA section 212(a)); Grounds of** – An individual who seeks admission into the United States or to receive lawful permanent residency must meet certain eligibility requirements to receive a visa and eventually be legally *admitted* into the United States. Grounds for *inadmissibility* include health related grounds, criminal and related grounds, security and related grounds, likelihood of becoming a public charge, not meeting labor certification and qualifications, and illegally entering the country. The Attorney General, through an immigration judge, will make a ruling when admissibility/inadmissibility is a factor in a case that is in immigration court. An immigration officer deciding cases (e.g. visa applications, VAWA self-petitions) for the Department of Homeland Security will make inadmissibility determinations on cases they are adjudicating.

**Inspection** – The process that all persons must go through when they arrive at the U.S. border, at airports, at seaports and at pre-flight inspection stations. A person is questioned and asked to present proof of his or her right to enter the country. At the end of the process of inspection, a person is either ADMITTED, REMOVED, PAROLED into the country, or allowed to withdraw their application for admission and depart voluntarily.

**Lawful Permanent Residency (LPR)** – A lawful permanent resident is a foreign-born individual who has the right under U.S. immigration law, to live and work permanently in the United States. Lawful permanent residents can still be put in removal proceedings and deported, particularly if they are convicted of crimes. Naturalization protects against deportation and therefore victims should be encouraged to naturalize as soon as eligible. An individual who has a green card is either a lawful permanent resident or a conditional permanent resident. See “adjustment of status.”

**Legacy INS** – A reference to the Immigration and Naturalization Service (e.g., “a legacy INS memo”) that acknowledges its status as the predecessor to the DEPARTMENT OF HOMELAND SECURITY.<sup>89</sup>

**Medicaid and State Child Health Insurance Program (SCHIP)<sup>90</sup>** – The Medicaid program provides health insurance to low-income individuals. The State Child Health Insurance Program (SCHIP) provides health care to low-income children. Under PRWORA, most individuals who entered the United States after August 22, 1996, are barred from receiving all non-emergency Medicaid for the first five years after they become qualified immigrants.<sup>91</sup>

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<sup>88</sup> INA §101(b)(4), , 8 U.S.C. § 1101(b)(4); INA § 240, 8 U.S.C. §1229a.

<sup>89</sup> New Jargon Alert: “Legacy INS” posted on AILA Info-Net. Doc. No. 03060442 (June 4, 2003).

<sup>90</sup> See 8 U.S.C. § 1641 (2004) for the definition of Qualified Alien, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, A.G. Order No. 2353-2001. 66 Fed. Reg. 3,613 (Jan. 16, 2001) (specifying emergency Medicaid Eligibility)

<sup>91</sup> Whether an immigrant victim of sexual assault or domestic violence will qualify for Medicaid covered health care services will depend on the victim’s immigration status, when they attained any legal immigration status, their state of residence and date of first entry into the United States. Persons who attained “qualified alien” including legal permanent resident status before August 22, 1996 will have the most access to Medicaid funded health care services. VAWA self-petitioners are an example of persons who may qualify but may have to wait 5 years if they entered the U.S. after 1996. Some states have chosen to offer access to funded health care to “qualified immigrants” who otherwise would have to wait 5 years. Other states offer funded health care to persons “permanently residing in the United States under color of law” which would include immigrant victims of sexual assault who have received interim relief in U visa cases. For further information and state-by-state charts on health care options for immigrant victims, see chapter 17 of this manual “Access to Health Care for Immigrant Victims of Sexual Assault”. For state-by state chart on access to a range of public benefits see NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

## **NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997<sup>92</sup>**

VAWA NACARA 202 creates self-petitioning for Nicaraguan or Cuban battered spouses and children who have been subjected to extreme cruelty by Nicaraguan or Cuban abusers who are unable to adjust their status to lawful permanent residency due to their abuser's failure to file for lawful permanent residency for himself. The battered spouse or child must have been physically present in the United States on the date the application is filed (which must have been before July 5, 2007).

VAWA NACARA 203 self-petitioning offers protection from deportation and access to lawful permanent residence for abused immigrants who were the spouses and children of El Salvadoran, Guatemalan and Eastern European abusers at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status under NACARA 203. VAWA NACARA 203 also allows battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant or the spouse or child filed an application to suspend or cancel the removal.

**Naturalization** – This is the process by which foreign-born persons, including lawful permanent residents, obtain citizenship. Requirements include a period of continuous residence in the U.S. and physical presence in the United States, an ability to read, write, and speak English, and good moral character. Some requirements can be waived depending on the circumstances. Immigrants married to U.S. citizens can apply for Naturalization after 3 years in lawful permanent residency. Other immigrants have to wait 5 years to file for naturalization. Immigrant victims who attain lawful permanent residency through VAWA can file to naturalize after 3 years (3 years only applies to petitioners who had USC abusers and LPR abusers).

**Non-immigrant Visas** – “Non-immigrant” visas are issued to persons granted permission to remain temporarily (not permanently) in the United States. If an immigrant is granted permission to live permanently in the United States they will receive an “immigrant” visa. (See “immigrant visa.”) Many different classes of non-immigrant visas are available to individuals intending to enter the United States temporarily. (See *examples and explanations below under “visa”*).

**Notice to Appear (NTA)** – A document issued by the Department of Homeland Security to commence immigration removal proceedings against an immigrant in immigration court.<sup>93</sup> The Notice to Appear<sup>94</sup> is usually issued by an immigration enforcement official and served on the immigrant who DHS believes is not legally present in the United States. If an immigrant victim has been arrested or detained by immigration officials, the NTA will often be issued and served on the immigrant before the immigrant victim is released from DHS custody. Once the NTA has been issued it has to be filed with the immigration court for removal proceedings to be opened against an immigrant.<sup>95</sup>

**ORR** – Department of Health and Human Services Office of Refugee Resettlement (ORR). The Office of Refugee Resettlement oversees refugee resettlement assistance programs and programs for victims of trafficking. This assistance includes, among other things, cash and medical assistance, employment preparation and job placement, skills training, English language training, legal services, social adjustment and aid for victims of torture.<sup>96</sup>

**Parental Kidnapping Prevention Act (PKPA)**<sup>97</sup>– The Parental Kidnapping Protection Act (PKPA) was designed to discourage interstate conflicts, deter interstate abductions, and promote cooperation between states about interstate custody matters. As part of the Violence Against Women Act of 2000, the PKPA's definition of “emergency jurisdiction” was broadened to cover domestic violence cases consistent with the UCCJEA,

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<sup>92</sup> See Appendix B.

<sup>93</sup> INA §239, 8 U.S.C. § 1229.

<sup>94</sup> The Notice to Appear replaced the Order to Show Cause previously used to initiate deportation cases.

<sup>95</sup> Notices to Appear that have been issued in violation of VAWA confidentiality statutory protections can be cancelled. See Chapter 3 of this Manual “VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections “

<sup>96</sup> For more information, please see <http://www.acf.hhs.gov/programs/orr/mission/functional.htm>.

<sup>97</sup> See 28 U.S.C. § 1738A (2000).



which is the Uniform Child Custody Jurisdiction and Enforcement Act<sup>98</sup> (see explanation below under this term). The PKPA tells courts when to honor and enforce custody determinations issued by courts in other states or Native American tribal jurisdictions. Unlike the UCCJEA, the PKPA does not instruct courts as to when they should exercise jurisdiction over a new custody matter. Instead, the court must follow the PKPA when 1) they are deciding whether to enforce a custody determination made by a court in another state or tribe; 2) they are deciding whether to exercise jurisdiction even though there is a custody proceeding already pending in another jurisdiction, and 3) they are asked to modify an existing custody or visitation order from another jurisdiction.

**Parole** – Parole is permission by the Department of Homeland Security that allows an immigrant to physically enter the United States temporarily for urgent humanitarian reasons or for significant public benefit. The entry is not a formal admission to the United States.<sup>99</sup> VAWA victims applying from abroad can receive parole into the United States once their application has been approved. This provision can also be used to help bring their children or other family members who qualify for VAWA relief into the country.

**Permanent Resident** – See “Lawful Permanent Resident.”

**Prima Facie Determination** – Battered immigrants filing VAWA self-petitions who can establish a "prima facie" case are considered "qualified aliens" for the purpose of eligibility for public benefits. The VAWA Unit of the Vermont Service Center at the Department of Homeland Security reviews each petition initially to determine whether the self-petitioner has addressed each of the requirements necessary to receive a self-petition. If DHS officials believe she has set forth a valid case they issued an order that is called a prima facie determination. If DHS makes a prima facie determination, the self-petitioner will receive a Notice of Prima Facie Determination. The notice provides evidence of immigration status that may be presented to state and federal agencies that provide public benefits.

**Priority Date** – The date that the application for an immigrant visa is filed becomes the priority date to establish an immigrant’s place in line to wait for a visa and to determine when the person can apply for lawful permanent residency. This means the date on which a person submitted documentation establishing prima facie eligibility for an immigrant visa. For family-based immigrants, a person’s priority date is the date on which he or she filed the family-based visa petition.<sup>100</sup> If the immigrant relative has a priority date on or before the date listed in the Visa Bulletin, then he or she is currently eligible for an immigrant visa. For employment-based cases, it is the date of the filing of the LABOR CERTIFICATION application, or if no labor certification is required, the date the immigrant visa petition is filed.<sup>101</sup> In VAWA self-petitioning cases immigrant victims can use as their priority date the date that their abusive citizen or lawful permanent resident spouse or parent filed any prior family based visa petition for them, whether or not that case was ever decided and whether or not that case was withdrawn by the abuser. This allows the immigrant victim to resume the place in line they would have had if their abuser had not withdrawn or had followed through on the original family-based visa petition.

**PRUCOL**<sup>102</sup> – PRUCOL stands for "permanently residing in the United States under color of law." PRUCOL is a term that generally describes immigrants whom the Department of Homeland Security (DHS) knows are in

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<sup>98</sup> The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is newer legislation enacted in many states to update the prior Uniform Child Custody Jurisdiction Act. As of June 2007, the UCCJEA has been enacted in 46 states, the District of Columbia, and U.S. Virgin Islands. As of June 2007, four states have not yet adopted the UCCJEA: Massachusetts, Missouri, New Hampshire and Vermont. Uniform Family Law Update, June 2007, <http://nccusl.org/Update/Docs/JEBUFL/Jun%2007%20JEB%20Newsletter.pdf>. These states instead continue to use their prior version of the Uniform Child Custody Jurisdiction Act.

<sup>99</sup> INA §212(d)(5)(A); 8 USC §1182(d)(5)(A); 8 C.F.R. § 212.5.; New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

<sup>100</sup> 8 C.F.R. §204.1(c).

<sup>101</sup> 8 C.F.R. §204.5(d).

<sup>102</sup> “Permanently Residing Under Color Of Law”-Prior to the passage of the Personality Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.) those who were permanently residing in the United States under color of law (PRUCOL’s) were eligible to receive federal public benefits. This group consisted of immigrants whom CIS was aware of their presence in the United States. The PRWORA cut off access to federal public benefits for this group of immigrants, but several states have passed laws providing access to state-funded Temporary Assistance for Needy Families (TANF) for PRUCOL’s. See NATIONAL

the United States, but whom the DHS is not taking steps to deport or remove from the country. Some states extend access to health care and some other public benefits to PRUCOL immigrants.<sup>103</sup>

**PRWORA and IIRAIRA** – The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or Welfare Reform Act)<sup>104</sup> and the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA)<sup>105</sup> substantially altered most immigrants' eligibility to receive many public benefits. These laws eliminated eligibility for most immigrants for Supplemental Security Income (SSI)<sup>106</sup> and Federal Food Stamps, limited access to certain other federal programs (including Medicaid funded health care), and gave states the discretion to determine whether immigrants can qualify for state and local public benefits programs.

**Public Charge** – This term describes immigrants who at the time of admission are likely to become primarily dependent on the U.S. government for financial support because of their health, education, assets, or family status.<sup>107</sup> If an immigrant is deemed likely to become a public charge they are thereby inadmissible.<sup>108</sup> Immigration officials and immigration judges are barred from considering any public benefits received by immigrant victims who attained immigration relief through VAWA or victims eligible for immigration benefits related to their having been victims of family violence in making public charge determinations.<sup>109</sup> Likewise, DHS does not consider public benefits received by trafficking victims when making public charge determinations.

**Qualified Immigrant** – Category created by PRWORA solely to assess eligibility for public benefits purposes. Inclusion in this category is determined by immigration status. Qualified immigrants have more access to federal public benefits than many other immigrants, but less access than citizens. Which federal or state funded public benefits they are eligible to receive depends on their: immigration status, state, date of first entry into the United States, and the specific benefit they are seeking. The most difficult benefits to access are federal means tested public benefits that not all qualified immigrants can access – Temporary Aid to Needy Families, Medicaid, State Child Health Insurance Program (SCHIP), Food Stamps and Supplemental Security Income (SSI). Under the statute qualified immigrants are called “qualified aliens.”

**Refugee** – An individual who is unable or unwilling to return to her country because of past persecution or a well-founded fear of future persecution on account of her race/ethnicity, religion, nationality, membership in a particular social group, or political opinion. An individual who is outside the U.S. and meets this definition can be admitted to the United States as a refugee. An individual already in the United States must apply for and be granted asylum to receive protection as a refugee. (*See “asylum” above*).

**Removal** – Removal, also known as deportation, is the process through which a non-citizen who is determined to be unlawfully in the U.S. is ordered to leave the United States and is returned to his or her country of origin by U.S. immigration officials. In some cases the person is removed to a third country that agrees to accept them.

**Removal Proceedings** – Formerly known as deportation proceedings, this is the process by which immigrants are required to appear before an immigration judge. The immigrant has an opportunity to request relief if eligible. The proceedings may result in an immigrant obtaining status or being ordered removed (deported). The judge can make other procedural orders as well.

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IMMIGRATION LAW CENTER, *States Providing Benefits to Immigrants Under 1996 Welfare & Immigration Laws -- State Responses*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 2-1, 14 (1998).

<sup>103</sup> See chapter 17 of this manual “Access to Health Care for Immigrant Victims of Sexual Assault”.

<sup>104</sup> PRWORA see *supra* note 95.

<sup>105</sup> Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (codified as amended at 8 U.S.C. § 1101 et seq.)

<sup>106</sup> SSI is a cash benefit program for low-income disabled, blind and elderly individuals.

<sup>107</sup> INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(4)(B). See also 64 Fed. Reg. 28689-01 (May 26, 1999).

<sup>108</sup> INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(15)(F). See also 64 Fed. Reg. 28689-01 (May 26, 1999).

<sup>109</sup> INA §212 (p); See also field Guidance on Deportability and Inadmissibility on Public Charge Grounds, INS, 64 Fed. Reg. 28,689 (May 26, 1999).

**Second Preference** – This refers to the immigrant visa category for family-based petitions of spouses, children, and unmarried sons or daughters of lawful permanent residents.

**Section 245(i)** – Congress first enacted INA §245(i) in 1994 to allow non-citizens who were present in the United States without lawful immigration status and who were otherwise eligible for permanent residence (through a family or employment-based petition) to apply to adjust their status to that of a lawful permanent resident without requiring them to physically leave the United States.<sup>110</sup> The section imposed a penalty fee (up to \$1,000) in addition to the normal fees for processing the applications from. The provision initially expired in January 1998, but was extended in 2000 and expired again on April 30, 2001. Upon expiration of this provision, most non-citizens who are out of legal immigration status are ineligible to adjust status and must leave the country, unless their immigrant visa petition or application for labor certification was filed prior to April 30, 2001. VAWA self-petitioners, however are eligible to adjust status to that of a lawful permanent resident even if they are undocumented.

**Self-Petition** – Under the Violence Against Women Act, certain abused spouses, children, or parents or parents of abused children can file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of an abusive spouse, parent, or son or daughter if the abuser is a U.S. citizen or lawful permanent resident. Victims of elder abuse, battered spouse waiver applicants, VAWA Cuban adjustment applicants, VAWA HRIFA (Haitian), VAWA NACARA (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners. Children of the self-petitioner can also obtain legal immigration status by being included in their parent’s self-petition. Undocumented immigrant children included in their parent’s self-petition are called “derivatives” because they derive a benefit from their parent’s application for legal immigration status. (See *VAWA Immigration Relief* at end of chapter).

**SSI** – Supplemental Security Income (SSI) is a program that provides cash assistance to low-income individuals who are aged, blind, or disabled. After the enactment of PRWORA, an otherwise eligible person could be denied SSI cash assistance solely on the basis of his/her immigration status. The only battered immigrants who are currently eligible to receive SSI are those who were lawful permanent residents and were receiving SSI on August 22, 1996, or those who fit into one of the other categories of eligible immigrants.

**State Child Health Insurance Program** – See Medicaid

**State Parental Kidnapping Statutes** – Parental kidnapping statutes are generally designed to ensure parents equal access to their children by criminally sanctioning a parent who hides the child from the other parent. Currently almost every state makes custodial interference by parents or relatives of the child a crime. While these statutes may share similarities in name, purpose, and structure, statutory provisions concerning the definition of lawful custodian, the availability of statutory exceptions or defenses, and the severity of the criminal penalties vary greatly between states. In counseling, a survivor who has already left or wishes to leave that state with her children should carefully consult the state statutes in the client’s home state and the state to which the client is considering moving to best inform the client of the potential legal ramifications of her decision to flee. For immigrant victims it is particularly important to avoid any criminal convictions that can complicate a victim’s ability to attain VAWA or U visa related immigration relief.<sup>111</sup>

**Stay of Deportation/Stay of Removal** – A stay of removal is an administrative decision by the government to stop temporarily the deportation or removal of an immigrant who has been ordered removed or deported from the United States.<sup>112</sup> Victims who were granted U-visa interim relief were granted stays of removal.<sup>113</sup>

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<sup>110</sup>Under immigration law, leaving and returning to the United States whether required as part of a visa application or not, often has harsh consequences. Leaving the United States after having been unlawfully in the United States can trigger application of multi-year bars to reentry (e.g. 3, 10 or more years). Immigrants who remain in the United States and have not left or are not required to leave can attain lawful permanent residency without risking separation from children and family members in the United States. For this reason, it is important to advise victims for VAWA immigration benefits against international travel.

<sup>111</sup> See Chapter 6.6 of *Breaking Barriers* “Appendix” for further information and the state criminal parental kidnapping statutes charts.

<sup>112</sup> See 8 §CFR 241.6, 1241.6.

<sup>113</sup> “New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule*, 72 Fed. Reg. 53016 (Sept. 17, 2007).

**Suspension of Deportation** – Suspension of deportation is terminology that was used prior to 1996, to refer to what is now called “cancellation of removal” (see above). Some immigrant victims will have old deportation orders, in cases initiated prior to 1992 and will need to file motions to reopen those immigration cases. For this reason post 1996 VAWA related immigration laws continue to refer to, cite to, and make amendments to VAWA suspension of deportation. Citations to Immigration and Naturalization Act Section 244 (a)(3) (“as in effect on March 31, 1997” or “as in effect before the Title III-A effective date of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996”) are references in statute to VAWA suspension of deportation and NOT “temporary protected status.”<sup>114</sup>

**TANF** – Temporary Assistance for Needy Families (TANF) provides cash payments, vouchers, social services, and other types of assistance to families in need. PRWORA gives states the option to grant TANF to immigrant families. Most states have decided to provide assistance to qualified immigrants who were in the United States before August 22, 1996, and many are also providing access to TANF for those who entered after August 22, 1996, following the expiration of the five-year bar.<sup>115</sup> Other states have decided to offer state-funded TANF to certain categories of immigrants or battered immigrants who would otherwise have no access to benefits, regardless of immigration status. (See “PRUCOL”)

**Undocumented** – Undocumented immigrants are individuals that do not have lawful immigration status granting them permission to reside in the United States. Some are individuals who entered the United States without being inspected by immigration authorities (i.e. illegally crossed the border). Others entered the U.S. on valid immigration visas but they stayed beyond their period of authorized stay. Some forms of temporary legal immigration status (See “non-immigrant visas.”) also place restrictions on the holder’s activities while in the United States, such as barring them from working in the U.S. or requiring them to attend a particular school or maintain employment with a particular employer. Individuals who fail to comply with the terms of their visa (i.e. working when they are not allowed or failing to attend school when they are required) become undocumented.

**Unlawful Entrants** – Individuals who entered the U.S. without admission are unlawful entrants and may be inadmissible. Depending on their date of entry and the relief they apply for, applicants, such as victims of domestic violence, may qualify for an exception to this inadmissibility criteria for unlawful entry.<sup>116</sup>

**U.S. Citizen (USC)** – An individual may become a U.S. citizen through several means. An individual born in the United States or in certain U.S. territories such as Guam, U.S. Virgin Islands, and Puerto Rico is automatically a citizen at birth. Additionally, an individual born abroad may acquire or derive U.S. citizenship through a U.S. citizen parent or parents. Many lawful permanent residents apply through the naturalization process to become a U.S. citizen. Finally, certain people serving in active-duty status for the U.S. military may qualify for expedited U.S. citizenship.

**United States Citizenship and Immigration Services (CIS)** –The division of the Department of Homeland Security (DHS) responsible for adjudicating immigration benefits. CIS adjudicates a range of applications filed for immigrants seeking legal immigration status including: visas, asylum, and naturalization applications. Cases of immigrant victims filing VAWA self-petitions, U and T visa applications, battered spouse waivers and battered spouse work authorizations are all adjudicated by CIS.

**Uniform Child Custody Jurisdiction Act (UCCJA)**<sup>117</sup> – Original state laws governing jurisdictional determinations in interstate custody cases. The UCCJA, or its successor statute the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), discussed next, must be considered anytime a victim is considering moving across state lines with her children.

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<sup>114</sup> Many codifications of the Immigration and Nationality Act are incorrect with regard to this section.

<sup>115</sup> NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

<sup>116</sup> INA § 212(a)(6)(A); 8 U.S.C. § 1182(a)(6)(A).

<sup>117</sup> Drafted by the National Conference of Commissioners on Uniform State Laws, and by it approved and recommended for enactment in all the states at its conference meeting July 22-Aug. 1, 1968; see also 28 U.S.C. § 1738A(c).

The UCCJA was created to promote common practices among the states with regard to jurisdiction over, and enforcement of child custody determinations. The goal was to foster a uniform approach that would result in fewer conflicting court rulings regarding the same children; minimizing or preventing parental kidnapping, jurisdictional conflicts, and re-litigation of custody decisions issued by courts in other states. The UCCJA's primary purpose is to help determine which court has appropriate jurisdiction over a custody matter by using the four following bases as a guide: home state, significant connection, emergency, and more appropriate forum. The UCCJA was not as effective in achieving these goals as expected and it contained few protections for battered women. As a result many jurisdictions began to replace the UCCJA with improved UCCJEA protections. The versions of the UCCJA or UCCJEA adopted in each state can vary slightly from the model code, but all state family laws include either a UCCJA or UCCJEA.

**Uniform Child Custody Uniform and Enforcement Act (UCCJEA)**<sup>118</sup> This is the successor statute to the UCCJA and is designed to be more helpful in preventing abductions of children. Like the UCCJA, the UCCJEA also utilizes the four jurisdictional bases of home state, significant connection, emergency, and more appropriate forum. However, unlike the UCCJA, the UCCJEA prioritizes home state jurisdiction. It also expands the basis for emergency jurisdiction to more fully include and protect a battered parent's decision to escape from her abuser with her children. While a temporary emergency jurisdiction order that a battered woman receives is still subject to the actual "home" state's issuance of a final custody order, the factors a "home" state must consider in declining jurisdiction offer greater protection for survivors of domestic violence. For example, a court may consider whether domestic violence had occurred, and is likely to continue, and which state could best protect the parties and the child.

**Violence Against Women Act (VAWA)** – In 1994, Congress enacted the Violence Against Women Act. This was the first piece of federal legislation that articulated the role of the federal government in stopping violence against women. VAWA brought about far-reaching reforms in the criminal and civil justice system's approach to domestic violence, sexual assault, stalking, dating violence and trafficking. VAWA's dual goals were to enhance protection and help for victims and to hold perpetrators accountable for their crimes. VAWA provides grants to governmental and non-governmental programs helping victims, creates federal crimes, enforces state issued protection orders, provides immigration relief and offers confidentiality and privacy protections to victims. VAWA was designed to offer protection to all victims of violence against women, explicitly including underserved victims (e.g. immigrants, women of color, disabled, rural victims). To further this goal and remove control over immigration status and threats of deportation as tools that could be used by abusers, traffickers and crime perpetrators to avoid or undermine criminal investigations and prosecutions, VAWA 1994, 2000 and 2005 each contained immigration relief.

**VAWA Unit of the Vermont Service Center** – The Citizenship and Immigration Services (CIS) Vermont Service Center, houses the specially trained unit at the Department of Homeland Security that is responsible for adjudicating VAWA cases filed by immigrant victims of violence against women. The VAWA Unit adjudicates a wide range of violence against women related applications including: VAWA self-petitions, T-visas, U-visas, adjustments (lawful permanent residency applications), and employment authorizations related to VAWA cases (VAWA Cuban, VAWA NACARA, VAWA HRIFA petitions, battered spouse waivers, parole of VAWA petitioners and their children, children of victims who have received VAWA cancellation). Spouses who have been battered or subjected to extreme cruelty perpetrated by their non-immigrant A visa holder, E iii visa holder, or G visa holder, or H visa holder spouse, and children of the battered spouses can also receive employment authorization from the VAWA Unit.<sup>119</sup>

**VAWA Confidentiality** – VAWA created this provision to prevent batterers and crime perpetrators from accessing VAWA self-petitioners' information through DHS. Under VAWA confidentiality, immigration enforcement agents are also prohibited from using information from an abuser to act against an immigrant victim. Additionally, VAWA confidentiality bars enforcement actions at protected locations including

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<sup>118</sup> Uniform Child-Custody Jurisdiction and Enforcement Act (1997), 9(1A) U.L.A. 657 (1999); See also 28 U.S.C. § 1738A(c)(2)(C).

<sup>119</sup> INA § 106(a); 8 U.S.C. § 1105(a)

## Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

shelters, victim services programs, rape crisis centers, courthouses, family justice centers, supervised visitation centers and community based organizations.<sup>120</sup>

**Visa** – The term visa has two meanings. A person who has attained legal immigration status in the United States is colloquially called a “visa” holder. A “visa” is also an official document issued by the U.S. Department of State at an embassy or consulate abroad. A visa grants an individual permission to request entry into the United States at a port of entry. If permission is granted, the applicant is admitted into the United States in a particular status, such as a U-visa. Visas may be *immigrant* visas that allow the individual who qualifies to live and work permanently in the United States – lawful permanent residency. An individual having a residence in a foreign country that he or she has no intention of abandoning, who wishes to enter the United States temporarily, will be issued a temporary visa referred to in immigration law as a *non-immigrant* visa. Nonimmigrant visas include, but are not limited to:

**A Visa** –This temporary visa is issued to diplomats, ambassadors, public ministers, employees or consular officers who have been accredited by a foreign government that is recognized by the United States and accepted by the President or the secretary of state. The A-visa includes the immigrant’s immediate family. The immigrant’s personal employees, such as nannies, also receive an A-visa.<sup>121</sup>

**B Visa** – This temporary visa is issued to tourists (business or pleasure). Tourists are generally admitted to the U.S. for no longer than six months.<sup>122</sup>

**F Visa** –This temporary visa is available to bona fide students who are coming to the United States temporarily and who are pursuing a full course of study at an established college, university, or other academic institution. The spouse and minor children of the student also receive F-visas.<sup>123</sup>

**G Visa** – The G visa is available to representatives and employees of international organizations. The visa is also available to members of the individuals’ immediate family, personal employees of the individual, and the immediate families (e.g. spouses and children) of the personal employees.<sup>124</sup>

**H Visa** – This is the temporary visa available to individuals who come to the United States temporarily to perform services or labor. This also includes a range of workers from technology industry workers to fashion models. The spouse and minor children of the immigrant also receive a specific type of H-Visa.<sup>125</sup>

**J Visa** – This temporary visa is issued to exchange visitors and foreign physicians. J visa holders can include scholars, teachers, professors, leaders in a field, among others, coming to the United States temporarily. Some J visa holders are subject to a two-year foreign residency requirement. They are required to leave the United States for two years and are barred from seeking H-Visa status or lawful permanent residency before complying with this requirement. The visa holder’s spouse and minor children can also receive J-Visas.<sup>126</sup>

**T Visa** – This visa is available to individuals who are victims of severe forms of trafficking in persons and who are willing to assist in the investigation and prosecution of their traffickers. Severe forms of trafficking include sex trafficking and transporting, harboring, or obtaining a person for labor by force, fraud, or coercion. A T-visa applicant under 21 years of age can apply for T-visas for their spouse, children, parents, and unmarried siblings under 18. T Visa applicants 21 years of age or older can apply for T-visas for their spouse and children.<sup>127</sup> The T Visa lasts for four years. After three years, T visa

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<sup>120</sup> For a full discussion of VAWA confidentiality protections See Chapter 3 of this Manual “VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections “.

<sup>121</sup> INA § 101(a)(15)(A), 8 U.S.C. § 1101(a)(15)(A).

<sup>122</sup> INA § 101(a)(15)(B), 8 U.S.C. § 1101(a)(15)(B).

<sup>123</sup> INA § 101(a)(15)(F), 8 U.S.C. § 1101(a)(15)(F).

<sup>124</sup> INA § 101(a)(15)(G), 8 U.S.C. § 1101(a)(15)(G).

<sup>125</sup> INA § 101(a)(15)(H), 8 U.S.C. § 1101(a)(15)(H).

<sup>126</sup> INA § 101(a)(15)(J), 8 U.S.C. § 1101(a)(15)(J).

<sup>127</sup> INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T).

recipients can apply for lawful permanent residency. If the Attorney General certifies that the investigation has concluded, T visa recipients can apply for lawful permanent residency sooner than three years.

**U Visa** – This visa is available to individuals who are victims of substantial physical or mental harm as a result of having been a victim of criminal activity. In order to receive a U visa, victims must provide a certification from a federal, state, or local law enforcement official, prosecutor, or judge establishing that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of criminal activity. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution as long as they are helpful in an investigation. For an immigrant under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U Visas based upon the immigrant crime victim's receipt of U visa. U-Visa applicants 21 years or older can apply for U Visas for their spouse and children.<sup>128</sup>

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<sup>128</sup> INA § 101(a)(15) (U), 8 U.S.C. § 1101(a)(15)(U).