

**NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT
WITH VIOLENCE AGAINST WOMEN ACT 2000 AND 2005 AMENDMENTS¹**

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VAWA 2000 changes are *underlined and italics*; with deletions.
VAWA 2005 amendments are **underlined and bold**, with deletions

SEC. 201. SHORT TITLE- This title may be cited as the 'Nicaraguan Adjustment and Central American Relief Act'.

SEC. 202. ADJUSTMENT OF STATUS OF CERTAIN NICARAGUANS AND CUBANS. (a)
ADJUSTMENT OF STATUS- (*Filing deadline for applications April 1, 2000*).²

SEC. 203. MODIFICATION OF CERTAIN TRANSITION RULES.
(Program open. No application deadlines.)

Sec 203. (a) TRANSITIONAL RULES WITH REGARD TO SUSPENSION OF DEPORTATION-

(1) IN GENERAL- Section 309(c)(5) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996³ (Public Law 104-208; division C; 110 Stat. 3009-627) is amended to read as follows:

 ` (5) TRANSITIONAL RULES WITH REGARD TO SUSPENSION OF DEPORTATION-

 ` (A) IN GENERAL- Subject to subparagraphs (B) and (C), paragraphs (1)⁴ and (2)⁵ of section 240A(d) of the Immigration and Nationality Act (relating to continuous residence or physical presence) shall apply to orders to show cause (including those referred to in section 242B(a)(1)⁶ of the Immigration and Nationality Act, as in effect before the title III-A effective date), ⁷ issued before, on, or after the date of the enactment of this Act.

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² Since applications are no longer accepted for this program the code section including its VAWA amendments are published in their entirety at the end of this publication.

³ Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104-208, 110 Stat. 3009-625, http://niwaplibrary.wcl.american.edu/pubs/iiraira_public-law-104-208_9-30-96-626-628-sec-309.

⁴ INA Section 240A(d)(1) (stops the clock on continuous presence when the immigrant is served with a notice to appear in an immigration court proceeding or when the immigrant has committed an offense or crime listed in INA 212(a)(2) that renders the immigrant inadmissible to the United States or removal from the United States on criminal grounds listed in INA Section 237(a)(2) or security related grounds of removal listed in INA section 237(a)(4).).

⁵ INA Section 240(d)(2) (sets limits on the amount of time an immigrant can be absent from the United States and still be able to establish continuous presence for the purposes of cancellation of removal.).

⁶ INA Section 242B(a)(1) (as in effect on March 31, 1996) (established rules for initiation of deportation proceedings.).

⁷ Effective Date: April 1, 1997

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`(B) EXCEPTION FOR CERTAIN ORDERS- In any case in which the Attorney General elects to terminate and reinstate proceedings in accordance with paragraph (3)⁸ of this subsection, paragraphs (1)⁹ and (2)¹⁰ of section 240A(d) of the Immigration and Nationality Act shall not apply to an order to show cause issued before April 1, 1997.

`(C) SPECIAL RULE FOR CERTAIN ALIENS GRANTED TEMPORARY PROTECTION FROM DEPORTATION *AND FOR BATTERED SPOUSES AND CHILDREN.* --

`(i) IN GENERAL- For purposes of calculating the period of continuous physical presence under section 244(a)¹¹ of the Immigration and Nationality Act (as in effect before the title III-A effective date)¹² or section 240A¹³ of such Act (as in effect after the title III-A effective date),¹⁴ subparagraph (A)¹⁵ and paragraphs (1)¹⁶ and (2)¹⁷ of section 240A(d) of the Immigration and Nationality Act shall not apply in the case of an alien, regardless of whether the alien is in exclusion or deportation proceedings before the title III-A effective date,¹⁸ who has not been convicted at any time of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act) and--

`(I) was not apprehended after December 19, 1990, at the time of entry, and is--

`(aa) a Salvadoran national who first entered the United States on or before September 19, 1990, and who registered for benefits pursuant to the settlement agreement in *American Baptist Churches, et al. v. Thornburgh (ABC)*, 760 F. Supp. 796 (N.D. Cal. 1991)¹⁹ on or before October 31,

⁸ Section 309(c)(3) of IIRAIRA (allowed the Attorney General to terminate deportation proceedings that had not reached a final administrative decision and initiate removal proceedings under amended immigration laws in effect starting April 1, 1996.).

⁹ INA Section 240A(d)(1) (stops the clock on continuous presence when the immigrant is served with a notice to appear in an immigration court proceeding or when the immigrant has committed an offense or crime listed in INA 212(a)(2) that renders the immigrant inadmissible to the United States or removal from the United States on criminal grounds listed in INA Section 237(a)(2) or security related grounds of removal listed in INA section 237(a)(4).).

¹⁰ INA Section 240(d)(2) (sets limits on the amount of time an immigrant can be absent from the United States and still be able to establish continuous presence for the purposes of cancellation of removal.).

¹¹ INA Section 244 (the INA Section that governs suspension of deportation cases initiated before April 1, 1997 and will not apply in NACARA, VAWA NACARA and VAWA suspension of deportation cases.).

¹² Effective Date: April 1, 1997

¹³ INA Section 240A (the INA section that governs cancellation of removal in cases initiated on or after April 1, 1997 and will not apply in NACARA, VAWA NACARA and VAWA suspension of deportation cases.).

¹⁴ Effective Date: April 1, 1997

¹⁵ INA Section 240A(d)(3)(A) sets a minimum time period for active duty armed forces members must have served in the military to have the continuous presence rules not apply to their cancellation of removal case. This is the only subsection (A) in INA Section 240A(d). Thus, this rule is waived in cases of immigrants eligible for NACARA 203, VAWA NACARA and VAWA suspension of deportation forms of immigration relief.

¹⁶ INA Section 240A(d)(1) stops the clock on continuous presence when the immigrant is served with a notice to appear in an immigration court proceeding or when the immigrant has committed an offense or crime listed in INA 212(a)(2) that renders the immigrant inadmissible to the United States or removal from the United States on criminal grounds listed in INA Section 237(a)(2) or security related grounds of removal listed in INA section 237(a)(4).

¹⁷ INA Section 240(d)(2) sets limits on the amount of time an immigrant can be absent from the United States and still be able to establish continuous presence for the purposes of cancellation of removal.

¹⁸ April 1, 1997

¹⁹ *American Baptist Churches v. Thornburgh (ABC) Settlement Agreement*, USCIS, <https://www.uscis.gov/laws/legal-settlement-notice/american-baptist-churches-v-thornburgh-abc-settlement-agreement>. (ABC Settlement Agreement in 1985 involved a group of religious organizations and refugee advocacy organizations filed a class action lawsuit in federal court against the Immigration and Naturalization Service (INS) (now USCIS), the Executive Office for Immigration Review (EOIR) and the United States Department of State (DOS). The lawsuit is known as *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) is commonly referred to as the ABC lawsuit. A federal judge subsequently certified a class of Guatemalan and Salvadoran nationals as plaintiffs in the lawsuit.

1991, or applied for temporary protected status on or before October 31, 1991;
or

`(bb) a Guatemalan national who first entered the United States on or before October 1, 1990, and who registered for benefits pursuant to such settlement agreement on or before December 31, 1991;

`(II) is a Guatemalan or Salvadoran national who filed an application for asylum with the Immigration and Naturalization Service on or before April 1, 1990;

`(III) is the spouse or child (as defined in section 101(b)(1)²⁰ of the Immigration and Nationality Act) of an individual, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such individual, if the individual has been determined to be described in this clause (excluding this subclause and subclause (IV));

`(IV) is the unmarried son or daughter of an alien parent, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such alien parent, if--

`(aa) the alien parent has been determined to be described in this clause (excluding this subclause and subclause (III)); and

`(bb) in the case of a son or daughter who is 21 years of age or older at the time such decision is rendered, the son or daughter entered the United States on or before October 1, 1990; or

`(V) is an alien who entered the United States on or before December 31, 1990, who filed an application for asylum on or before December 31, 1991, and who, at the time of filing such application, was 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. ; *or*

(VI)²¹ is an alien who was issued an order to show cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation

The plaintiffs alleged, among other things, that the INS (now USCIS), EOIR and DOS engaged in discriminatory treatment of asylum claims made by Guatemalans and Salvadorans. In 1990, the government and attorneys representing the certified class settled the class action lawsuit. The ABC settlement agreement provides that an eligible class member who registers for benefits and applies for asylum by the agreed-upon dates (these deadlines were initially defined in the settlement agreement, but the asylum filing deadlines were later extended by agreement of the parties) is entitled to an initial or de novo asylum interview and adjudication under the asylum regulations published July 27, 1990, which became effective October 1, 1990, and special provisions of the settlement agreement. The settlement agreement also contains special provisions regarding employment authorization and detention of eligible class members.).

²⁰ INA 101(b)(1) (The definition of child found in this section includes “stepchildren” who were under the age of 18 at the time of the marriage that created the step-child/step-parent relationship).

²¹ Leslye E. Orloff and Faiza Chappell, Violence Against Women Act (VAWA) Suspension Of Deportation As Created in 1994 With VAWA 2000, And 2005 Amendments, VAWA Suspension Of Deportation, NIWAP, April 2, 2020, <http://niwaplibrary.wcl.american.edu/pubs/vawa-suspension-of-deportation-interliniated-statute>.

under section 244(a)(3)²² of the Immigration and Nationality Act (as in effect before the date of the enactment of this Act).’

(VII)²³

(aa) was the spouse or child of an alien described in subclause (I),²⁴ (II),²⁵ or (V)²⁶ –

(AA) at the time at which a decision is rendered to suspend the deportation or cancel the removal of the alien;

(BB) at the time at which the alien filed an application for suspension of deportation or cancellation of removal; or

(CC) at the time at which the alien 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; and

(DD)²⁷ at the time at which the spouse or child files an application for suspension of deportation or cancellation of removal; and’’

(bb) the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien described in subclause (I),²⁸ (II),²⁹ or (V).³⁰

“(ii) LIMITATION ON JUDICIAL REVIEW- A determination by the Attorney General as to whether an alien satisfies the requirements of this clause (i)³¹ is final and shall not be subject to review by any court. Nothing in the preceding sentence shall be construed as limiting the application of section 242(a)(2)(B)³² of the Immigration and Nationality Act

²² INA Section 244(a)(3) and Section 309(c)(1) of IIRAIRA ensure that immigrant victims who received notices to appear in immigration court proceedings that were issued before April 1, 1996, will continue to be eligible for and be able to apply for VAWA suspension of deportation in the future with the same substantive laws and procedural rules that applied to their case on March 31, 1996. The amendments made to the Immigration and Nationality Act that went into effect on April 1, 1996 do not apply VAWA suspension of deportation cases initiated prior April 1, 1996 or judicial review of those cases. Improvements to the VAWA suspension of deportation made by subsequent Violence Against Women Act amendments as part of VAWA 2000, VAWA 2005, and VAWA 2013 and the VAWA confidentiality protections contained in IIRAIRA Section 384 (8. U.S.C. 1367) do apply as laws and procedural protections in the adjudication of VAWA suspension of deportation cases.

²³ INA 244(a)(3)(VII) (This section governs VAWA NACARA 203).

²⁴ INA 244(a)(3)(VII)(aa)(I) NACARA 203 (offering relief for El Salvadorans and Guatemalans who registered for ABC or filed for TPS).

²⁵ INA 244(a)(3)(VII)(aa)(II) NACARA 203 (offering relief for El Salvadorans and Guatemalans who filed for asylum before April 1, 1990).

²⁶ INA 244(a)(3)(VII)(aa)(V) NACARA 203 (offering relief for Eastern Europeans).

²⁷ This provision (DD) includes current immigrant spouses of abusive NACARA eligible, NACARA applicant and NACARA recipient spouses who have suffered or are currently suffering battering or extreme cruelty.

²⁸ INA 244(a)(3)(VII)(bb)(I) NACARA 203 (offering relief for El Salvadorans and Guatemalans who registered for ABC or filed for TPS).

²⁹ INA 244(a)(3)(VII)(bb)(II) NACARA 203 (offering relief for El Salvadorans and Guatemalans who filed for asylum before April 1, 1990).

³⁰ INA 244(a)(3)(VII)(bb)(V) NACARA 203 (offering relief for Eastern Europeans).

³¹ This is a reference to all of the NACARA categories El Salvadorans, Guatemalans, Eastern Europeans, VAWA suspension of deportation, VAWA NACARA and the under IIRAIRA 309(c)(5)(C)(i)(III) and over 21 year old (IIRAIRA 309(c)(5)(C)(i)(IV) children of each of these groups who are also eligible under NACARA.

³² 242(a)(2)(B) limits judicial review of denials of discretionary relief in removal proceedings.

(as in effect after the title III-A effective date) to other eligibility determinations pertaining to discretionary relief under this Act.'

(iii) CONSIDERATION OF PETITIONS. –In acting on a petition filed under subclause (VII)³³ of clause (i) the provisions set forth in section 204(a)(1)(H)³⁴ shall apply.

(iv) RESIDENCE WITH SPOUSE OR PARENT NOT REQUIRED. –For purposes of the application of clause (I)(VII),³⁵ a spouse or child shall not be required to demonstrate that he or she is residing with the spouse or parent in the United States.

(2) CONFORMING AMENDMENT- Subsection (c) of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; division C; 110 Stat. 3009-625) is amended by striking the subsection designation and the subsection heading and inserting the following:

“(c) TRANSITION FOR CERTAIN ALIENS- ’

(b) SPECIAL RULE FOR CANCELLATION OF REMOVAL- Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-625) is amended by adding at the end the following:

“(f) SPECIAL RULE FOR CANCELLATION OF REMOVAL-

“(1) IN GENERAL- Subject to the provisions of the Immigration and Nationality Act (as in effect after the title III-A effective date³⁶), other than subsections (b)(1),³⁷ (d)(1),³⁸ and (e)³⁹ of section 240A of such Act (but including section 242(a)(2)(B)⁴⁰ of such Act), the Attorney General may, under section 240A of such Act, cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States, if the alien applies for such relief, the alien is described in subsection (c)(5)(C)(i)⁴¹ **of this section including subsections (VI)⁴² and (VII),⁴³** and--

³³ VAWA NACARA

³⁴ VAWA’s any credible evidence rules apply to adjudications of VAWA NACARA cases.

³⁵ VAWA NACARA

³⁶ Effective Date: April 1, 1996

³⁷ INA Section 240A(b)(1) contains the requirements for a form of immigration relief known as 10-year cancellation of removal. To qualify immigrants must prove: 10 years continuous presence in the U.S.; good moral character; not be convicted of a criminal offense that would make the immigrant inadmissible under INA Section 212(a)(2), deportable under INA Section 237(a)(2) or deportable under INA Section 237(a)(3)(document fraud, failure to register); and that the immigrant’s removal would cause exceptional and extreme hardship to the alien’s U.S. citizen or lawful permanent resident spouse, parent or child.

³⁸ INA Section 240A(d)(1) (stops the clock on continuous presence when the immigrant is served with a notice to appear in an immigration court proceeding or when the immigrant has committed an offense or crime listed in INA 212(a)(2) that renders the immigrant inadmissible to the United States or removal from the United states on criminal grounds listed in INA Section 237(a)(2) or security related grounds of removal listed in INA section 237(a)(4)).

³⁹ Section 240A(E) (creates an annual cap of 4,000 on the maximum number of combined cancellation of removal and suspension of deportation cases that immigration judges can grant in a single year. Several forms of immigration relief for specific groups of immigrants are not subject to this annual limitation. Forms of immigration relief exempt from the cap are: NACARA Section 203 immigrants (This is a reference to all of the NACARA categories El Salvadorans, Guatemalans, Eastern Europeans, VAWA suspension of deportation, VAWA NACARA and the under (IIRAIRA 309(c)(5)(C)(i)(III) and over 21 year old (IIRAIRA 309(c)(5)(C)(i)(IV) children of each of these groups who are also eligible under NACARA) and immigrants who were in deportation proceedings prior to April 1, 1997 who applied for VAWA suspension of deportation).

⁴⁰ INA Section 242(a)(2)(B) (limits judicial review of denials of discretionary relief in removal proceedings).

⁴¹ This section covers the full list forms of immigration relief NACARA created or covered and extended: This is a reference to all of the NACARA categories: (I and II) El Salvadorans, Guatemalans, (V) Eastern Europeans, (VI) VAWA suspension of deportation, (VII)

`(A)⁴⁴ the alien--

`(i) is not inadmissible or deportable under paragraph (2)⁴⁵ or (3)⁴⁶ of section 212(a) or paragraph (2),⁴⁷ (3),⁴⁸ or (4)⁴⁹ of section 237(a) of the Immigration and Nationality Act and is not an alien described in section 241(b)(3)(B)(i)⁵⁰ of such Act;

`(ii) has been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date of such application;

`(iii) has been a person of good moral character during such period; and

`(iv) establishes that removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

`(B)⁵¹ the alien--

VAWA NACARA and the children under age 21 (IIRAIRA 309(c)(5)(C)(i)(III) and over 21 year old (IIRAIRA 309(c)(5)(C)(i)(IV) children of each of these groups who are also eligible under NACARA (I, II, V, VI, VII).

⁴² INA Section 244(a)(3) (governs VAWA suspension of deportation protections are and require three years continuous presence).

⁴³ VAWA NACARA; See I-881 Form Instructions, Instructions for Application for Suspension of Deportation or Special Rule Cancellation of Removal, DHS USCIS, pg. 3, <https://www.uscis.gov/i-881> (summarizing the VAWA suspension of deportation requirements as follows: "you show that you have had three years of continuous physical presence in the United states, that during those three years you were of good moral character and that you or your spouse, parent, or child who is a U.S. citizen or lawful permanent resident will experience extreme hardship if you are returned to your country").

⁴⁴ IIRAIRA Section 309(f)(1)(A) (amended by NACARA sets out several of the eligibility requirements that apply to 7-year NACARA applicants. It sets the application requirements for NACARA applicants applying based on (ii) 7 years continuous physical presence; (i) listing grounds of inadmissibility or deportability that would bar access to 7 year suspension of deportation or cancellation of removal under NACARA; (iii) good moral character requirement; and (iv) the extreme hardship requirement).

⁴⁵ INA 212(a)(2) (inadmissibility on criminal and related grounds).

⁴⁶ INA 212(a)(3) (inadmissibility on security and related grounds).

⁴⁷ INA Section 237(a)(2) (deportable due to criminal offenses).

⁴⁸ INA Section 237(a)(3) (deportable due to document fraud and failure to register).

⁴⁹ INA Section 237(a)(4) (deportable on security and related grounds).

⁵⁰ INA Section 241(b)(3)(B)(i)(deportable for participation in Nazi persecution, genocide, extrajudicial killing or other forms of persecution of others based on an individual's race, religion, nationality, membership in a particular social group or political opinion).

⁵¹ IIRAIRA Section 309(f)(1)(B) provides a form of NACARA immigration relief for NACARA applicants with criminal histories who would be eligible for NACARA with 10 years or more continuous physical presence with good moral character between filing for NACARA relief and back to the date immediately following the conviction or commission of an act that made the immigrant inadmissible or deportable on one of the following grounds:

- Inadmissible on criminal grounds (INA 212(a)(2)),
- Inadmissible on security related grounds (INA Section 212(a)(3)),
- Deportable due to criminal offenses (INA Section 237(a)(2)),
- Deportable due to document fraud or failure to register (INA section 237(a)(3)), or
- Deportable on security and related grounds under INA Section 237(A)(4).

To be eligible they must also demonstrate that:

- They are not deportable due to Nazi persecution, genocide, extrajudicial killing or as a perpetrator of persecution of others based on an individual's race, religion, nationality, membership in a particular social group or political opinion INA Section 241(b)(3)(B)(i), and
- That they have not been convicted of an aggravated felony listed in INA Section 101(a)(43);

To be granted NACARA the applicant would also need to prove that their deportation would cause exceptional and extremely unusual hardship to the immigrant applicant or to the applicant's spouse, parent, or child, who is a citizen of the United States or lawful permanent resident.

`(i) is inadmissible or deportable under section 212(a)(2),⁵² 237(a)(2)⁵³ (other than 237(a)(2)(A)(iii))⁵⁴, or 237(a)(3)⁵⁵ of the Immigration and Nationality Act;

`(ii) is not an alien described in section 241(b)(3)(B)(i)⁵⁶ or 101(a)(43)⁵⁷ of such Act;

`(iii) has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for removal;

`(iv) has been a person of good moral character during such period; and

`(v) establishes that removal would result in exceptional and extremely unusual hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

`(2) TREATMENT OF CERTAIN BREAKS IN PRESENCE-Section 240A(d)(2) shall apply for purposes of calculating any period of continuous physical presence under this subsection, except that the reference to subsection (b)(1) in such section shall be considered to be a reference to paragraph (1)⁵⁸ of this section.'

(c) MOTIONS TO REOPEN DEPORTATION OR REMOVAL PROCEEDINGS- Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-625), as amended by subsection (b), is further amended by adding at the end the following:

`(g) MOTIONS TO REOPEN DEPORTATION OR REMOVAL PROCEEDINGS-

(1)⁵⁹Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's

⁵² INA 212(a)(2)(inadmissibility on criminal and related grounds).

⁵³ INA Section 237(a)(2)(deportable due to criminal offenses).

⁵⁴ INA Section 237(a)(2)(A)(iii)(deportable for conviction of an aggravated felony after the time of admission to the United States).

⁵⁵ INA Section 237(a)(3) (deportable due to document fraud or failure to register).

⁵⁶ INA Section 241(b)(3)(B)(i) (deportable for participation in Nazi persecution, genocide, extrajudicial killing or other forms of persecution of others based on an individual's race, religion, nationality, membership in a particular social group or political opinion).

⁵⁷ INA Section 101(a)(43) (containing the full list of crimes that are under U.S. immigration laws considered aggravated felonies. It is important to note that many of the crimes listed as aggravated felonies under immigration laws are considered misdemeanors under state criminal laws).

⁵⁸ This section governs how continuous physical presence will be calculated for purposes of NACARA cases and applies to all NACARA Section 203 immigrants except VAWA suspension of deportation. (This is a reference to all of the NACARA categories El Salvadorans, Guatemalans, Eastern Europeans, VAWA NACARA and the under (IIRAIRA 309(c)(5)(C)(i)(III) and over 21 year old (IIRAIRA 309(c)(5)(C)(i)(IV) children of each of these groups who are also eligible under NACARA.) Section 240A(c)(2) states that an immigrant shall be considered to have failed to maintain continuous physical presence in the United States if the immigrant has departed from the U.S. for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days. VAWA 2000 amended these requirements to exclude absences related to the abuse the victim suffered. *See* Leslye E. Orloff and Faiza Chappell, Violence Against Women Act (VAWA) Suspension Of Deportation As Created in 1994 With VAWA 2000, And 2005 Amendments, VAWA Suspension Of Deportation, NIWAP, April 2, 2020, <http://niwaplibrary.wcl.american.edu/pubs/vawa-suspension-of-deportation-interliniated-statute>.

⁵⁹ This section set a deadline on the ability of NACARA applicants with prior deportation, exclusion, or removal orders issued against them to file motions to reopen in immigration court to ask the immigration judge to grant the applicant immigration relief under NACARA. This deadline has passed in the 1990's. However, the deadline does not apply to VAWA NACARA and VAWA cancellation of removal cases

conviction of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act)) subject to paragraph (2), any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act may file one motion to reopen removal or deportation proceedings to apply for cancellation of removal or suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of the Nicaraguan Adjustment and Central American Relief Act and shall extend for a period not to exceed 240 days.'

(2) ~~60~~There shall be no limitation on a motion to reopen removal or deportation proceedings in the case of an alien who is described in subclause (VI)⁶¹ or (VII)⁶² of subsection (c)(5)(C)(i). Motions to reopen removal or deportation proceedings in the case of such an alien shall be handled under the procedures that apply to aliens seeking relief under section 204(a)(1)(A)(iii)⁶³ of the Immigration and Nationality Act.

(d) Temporary Reduction in Diversity Visas-

(1) Beginning in fiscal year 1999, subject to paragraph (2), the number of visas available for a fiscal year under section 201(e) of the Immigration and Nationality Act shall be reduced by 5,000 from the number of visas available under that section for such fiscal year.

(2) In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which--

(A) one-half of the total number of individuals described in subclauses (I), (II), (III), and (IV) of section 309(c)(5)(C) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 who have adjusted their status to that of aliens lawfully admitted for permanent residence under the Nicaraguan Adjustment and Central American Relief Act as of the end of the previous fiscal year exceeds--

(B) the total of the reductions in available visas under this subsection for all previous fiscal years.

and to NACARA eligible immigrants and their family members who did not have removal, deportation or exclusion orders issued against them prior to September 30, 1996.

⁶⁰ This paragraph removes the deadlines and limitations on motions to reopen in VAWA suspension of deportation and VAWA NACARA cases and applies the procedural rules regarding motions to reopen that became law under VAWA.

⁶¹ VAWA suspension of deportation.

⁶² VAWA NACARA.

⁶³ VAWA self-petitioning statute. VAWA 2005 created special motion to reopen rules that govern VAWA deportation, exclusion and removal proceedings when the purpose of the motion is to allow an immigrant victim to file a VAWA self-petition, a VAWA suspension of deportation or VAWA cancellation of removal application or for VAWA NACARA. See Leslye E. Orloff and Faiza Chappell, Violence Against Women Act (VAWA) Suspension Of Deportation As Created in 1994 With VAWA 2000, And 2005 Amendments, VAWA Suspension Of Deportation, NIWAP, April 2, 2020, <http://niwaplibrary.wcl.american.edu/pubs/vawa-suspension-of-deportation-interliniated-statute>.

(e) Temporary Reduction in Other Workers' Visas-

(1) Beginning in the fiscal year following the fiscal year in which a visa has been made available under section 203(b)(3)(A)(iii) of the Immigration and Nationality Act for all aliens who are the beneficiary of a petition approved under section 204 of such Act as of the date of the enactment of this Act for classification under section 203(b)(3)(A)(iii) of such Act, subject to paragraph (2), visas available under section 203(b)(3)(A)(iii) of that Act shall be reduced by 5,000 from the number of visas otherwise available under that section for such fiscal year.

(2) In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which--

(A) the number computed under subsection (d)(2)(A), exceeds--

(B) the total of the reductions in available visas under this subsection for all previous fiscal years.

(f) EFFECTIVE DATE- The amendments made by this section to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 shall take effect as if included in the enactment of such Act.⁶⁴

For historical purposes no applications being accepted under the NACARA code section listed below:

SEC. 202. ADJUSTMENT OF STATUS OF CERTAIN NICARAGUANS AND CUBANS.

(a) ADJUSTMENT OF STATUS- (Filing deadline for applications April 1, 2000).

(1) IN GENERAL- Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien--

(A) applies for such adjustment before April 1, 2000; and

(B) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS- An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General renders a final

⁶⁴ The effective date of IIRAIRA is April 1, 1997.

administrative decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS-

(1) **IN GENERAL-** The benefits provided by subsection (a) shall apply to any alien who is a national of Nicaragua or Cuba and who has been physically present in the United States for a continuous period, beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under such subsection is filed, except an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any periods in the aggregate not exceeding 180 days.

(2) **PROOF OF COMMENCEMENT OF CONTINUOUS PRESENCE-** For purposes of establishing that the period of continuous physical presence referred to in paragraph (1) commenced not later than December 1, 1995, an alien--

(A) shall demonstrate that the alien, prior to December 1, 1995--

(i) applied to the Attorney General for asylum;

(ii) was issued an order to show cause under section 242 or 242B of the Immigration and Nationality Act (as in effect prior to April 1, 1997);

(iii) was placed in exclusion proceedings under section 236 of such Act (as so in effect);

(iv) applied for adjustment of status under section 245 of such Act;

(v) applied to the Attorney General for employment authorization;

(vi) performed service, or engaged in a trade or business, within the United States which is evidenced by records maintained by the Commissioner of Social Security; or

(vii) applied for any other benefit under the Immigration and Nationality Act by means of an application establishing the alien's presence in the United States prior to December 1, 1995; or

(B) shall make such other demonstration of physical presence as the Attorney General may provide for by regulation.

(c) STAY OF REMOVAL; WORK AUTHORIZATION-

(1) **IN GENERAL-** The Attorney General shall provide by regulation for an alien subject to a final order of deportation or removal to seek a stay of such order based on the filing of an application under subsection (a).

(2) **DURING CERTAIN PROCEEDINGS-** Notwithstanding any provision of the Immigration and Nationality Act, the Attorney General shall not order any alien to be removed from the United States, if the alien is in exclusion, deportation, or removal proceedings under any

provision of such Act and has applied for adjustment of status under subsection (a), except where the Attorney General has rendered a final administrative determination to deny the application.

(3) WORK AUTHORIZATION- The Attorney General may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an 'employment authorized' endorsement or other appropriate document signifying authorization of employment, except that if such application is pending for a period exceeding 180 days, and has not been denied, the Attorney General shall authorize such employment.

(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN-

(1) IN GENERAL- Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if—

(A) the alien is a national of Nicaragua or Cuba;

(B) *the alien —*

*(i) is the spouse, child, or unmarried son or daughter of an alien whose status is adjusted **or was eligible for adjustment** to that of an alien lawfully admitted for permanent residence under subsection (a), except that in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that they have *the son or daughter has* been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for adjustment under this subsection is filed; *or**

(ii) was, at the time at which an alien filed for adjustment under subsection (a), the spouse or child of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien that filed for adjustment under subsection (a);

(C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed;

(D) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply; and

(E) applies for such adjustment before April 1, 2000, **or, in the case of an alien who qualifies under subparagraph (B)(ii), applies for such adjustment during the 18-month period beginning on the date of enactment of the Violence Against Women and Department of Justice Reauthorization Act of 2005.**

(2) PROOF OF CONTINUOUS PRESENCE- For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), an alien--

(A) shall demonstrate that such period commenced not later than December 1, 1995, in a manner consistent with subsection (b)(2); and

(B) shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any period in the aggregate not exceeding 180 days.

(3) PROCEDURE – In acting on an application under this section with respect to a spouse or child who has been battered or subjected to extreme cruelty, the Attorney General shall apply section 204(a)(1)(H). 204(a)(1)(J).⁶⁵

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW- The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act; or

(2) aliens subject to removal proceedings under section 240 of such Act.

(f) LIMITATION ON JUDICIAL REVIEW- A determination by the Attorney General as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE- When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act.

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS- Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not

⁶⁵ INA Section 204(a)(1)(J) (“In acting on petitions filed under clause (iii)-(if the alien entered or intended to enter into marriage in good faith with a citizen and during the relationship the alien or child of alien has been battered or the subject of extreme cruelty perpetrated by the spouse or intended spouse) or (iv)-(the alien child who lives with the citizen or former citizen parent who lost status due to domestic violence and is the subject of battery or extreme cruelty) of subparagraph (A) or clause (ii)- (if the alien entered or wanted to enter into marriage in good faith with a Legal Permanent Resident and during the relationship the alien or child of alien has been battered or the subject of extreme cruelty perpetrated by the spouse or intended spouse) or clause (iii)-)-(the alien child who lives with the LPR or former LPR parent who lost status due to domestic violence and is the subject of battery or extreme cruelty) of subparagraph (B) “the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General”).

preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.