

## Good Faith Marriage in VAWA Self-Petitioning Cases

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When Congress created VAWA self-petitioning in 1994 its goal was to offer help to immigrant spouse and child abuse victims who were trapped in good faith marriages to U.S. citizens and lawful permanent residents that had become abusive. In 1990 Congress created the battered spouse waiver that allowed abused immigrant spouses with conditional permanent residency to flee homes where they were suffering battering or extreme cruelty and obtain full lawful permanent residency their abusive spouse's cooperation in filing a joint petition and without being locked in an abusive marriage for two years.<sup>1</sup> However, the battered spouse waiver only help spouses of U.S. citizens when the abusive citizen spouse had filed a family based visa petition for the abused immigrant spouse. The VAWA self-petition was created by Congress to provide a remedy for immigrant spouses in marriages to U.S. citizens and lawful permanent residents who were subject to battering or extreme cruelty, but the abusive citizen or lawful permanent resident spouse had never filed immigration papers on the immigrant spouses' behalf.<sup>2</sup>

To remedy this problem in VAWA 1994 Congress did to three things. It created VAWA self-petitioning and VAWA suspension of deportation new forms of immigration relief that allowed abused immigrant spouses of U.S. citizens and lawful permanent resident to file their own immigration applications. In addition, VAWA 1994 created new evidence rules applicable to battered spouse waiver, VAWA self-petition and VAWA suspension of deportation cases that allow abused immigrant spouses and children to present any credible evidence to support their VAWA or battered spouse waiver immigration cases.<sup>3</sup> The House Committee on the Judiciary in the legislative history of the 1994 Violence Against Women Act stated<sup>4</sup>—

“Domestic battery problems become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizens legal status depends on his or her marriage to the abuser. Current [pre-VAWA 1994] law fosters domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen or lawful permanent resident spouse. Under the Immigration and Nationality Act, a U.S. citizen or lawful permanent resident can, but is not required to file a relative visa petition requesting that his or her

<sup>1</sup> Family Unity and Employment Opportunity Immigration Act of 1990, HR REP 101-723, at 81 (1990)

<https://niwaplibrary.wcl.american.edu/pubs/hr-rep-101-723-bsw-sijs-leg-history>.

<sup>2</sup> Mary A. Dutton, Leslye E. Orloff, Giselle A. Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications, 7 Georgetown J. on Poverty L & Policy 245, 292 (2000) <https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors> (finding that although citizens and lawful permanent residents can file papers asking the Immigration and Naturalization Service to grant legal immigration status to their immigration spouses, 72.3% of the physically and/or sexually abused married immigrant women surveyed reported that their spouse had never filed immigration papers on their behalf. When U.S. citizens and lawful permanent residents had filed immigration papers the mean delay in filing in cases of physical and or sexual abuse was 3.97 years.).

<sup>3</sup> VIOLENCE AGAINST WOMEN ACT OF 1994, H.R. Rep. No. 103-395 (Nov. 20, 1993), at § 40701 (VAWA self-petitioners), § 40702 (any credible evidence). § VAWA (suspension of deportation). <https://niwaplibrary.wcl.american.edu/pubs/vawa-1994-house-leg-history-nov-1993>.

<sup>4</sup> VIOLENCE AGAINST WOMEN ACT OF 1993, H.R. REP. NO. 103-395, at 26-27 (1993), <https://niwaplibrary.wcl.american.edu/pubs/vawa-1994-house-leg-history-nov-1993>.

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spouse be granted legal *status based on a valid marriage*. Also, the citizen or lawful permanent resident can revoke such a petition at any time prior to the issuance of permanent or conditional residency to the spouse. Consequently, a battered spouse may be deterred from taking action to protect him or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation. Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave”.

The legislative history for VAWA 2000 provides additional background<sup>5</sup>—

“Title V is designed to improve on efforts made in VAWA 1994 to prevent immigration law from being used by an abusive citizen or lawful permanent resident spouse as a tool to prevent an abused immigrant spouse from reporting abuse or living the abusive relationship. This could happen because generally speaking, U.S. immigration law gives citizens and lawful permanent residents the right to petition for their spouses to be granted a permanent resident visa, which is the necessary prerequisite for immigrating to the United States. In the vast majority of cases, granting the right to seek the visa to the citizen or lawful permanent resident spouse makes sense, since the purpose of family immigration visas is to allow U.S. citizens or lawful permanent residents to live here with their spouses and children. But in the unusual case of the abusive relationship, an abusive citizen or lawful permanent resident can use control over his or her spouse's visa as a means to blackmail and control the spouse. The abusive spouse would do this by withholding a promised visa petition and then threatening to turn the abused spouse in to the immigration authorities if the abused spouse sought to leave the abuser or report the abuse. .. VAWA 1994 changed this by allowing immigrants who demonstrate that they have been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouses to file their own petitions for visas without the cooperation of their abusive spouse.”

In a 1999, the Immigration and Naturalization Service conducted a review of all requests for removal of conditions in battered spouse waiver cases filed in 1994 and self-petitions filed in 1997 and 1998 to determine the level of fraud in cases of immigrant spouses of U.S. citizens and lawful permanent residents. The report to Congress on this investigation notes that INS found no cases reviewed in which there was credible evidence of *both fraud and abuse*.<sup>6</sup> Congress and INS in its 1999 report to Congress recognized what researchers and domestic violence experts have long known. Domestic violence, battering or extreme cruelty, power, and coercive control provide strong evidence that the marriage is a good faith marriage.<sup>7</sup>

It is important to note that domestic violence, child abuse and human trafficking can co-occur in immigrant families and in families where family members have mixed immigration statuses. When the perpetrator of sex or labor trafficking against an immigrant spouse, child or step-child is a U.S. citizen or

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<sup>5</sup>VIOLENCE AGAINST WOMEN ACT OF 2000, Section by Section Summary, 146 CONG. REC. S10,195 (2000), <https://niwaplibrary.wcl.american.edu/pubs/imm-lghst-vaawa200wholebill>.

<sup>6</sup> International Matchmaking Organizations: A Report to Congress (February 1999), <https://niwaplibrary.wcl.american.edu/pubs/intl-matchmaking-orgs>.

<sup>7</sup> See generally, Nawal Ammar, Helene Berman, Jacquelyn Campbell, Anindita Dasgupta, Mary Ann Dutton, Giselle Hass, Stephanie J. Nawyn, Leslye E. Orloff, Anita Raj, Rachael Rodriguez, Evan Stark, Jay G. Silverman, Cris M. Sullivan, David B. Thronson, Veronica Tobar Thronson, Hannah Brenner, J. Ruben Parra-Cardona, and Julia L. Perilla; see also Social Science Research Documents The Need for VAWA Self-Petitions and U-Visas, 10-11 (December 6, 2012), <https://niwaplibrary.wcl.american.edu/pubs/traum-man-socialscienceresearchneedvawauvisa-12-06-12>.

lawful permanent resident spouse, former spouse, parent or step-parent, the trafficked immigrant may also be eligible for the forms of immigration relief discussed in this article, VAWA self-petitioning, battered spouse waivers, VAWA cancellation of removal, or VAWA suspension of deportation and the definition of good faith marriage discussed here would apply to such cases.<sup>8</sup>

### Good faith marriage in VAWA self-petitioning cases

Persons applying for marriage based benefits are generally required to establish that they entered into the marriage in good faith. The Immigration and Nationality Act does not define a "good-faith" marriage or provide guidelines for evaluating the bona fides of a marriage. A significant body of case law has developed concerning the interpretation of this requirement.<sup>9</sup>

The preamble to the VAWA self-petitioning regulations state:

“It has long been held that a marriage that is entered into for the primary purpose of circumventing the immigration laws, referred to as a fraudulent or sham marriage cannot be recognized as enabling a spouse to obtain immigration benefits.”<sup>10</sup>

A May 15, 2012 Congressional Research Service Report on VAWA self-petitioning and other forms of immigration relief offer to immigrant crime victims under VAWA explored the degree to which the VAWA self-petitioning provisions “unintentionally facilitate marriage fraud.”<sup>11</sup> The report concluded that “While some suggest that VAWA provides opportunities for dishonest and enterprising immigrants to circumvent U.S. immigration laws, reliable empirical support for these assertions is limited.”<sup>12</sup>

The relatively low level of marriage fraud in the context of VAWA self-petitioning is due in part to the heightened number of factors a battered immigrant self-petitioner must prove to have the VAWA self-petition approved compared to the family based spousal petitioning process. Several of these factors also by their nature often provide credible evidence of good faith marriage, particularly battering or

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<sup>8</sup> See *Arguijo v. USCIS*, No. 13-cv-05751 (7th Cir. Mar. 12, 2021) (Once a step-parent/step-child relationship is established based upon a good faith marriage between the child’s natural parent and their step-parent, divorce does not end the step-parent/step-child relationship in VAWA self-petition cases. An immigrant step-child abused by their citizen or lawful permanent resident step-parent maintains the ability to file a self-petition despite their natural parent’s divorce from their abusive step-parent.)

<sup>9</sup> See *Lutwak v. U.S.*, 344 U.S. 604, 611 (1953); *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975); *Matter of Soriano*, 19 I. & N. Dec. 764 (BIA 1988); *El-Hadi v. I.N.S.*, 194 F.3d 1312 (6th Cir. 1999); *Ayyoub v. I.N.S.*, 93 Fed. Appx. 828 (6th Cir. 2004) (includes a review of relevant historical and current case law through December 27, 2021).

<sup>10</sup> *Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant*, 61 FR 13068 (March 26, 1996), <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>. VAWA self-petitions are adjudicated by immigration officials working on a specially trained team in the Violence Against Women Act (VAWA) Unit. The training adjudicators receive includes training on VAWA confidentiality protections and on fraud detection. A review by the Government Accounting Office of cases filed between 2014 and 2018 found that of the 45,414 VAWA self-petition cases filed by spouses if U.S. citizens and lawful permanent residents 72% of VAWA self-petitions were approved, 3% were withdrawn, revoked or administratively closed and 25% were denied (of which 4.9% involved referrals for fraud investigations). Government Accounting Office, *Additional Actions Needed to Address Fraud Risks in Program for Foreign National Victims of Domestic Abuse 10-11* (September 2019) <https://www.gao.gov/products/gao-19-676>. Of the fraud investigations reviewed, in 2.6% of the cases the fraud unit found no reason to investigate and declined the leads. *Id.* at 36. Of the 1367 cases of potential fraud investigated 24.3% (n=332) resulted in findings of fraud. *Id.* at 36. Among the 45,414 marriage based self-petition cases filed between 2014 and 2018 in 0.7% of those cases did USCIS find that the self-petition was fraudulently filed. *Id.* at 11 and 36. This report found that USCIS had established a culture and a dedicated entity to manage fraud risks for the VAWA self-petition program and made recommendations to USCIS designed to enhance fraud detection. *Id.* at 15.

<sup>11</sup> William A. Kandel, *Immigration Provisions of the Violence Against Women Act* (May 15, 2012), <https://niwaplibrary.wcl.american.edu/pubs/vawa-2013-crs-report>.

<sup>12</sup> *Id.* at p. 3.

extreme cruelty, occurring during the marriage, when the parties have children in common, and residence with the abusive U.S. citizen or lawful permanent resident spouse.

VAWA Immigration Relief Compared With Family Based Visa Petitions

COMPARISON OF ELEMENTS OF PROOF

<b>Family Based Spousal Petitions</b>	<b>Battered Spouse Waiver</b>	<b>VAWA Self- Petitions</b>	<b>VAWA Suspension of Deportation and VAWA Cancellation of Removal</b>
Good faith marriage	Good faith marriage	Good faith marriage	Good faith marriage <i>or intended marriage or Immigrant's child abused by the child's other parent who is a U.S. citizen or lawful permanent resident.</i>
U.S. citizenship or lawful permanent residency of spouse	U.S. citizenship or lawful permanent residency of spouse	U.S. citizenship or lawful permanent residency of spouse	U.S. citizenship or lawful permanent residency of spouse
	<i>Battering or extreme cruelty</i>	<i>Battering or extreme cruelty</i>	<i>Battering or extreme cruelty</i>
		<i>One of more of the incidents of battering or extreme cruelty occurred during the marriage</i>	<i>Physical presence in the U.S. for a continuous period of not less than 3 years</i>
		<i>Residence with the U.S. citizen or lawful permanent resident spouse</i>	<i>Removal from the U.S. would cause extreme hardship to self, child or parents.</i>
		<i>Good moral character</i>	<i>Good moral character</i>
			<i>Applicant merits favorable exercise of discretion</i>

When an immigrant self-petitioner, a battered spouse waiver applicant, VAWA suspension of deportation, or a VAWA cancelation of removal applicant provides DHS or the immigration judge with credible evidence proving any of the following facts, such evidence also supports a finding of good faith marriage—

- Battering or extreme cruelty,
- The fact that incidents of battering or extreme cruelty occurred during the marriage;
- Residence with the abuser, and/or
- Children born to the abuser and the immigrant spouse.

To better assess claims and prevent fraud, a centralized, specially trained VAWA Unit processes all crime victim immigration applications filed under the law.<sup>13</sup> Immigrant victims must undergo a rigorous application process and a criminal background check, and must submit a certification from

<sup>13</sup> See USCIS, Department of Homeland Security, Report on the Operations of the Violence Against Women Act Unit at the USCIS Vermont Service Center, p. 3, (October 22, 2010), (“Consolidation of VAWA petition adjudications in the VSC [Vermont Service Center] was intended, among other things, to prevent fraud by assigning adjudication of specialists in domestic violence cases who could efficiently discern fraudulent petitions, fairly adjudicate legitimate petitions, and protect victims from accidental violations of confidentiality.”), <https://niwaplibrary.wcl.american.edu/pubs/report-vawa-uscis-vermont-service-center>.

police or prosecutors to prove their cooperation. The non-partisan Congressional Research Service noted that DHS has incorporated safeguards for adjudicating these cases and there is no empirical evidence of fraud.<sup>14</sup>

DHS uses a high degree of diligence and vigilance in adjudicating these cases as compared to other forms of immigration relief. VAWA and U visa cases have a higher rate of Requests for Further Evidence (RFE) and denials issued by immigration authorities as compared to other types of immigration cases.<sup>15</sup> DHS case processing data reveals that the VAWA Unit requires significantly more evidence in VAWA self-petitioning cases when battered spouses and children apply for immigration relief on their own without the abusive U.S. citizen or lawful permanent resident spouse's knowledge, assistance or consent. The DHS VAWA unit issues a 4 times greater rate of requests for further evidence in VAWA self-petitioning cases than in family based visa petition cases.<sup>16</sup>

- Requests for further evidence rate (DHS 2007-2011)
  - 74% VAWA cases
  - 18.3% family visa petition cases

The denial rate for VAWA self-petitioning cases is also higher than for family based visa petition cases generally.<sup>17</sup>

- Denial rate
  - 31.4% VAWA self-petitions
  - 21% U visas
  - 11.2 % family members of citizens
  - 14.2% family members of lawful permanent residents

#### Proof of good faith marriage or the immigrant's intent to enter a good faith marriage required

Immigrant victims of battering or extreme cruelty filing VAWA self-petitions bear the burden of proving to DHS that they are or were in good faith marriage to their U.S. citizen or lawful permanent resident spouse. Proof that the alien entered into the marriage in good faith (or in the case of an abusive U.S. citizen or lawful permanent resident spouse's bigamy) that the immigrant intended to enter into a marriage in good faith<sup>18</sup> is a required component of any spouse based VAWA self-petition.<sup>19</sup>

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<sup>14</sup> William A. Kandel, Immigration Provisions of the Violence Against Women Act, (Feb. 15, 2013), <https://niwaplibrary.wcl.american.edu/pubs/crs-vaawa-immigration1-2-13-15>.

<sup>15</sup> VAWA T, U Case Processing Data 1997-2020 (Feb. 10, 2021), <https://niwaplibrary.wcl.american.edu/pubs/vawa-t-u-data-1997-2020> (VAWA self-petitions 25.2% denial rate in 2019); *see also* USCIS Number of Service-wide Forms Fiscal Year 2019 by Quarter and Form Status (2019) [https://niwaplibrary.wcl.american.edu/pubs/quarterly\\_all\\_forms\\_fy19q4](https://niwaplibrary.wcl.american.edu/pubs/quarterly_all_forms_fy19q4) (Denial rate for family based visa petitions 9.6% in 2019).

<sup>16</sup> USCIS Approval Rates and Requests for Evidence for All Form Types, (2003-2011), [https://niwaplibrary.wcl.american.edu/pubs/allformtype\\_approval-rfe-rates-fy2003-2011](https://niwaplibrary.wcl.american.edu/pubs/allformtype_approval-rfe-rates-fy2003-2011) (starting in 2012 DHS began reporting VAWA self-petitions and Widow SJIS together making it difficult to run later data).

<sup>17</sup> USCIS Approval Rates and Requests for Evidence for All Form Types, (2003-2011), [https://niwaplibrary.wcl.american.edu/pubs/allformtype\\_approval-rfe-rates-fy2003-2011](https://niwaplibrary.wcl.american.edu/pubs/allformtype_approval-rfe-rates-fy2003-2011).

<sup>18</sup> VIOLENCE AGAINST WOMEN ACT OF 2000, Section by Section Summary, 146 CONG. REC. S10,195 (2000), <https://niwaplibrary.wcl.american.edu/pubs/imm-lghst-vaawa200wholebill> (stating that section 1503 of this legislation allows battered immigrants who unknowingly marry bigamists to avail themselves of VAWA's self-petition procedures)

<sup>19</sup> INA Section 204(a)(1)(A)(iii)(II)(AA) and 204(a)(1)(B)(ii)(II)(AA).

At the time of the filing of the VAWA self-petition the immigrant filing the self-petitioner must:

- Current marriage: Be married to the U.S. citizen and lawful permanent resident spouse;<sup>20</sup>
- Within the past two years: Have been a bona fide spouse of a U.S. citizen or lawful permanent resident who within the past two years:
  - Whose spouse died,<sup>21</sup> or
  - Whose marriage was terminated, whose spouse lost or renounced citizenship or lost lawful permanent resident status *related to battering or extreme cruelty*;<sup>22</sup> (Emphasis added)
- Intended spouse: Have intended to enter a good faith marriage and believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States or lawful permanent resident spouse.<sup>23</sup>

Intent at the time of the marriage:

Adjudications of good faith marriage requirements apply the same standards as are applicable in family based visa petition cases filed by a U.S. citizen or lawful permanent resident spouse. The statutes regulations and case law government what is under immigration law a good faith marriage are the same in VAWA self-petitioning, battered spouse waiver, VAWA suspension of deportation, VAWA cancellation of removal, and family based visa adjudications. The key focus of these adjudications is on the intent of the immigrant applicant at the time of the marriage.

- The preamble to the VAWA self-petitioning regulations:

“The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage.” The person's conduct after marriage is relevant only to the extent that it bears upon his or her subjective state of mind at the time of the marriage.”<sup>24</sup>

“Separation from the other spouse, even shortly after the marriage took place, does not prove, by itself that a marriage was not entered in to in good faith”.<sup>25</sup>

- A self-petition will not be denied simply because the spouses are no longer living together and the marriage is no longer viable.<sup>26</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> INA Section 204(a)(1)(A)(iii)(II)(CC)(aaa).

<sup>22</sup> INA Section 204(a)(1)(A)(iii)(II)(CC)(aaa)-(ccc).

<sup>23</sup> INA Section 204(a)(1)(A)(iii)(II)(BB) and 204(a)(1)(B)(ii)(II)(BB).

<sup>24</sup> Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant, 61 FR 13068 (March 26, 1996), <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

<sup>25</sup> *Id.*; see also *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975).

<sup>26</sup> 8 C.F.R. §204.2(c)(1)(ix); see also *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980).

- In determining whether an alien has entered into a good-faith marriage, "the central question is whether [the couple] intended to establish a life together at the time they were married."<sup>27</sup>
- Criteria that the agency may consider to gauge this intent and the "commitment of both parties to the marital relationship" <sup>28</sup>
- The actions of the parties after their marriage may be considered to the extent the actions illuminate the intent of the parties at the time they married.<sup>29</sup>
- Conduct after a couple is married – even separation shortly after the marriage – is relevant only to establish intent at the time the marriage was entered into. <sup>30</sup>

It is important to note that the focus of this inquiry is the intention of the immigrant spouse or intended spouse at the time the marriage ceremony took place. If a marriage took place and the immigrant spouse lived with the U.S. citizen or lawful permanent resident spouse with the intent to establish a life together that is sufficient proof of good faith marriage. How the immigrant spouse and the U.S. citizen or lawful permanent resident spouse met is relevant but not determinative evidence. Immigrant spouses meet U.S. citizen or lawful permanent resident spouses in a variety of ways each of which can result in a good faith marriage under immigration laws. The U.S. citizen or lawful permanent resident spouse may have met through family members, faith based organizations, foreign travel, domestic dating services and international matchmaking agencies. Some immigrants meet and marry through marriages arranged by their family members or religious or cultural communities.

In determining whether the immigrant spouse entered the marriage in good faith how the couple met is evidence but is not dispositive. Immigrants whose marriages to U.S. citizens or lawful permanent residents were of shorter duration will be required by the DHS VAWA Unit to present more extensive proof of good faith marriage than immigrant spouses who have had children with their U.S. citizen or lawful permanent resident spouse or whose marriages were of longer duration.

### Evidence of Good Faith Marriage

In issuing the regulations implementing the 1994 Violence Against Women Act, INS recognized that in cases in which applicants must prove that battering or extreme cruelty exists in the spousal or parent child relationship, victims filing self-petitions and battered spouse waivers need only prove by a preponderance of the evidence that the victim married in good faith.<sup>31</sup> In determining whether a battered immigrant filing for one of these forms of relief has proved marriage in good faith to a U.S. citizen or lawful permanent resident, DHS has confirmed that "eligibility is generally not established with any

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<sup>27</sup> *Ibrahimi v. Holder*, 566 F.3d 758 (2009); *see also* *Damon v. Ashcroft*, 360 F.3d 1084, 1088 (9th Cir. 2004); *see also* *Cho v. Gonzales*, 404 F.3d 96, 102 (1st Cir. 2005); *see also* *Matter of Laureano*, 19 I. & N. Dec. 1, \*3 (BIA 1983); *see also* *Ayyoub*, 93 Fed. Appx. 828, 2004 WL 618794, at \*4.

<sup>28</sup> 8 C.F.R. § 1216.5(e) (2); *see also* *Nyonzele v. INS*, 83 F.3d 975, 980 (8th Cir. 1996); *see also* *Sami v. INS*, 121 Fed. Appx. 615 (2005).

<sup>29</sup> *Ayyoub*, 93 Fed. Appx. 828, 2004 WL 618794, at \*4.

<sup>30</sup> *Id.*

<sup>31</sup> *Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant*, 61 FR 13068 (March 26, 1996), <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

single piece of evidence. Rather, we look at the total picture presented by the record.”<sup>32</sup> The totality of the evidence in VAWA self-petitioning and battered spouse waiver cases includes proof of battering or extreme cruelty. This same approach is required by VAWA’s any credible evidence rules for VAWA cancellation of removal and VAWA suspension of deportation cases.

Battered immigrants applying as VAWA self-petitioners are required to prove in order to gain approval of their VAWA self-petition that they entered into their marriage with their marriage to their U.S. citizen or lawful permanent resident spouse in good faith. To prove this fact, the self-petitioner may provide any credible evidence that they entered their marriage in good faith. The preamble to the self-petitioning regulations state that —

“The Service has previously determined that a variety of evidence may be used to establish a good-faith marriage, and a self-petitioner should submit the best evidence available. Evidence of good faith at the time of marriage may include, but is not limited to proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983). Other types of readily available evidence might include the birth certificates of children born to the relationship; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. Self-petitioners who submit affidavits are encouraged to submit affidavits from more than one person. Other types of evidence may also be submitted; the Service will consider any relevant credible evidence.”

- This evidence may include:<sup>33</sup>
  - documentation relating to the degree to which the financial assets and liabilities of the parties were combined;”
  - documentation concerning the length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;”
  - birth certificates of children born to the marriage;
  - *police*, medical or court records providing information about the spousal or parent child relationship<sup>34</sup> and/or the abuse occurring in that relationship;
  - Evidence of the battering or extreme cruelty; or
  - Other evidence deemed pertinent.

The same any credible evidence rules apply to all forms of Violence Against Women Act related immigration relief cases including proof of good faith marriage required for battered spouse waiver, VAWA cancellation of removal and VAWA suspension of deportation cases.

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<sup>32</sup> Questions/Discussion Topics at Vermont Service Center Stakeholder Meeting (August 20, 2009), <https://niwaplibrary.wcl.american.edu/pubs/questions-discussion-vermont-service-center>.

<sup>33</sup> 8 C.F.R. § 216.5(e)(2).

<sup>34</sup> 8 C.F.R. §204.2(c)(1)(ix); *see also* Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant, 61 FR 13061 (March 26, 1996), <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

Evidence of “Battering or Extreme Cruelty” in a marriage or parent/child relationship is evidence of both good faith marriage and humanitarian need to free victims from abusive marriages.

Immigration Act of 1990 created a special waiver of Immigration Marriage Fraud Amendments of 1986 (IMFA) for immigrant spouses and children subjected to battery or extreme cruelty.<sup>35</sup> After examining the impact that IMFA had in locking abused immigrant spouses and children into abusive marriages, Congress amended the INA creating a new waiver for spouses and children subjected to battering or extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent. Congress found that IMFA’s two year marriage requirement locked abused immigrant spouses and children into marriages that were entered into in good faith and bona fide marriages to their abusers.

The battered spouse waiver legislation defined domestic violence under immigration law to include having been “battered or subject to extreme cruelty.” This definition was designed to include violent acts, crimes committed against family members including threats and attempts, a recognition that other forms of non-physical abuse and coercive control could constitute extreme cruelty. In 1990 Congress ---

“[A]mend[ed] the Marriage Fraud Act and provide[d] immigrant spouses in a bona fide marriage, an escape from the beatings, the insults and the fear.... it would make it clear to abused spouses that there was an escape from their situations... Abused spouses should be sent a clearer signal that there is an escape from their dilemma and that the abusing spouse does not have complete control over their lives...<sup>36</sup>

“It would seem unconscionable that any human being should be required by our laws to remain in a situation in which they are abused in order to remain in legal status.”<sup>37</sup>

Congress—<sup>38</sup>

“[F]ound that there was a need to spell out that victims of such treatment are entitled to special consideration under the law. As a result, section 216 of the Act was amended by section 701 of the Immigration Act of 1990 to add this waiver.<sup>39</sup> It is important that in adjudicating such waiver applications INS officers are aware of and in accord with the views of Congress in passing this legislation. Other issues to bear in mind when adjudicating a battering or extreme cruelty waiver include:

“Persons who have been subjected to such treatment may have difficulty in discussing their experiences. While it is almost always necessary to discuss the abusive events with the applicant, such discussions should be carried on in a professional manner which does not further abuse the applicant by forcing him or her to unnecessarily re-live abusive episodes.... Police reports and hospital records can be key documents in establishing that battering or extreme cruelty existed.”

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<sup>35</sup> Section 701, Pub. L. No. 99-639, §701(a)(4)(c), 101 Stat. 3537 (1990).

<sup>36</sup> House Congressional Record, UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990 (October 02, 1990) [Page: H8642] (Remarks of Representative Louise Slaughter).

<sup>37</sup> House Congressional Record, UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990 (October 02, 1990) [Page: H8648] (Remarks of Representative Gilman).

<sup>38</sup> Adjudicator's Field Manual, Chapter 25 Petitions for Removal of Conditions on Conditional Residence, 25.1 Immigration Marriage Fraud Amendments of 1986, <https://niwaplibrary.wcl.american.edu/pubs/uscis-adjudicators-field-manuel-ch-25>.

<sup>39</sup> Section 701, Pub. L. No. 99-639, §701(a)(4)(c), 101 Stat. 3537 (1990).

In the Violence Against Women Act (VAWA) of 1994, Congress expanded protections allowing additional spouses and children suffering battering or extreme cruelty to self-petition for lawful permanent residency. VAWA 1994 also created VAWA suspension of deportation, and in 1996 VAWA cancellation of removal which provide abused spouses and children of U.S. citizens and lawful permanent residents that ability to apply for a defense to deportation which if approved results in the abused immigrant spouse or child being granted lawful permanent residency.

Congress and the INS recognized that there was a need to not provide protection not only for immigrant spouses and children who have already suffered physical violence, but to also offer protection to victims of extreme cruelty including coercive control over the victim's immigration status. A Congressional Research Service Report summarized the importance of extreme cruelty and the power and control it aimed to remedy as follows:<sup>40</sup>

“[A]busers are less likely than others to petition for their noncitizen spouses and children because, according to the former INS, “they find it easier to control relatives who do not have lawful immigration status.”<sup>41</sup> Battered relatives also tend to avoid either seeking help or leaving their abusers because they fear deportation or lack knowledge about available services.”<sup>42</sup> The House Judiciary Committee explained that “the purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse.”<sup>43</sup>

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<sup>40</sup> William A. Kandel, Immigration Provisions of the Violence Against Women Act (May 15, 2012) page 23-24, <https://niwaplibrary.wcl.american.edu/pubs/vawa-2013-crs-report>.

<sup>41</sup> U.S. Department of Justice, Immigration and Naturalization Service, “Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children,” Federal Register, v. 61, no. 59, March 26, 1996, p. 13062, <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>.

<sup>42</sup> *Ibid.*

<sup>43</sup> U.S. Congress. House Committee on the Judiciary. VIOLENCE AGAINST WOMEN ACT OF 1993, <https://niwaplibrary.wcl.american.edu/pubs/vawa-lghist-crsenate-11-10-93>.