

**Comparison Chart of VAWA and Special Immigrant Juvenile Status (SIJS)<sup>1</sup>**

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	<b>Violence Against Women Act (VAWA) Self-Petition</b>	<b>Special Immigrant Juvenile Status (SIJS)</b>
<b>ELIGIBILITY</b>		
<b>Applicant</b>		
<b>Typical Recipients</b>	<p>The immigrant (or the immigrant’s child or step-child) has been battered or subjected to extreme cruelty by the immigrant’s:</p> <ul style="list-style-type: none"> <li>▪ U.S. citizen-               <ul style="list-style-type: none"> <li>○ Spouse</li> <li>○ Former spouse (within 2 years)</li> <li>○ Parent</li> <li>○ Step-parent</li> <li>○ Over 21 year old child, adopted child or step-child</li> </ul> </li> <li>▪ Lawful permanent resident               <ul style="list-style-type: none"> <li>○ Spouse</li> <li>○ Former spouse (within 2 years)</li> <li>○ Parent</li> <li>○ Step-parent</li> </ul> </li> </ul>	<p>The applicant must:</p> <ul style="list-style-type: none"> <li>• Be under 21 years old and unmarried (most jurisdictions will not declare a youth dependent of the court once they are 18 or older);<sup>2</sup></li> <li>• Have been abused, neglected, or abandoned by one or both parents;</li> <li>• Demonstrate that reunification with parent who abused, neglected or abandoned him/her is not viable;</li> <li>• Demonstrate that it is not in the best interest of the child to return to home country; and</li> <li>• Have a court order placing the child/juvenile under jurisdiction of a state juvenile, family, or probate court.</li> </ul>
<b>*Family Members Who May Qualify as Indirect Victims</b>	Not applicable	Not applicable
<b>Proof of Good Moral Character</b>	Required for self-petition	Not required
<b>Applicant's Criminal History</b>	<p>Any arrest,* conviction,* or otherwise criminal involvement* may make the applicant ineligible to file the VAWA self-petition.</p> <p>Many types of convictions may also bar access to lawful permanent residency based on an approved self-petition.</p>	<p>Criminal history involving drugs, prostitution, fraud, smuggling, or felonies may bar SIJS approval.</p>

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<sup>2</sup> State laws generally require that a child be under age 18 at the time he or she first is declared a juvenile court dependent. State laws vary as to how long a child can remain a juvenile court dependent once he or she has been declared a dependent. Some states end dependency at age 18, others extend it to age 19 (especially if the child must complete high school), and others potentially can extend dependency to age 21. Similarly, different states have different laws on how old a young person must be to enter or stay under juvenile court jurisdiction in a delinquency case.

<p><b>*Applicant’s Criminal History That Is Related to Domestic Violence Suffered</b></p>	<p>In determining good moral character as part of the VAWA self-petition adjudication, crimes related to the domestic violence may not bar victims from being found to have good moral character.</p> <p>Domestic violence convictions are deportable offenses that could also bar access to lawful permanent residency. A domestic violence victim with a conviction for domestic violence may be able to obtain a special domestic violence victim waiver if the battered immigrant was acting in self-defense; was found to have violated a protection order intended to protect the person; or committed, was arrested for, was convicted of, or pled guilty to committing a crime –</p> <ul style="list-style-type: none"> <li>▪ that did not result in serious bodily injury; and</li> <li>▪ where there was a connection between the crime and the person’s having been barred of subject to extreme cruelty</li> </ul>	<p>Not applicable</p>
<p><b>Criminal Activity Suffered by Applicant</b></p>		
<p><b>Qualifying Criminal Activity</b></p>	<p>Not applicable</p>	<p>Not applicable</p>
<p><b>Proof of Harm</b></p>	<p>Must show battery or extreme cruelty</p> <ul style="list-style-type: none"> <li>• Extreme cruelty includes forms of emotional abuse that do not have to rise to the level of physical violence, sexual violence or criminal activity.</li> </ul>	<p>Must show that the child has been abused, neglected, or abandoned by one or both parents.</p> <p>“Abuse, abandonment or neglect” includes behaviors and patterns of treatment and coercive control that are not limited to physical or sexual abuse and would constitute “extreme cruelty.”<sup>3</sup></p>
<p><b>Perpetrator</b></p>		
<p><b>Applicant's Relationship to Perpetrator</b></p>	<p>Applicant must have or had one of the following relationships with the abuser:</p> <ul style="list-style-type: none"> <li>▪ Spouse</li> <li>▪ Former spouse (must file within 2 years)</li> <li>▪ Parent of child victim</li> <li>▪ Step-parent of child victim</li> <li>▪ Parent abused by over 21-year-old son or daughter.</li> </ul>	<p>Applicant must be the perpetrator’s child.</p>
<p><b>*If Applicant Is/Was Married to Perpetrator</b></p>	<p>Applicant must show the couple was legally married in good faith (i.e. not solely to gain immigration status).</p>	<p>Applicant must be unmarried.</p>

<sup>3</sup> Leslye Orloff, Brittnay Roberts and Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, NIWAP (Oct. 13, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/Extreme-Cruelty-BIA-training-memo.pdf/view>

<b>Effect of Marriage for Child Applicant</b>	Cannot marry until the self-petition is approved.	Applicant must be unmarried.
<b>Requirement of Applicant and Perpetrator's Shared Residence</b>	Applicant must currently reside or have resided with the abuser at any point (no specific duration of residence required).	Not required
<b>Perpetrator's Immigration Status</b>	Abuser must be either a United States Citizen or a Lawful Permanent Resident spouse, former spouse, parent or step parent. The abuser may also be an over 21 year old son or daughter.	Any status (including undocumented).
<b>Cooperation with Law Enforcement Requirement</b>	Not required	Not required
<b>PROCESS</b>		
<b>What to File</b>	VAWA Self-Petition (Form I-360).	Form I-360 <sup>4</sup> (and Form I-485 Application for Lawful Permanent Residency Title: "Adjustment of Status" if the child is filing affirmatively).
<b>Where to File</b>	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).	VAWA Unit of Vermont Service Center of the Department of Homeland Security (DHS).
<b>Family Members Whom Applicant Can Include in His or Her Application</b>	If applicant is over 21: unmarried children under the age of 21 at the time of filing.  If applicant is under 21: children under the age of 21 at the time of filing	Cannot include family members. A child who immigrates as SIJS essentially ceases to be the "child" of his or her natural or prior adoptive parent who subjected the child to abuse, abandonment or neglect for immigration purposes. This means that the child who obtains lawful permanent residence through SIJS and later becomes a naturalized citizen will not be able to file an immigration application to confer any legal immigration status on the parent who abused, abandoned or neglected the parent, even when the parent's parental rights were not terminated. <sup>5</sup>
<b>Number of Visas Given Out / Year</b>	No limit	No limit
<b>Average Case Processing Times</b>	As of April 2014, 7 months.	As of April 2014, DHS states it takes 5 months.
	Prior to December 2013: research shows that processing times vary between 6-24 months from filing.	

<sup>4</sup> Form I-360 must be filed with the underlying custody order from family court, dependency order, and the child's translated birth certificate.

<sup>5</sup> In some cases where children want to help a non-offending parent to also obtain lawful immigration status, applying for U visa may be a better option. Moreover, an SIJS with lawful permanent residency can apply for citizenship in 5 years, and a U.S. citizen of at least 21 years of age would be able to file for her immediate family members, parents, and siblings.

<b>How Long Relief Lasts</b>	Indefinitely – must request Deferred Action every year	SIJS leads directly to lawful permanent residency.
<b>What Wait-List Approval Provides</b>	Not applicable	Not applicable
<b>What Approval Provides</b>	<p>Approval provides deferred action which:</p> <ul style="list-style-type: none"> <li>▪ Protects against removal/deportation</li> <li>▪ Provides basis for work authorization</li> <li>▪ May be renewed until self-petitioner is eligible to apply for lawful permanent residence.</li> <li>▪ Eligibility to apply for lawful permanent residency either <ul style="list-style-type: none"> <li>○ Immediately if the perpetrator is a citizen; or</li> <li>○ When the victim’s priority date becomes current if the perpetrator is a lawful permanent resident. As of April 2014 the wait times for a current priority date to be able to apply for lawful permanent residency were anywhere from 9 months to 2 years depending on the victim’s country of origin.</li> </ul> </li> </ul>	SIJS approval allows the applicant to apply for lawful permanent residency.
<b>BENEFITS</b>		
<b>Immigration Benefits</b>		
<b>Protection Against Deportation</b>	Upon filing, applicant is flagged as "384" in Department of Homeland Security's system as a VAWA confidentiality-protected case. This stops the Department of Homeland Security from taking any enforcement action against the victim, including detention and removal. Cannot rely on information provided by the perpetrator or their family member to harm the victim.	Upon filing, applicants are protected against deportation until their cases are decided.
<b>Applicant's Access to Work Authorization</b> <i>It is important to consider WA even for children under the legal working age as it provides eligibility to apply for an SSN</i>	If abuser is a United States Citizen: Employment authorization upon prima facie finding, provided the applicant is admissible and has jointly filed an application for lawful permanent residency (I-485) as an immediate relative of a U.S. citizen.	Applicants, who have submitted affirmative SIJS petitions and have also submitted an application for lawful permanent residency, are granted employment authorization while their cases are pending.
	If abuser is a Lawful Permanent Resident: Applicant receives employment authorization upon approval of VAWA petition.	Applicants who are in removal (deportation) proceedings and cannot obtain a work authorization until their SIJS application has been approved by USCIS and their application for lawful permanent residency is filed with the immigration judge.
	Form to file: Application for Employment Authorization (Form I-765) – fee waiver available.	Forms to file: Form I-485 “Adjustment of Status Application.” This is the application for lawful permanent residency. Additionally, the applicant will need to file an Application for Employment Authorization (Form I-765) – fee waivers are available.

<p><b>Waivers Available for Ineligibility Factors So That Victim Can Receive Lawful Permanent Residency</b></p>	<p>There is an exception to the public charge grounds of inadmissibility. There are a range of inadmissibility waivers that are available specifically for VAWA self-petitioners:</p> <ul style="list-style-type: none"> <li>• <i>Fraud</i> – may be waived if self-petitioner can show extreme hardship to self and/or children, spouse, and parents</li> <li>• <i>Immigration violations</i> – may be waived if self-petitioner can establish substantial connection between the immigration violation and the abuse</li> <li>• <i>Other crimes</i> – may affect the good moral character requirement, unless self-petitioner can show connection between the crime and the abuse suffered.</li> <li>• <i>Domestic violence victim waiver</i> – for self-defense; violation of protection order<sup>27</sup> intended to protect the victim; or committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury; and where there was a connection between the crime and the alien’s having been barred of subject to extreme cruelty</li> </ul>	<p><u>Grounds of inadmissibility that are statutorily waived:</u> public charge, misrepresentation (including false claim to U.S. citizenship), stowaways, smuggling/trafficking of people, being present without inspection, unlawful presence, being present without admission or parole</p> <p><u>For other grounds of inadmissibility, waivers are discretionary.</u> The applicant must show that the inadmissibility should be waived:</p> <ul style="list-style-type: none"> <li>• For humanitarian purposes, family unity, or when it is otherwise in the public interest.</li> <li>• Because of health related reasons (physical/mental disorder)</li> </ul> <p>No waiver for certain crimes involving moral turpitude, drug offenses, multiple criminal convictions, terrorist activities, genocide, torture, extrajudicial killing.</p>
<p><b>Applicant's Access to a Permanent Residency Card</b></p> <p><i>Also known as a "Green Card"</i></p>	<p>If abuser is a United States Citizen: eligible following approval if admissible.</p> <p>If abuser is a Lawful Permanent Resident and self-petitioner must wait until their priority date becomes current. Wait times vary by the victim’s country of origin and in April 2014 ranged from 9 months to 2 years.</p>	<p>Applicants can apply for permanent residency upon approval of SIJS application.</p>
<p><b>Access to Services Not Considered Public Benefits Open to All Immigrants<sup>6</sup></b></p>		
<p><b>Life and Safety Services<sup>7</sup></b></p>	<p>Eligible</p>	<p>Eligible</p>
<p><b>Transitional Housing</b></p>	<p>Eligible</p>	<p>Eligible</p>
<p><b>Emergency Medicaid</b></p>	<p>Eligible</p>	<p>Eligible</p>
<p><b>Healthcare from HHS-funded Community Clinics</b></p> <p><a href="http://www.HRSA.gov">www.HRSA.gov</a></p>	<p>Eligible</p>	<p>Eligible</p>

<sup>6</sup> Leslye Orloff, Aditi Kumar and Krisztina Szabo, *Public Benefits Toolkit*, NIWAP (March 2014) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/Public%20Benefits%20Toolkit%20FINAL%203%2024%2014%20leo.pdf/view> (Hereinafter “Public Benefits Toolkit”).

<sup>7</sup> For more information about the benefits available to all immigrants regardless of status, see Catherine Longville and Leslye E. Orloff, *Programs Open To Immigrant Victims And All Immigrants Without Regard To Immigration Status*, NIWAP (June 2014) available at <http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/Programs%20Open%20To%20All%20Immigrants%20Regardless%20of%20Status.pdf/view>.

<b>Assistance from a Legal Services Corporation Funded Program</b>	Eligible under <i>anti-abuse regulations</i> for “related legal assistance” including matters related to escaping abuse; ameliorating the effects of the abuse, preventing future abuse, prevention of or obtaining relief from battering or extreme cruelty.  Upon filing an application for lawful permanent residency based on VAWA, VAWA self-petitioners are eligible for all legal assistance offered with no relationship to the abuse required.	Eligible under anti-abuse regulations because “abuse, abandonment or neglect” includes behaviors and patterns of treatment and coercive control that are not limited to physical or sexual abuse and would constitute “extreme cruelty.” <sup>8</sup>
<b>Special Supplemental Nutrition Program for Women, Infants and Children (WIC)</b>	Eligible	Eligible
<b>Access to Federal and State Public Benefits<sup>9</sup></b>		
<b>General Access to Public Benefits</b>	VAWA self-petitioners who entered on or after 8/22/1996, are "qualified immigrants," but must wait 5 years before they can access federal means-tested benefits.  VAWA self-petitioners who entered the United States before 8/22/1996, are "qualified immigrants," and are eligible to receive federal public benefits and federal means-tested public benefits.	SIJS applicants are lawfully present for health care purposes and states have the option of providing subsidized health care to lawfully present children.  SIJS recipients are lawful permanent residents and qualified immigrants for public benefits purposes, but they must wait 5 years before they are eligible for federal means tested public benefits.  SIJS recipients are eligible for Title IV-E federal foster care funds and federal financial aid to go to college.
<b>Post-secondary Education</b>	Eligible as qualified immigrants for postsecondary grants and loans.	SIJS applicants and recipients are not able to file for FAFSA or other governmental scholarships, grants, or loans, until they become Lawful Permanent Residents. However, recipients may be eligible to apply for non-governmental, and state scholarships, grants, and loans. Recipients may also be eligible to receive in-state tuition in certain states.
<b>Public and Assisted Housing</b>	Eligible as qualified immigrants for Section 8 Subsidized Housing and Public and Assisted Housing.	Eligible upon receipt of Lawful Permanent Residency
<b>Child Care<sup>10</sup></b>	<u>Child Care Development Fund (CCDF)</u> : Children, who are self-petitioners or included in their parent’s self-petition upon receiving a prima facie determination are qualified immigrants, are eligible for CCDF child care as qualified immigrants	<u>Child Care Development Fund (CCDF)</u> : Children receiving lawful permanent residency through SIJS are qualified immigrants are eligible for CCDF child care.  <u>TANF Funded Child Care</u> : Varies by state. Depends on whether the state

<sup>8</sup> Leslye Orloff, Brittnay Roberts and Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, NIWAP (Oct. 13, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/Extreme-Cruelty-BIA-training-memo.pdf/view>

<sup>9</sup> This section highlights some of the public benefits available to qualified immigrants for a more complete list of benefits available see Public Benefits Toolkit, *supra* note 6.

<sup>10</sup> Benish Anver and Leslye E. Orloff, *Immigrant Crime Victim Child Care Access*, NIWAP (March 13, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

	<u>TANF Funded Child Care</u> : Varies by state. Depends on whether the state provides benefits for qualified immigrants during the 5 year bar.	provides benefits for qualified immigrants during the 5 year bar.
<b>State Public Benefits</b>	VAWA self-petitioners are qualified immigrants eligible for state funded benefits. Whether and which state funded benefits states provide to qualified immigrants varies by state and by benefit. <sup>11</sup>	SIJS recipients are qualified immigrants eligible for state funded benefits. Whether and which state funded benefits states provide to qualified immigrants varies by state and by benefit. <sup>12</sup>
<b>Driver's Licenses</b> <sup>13</sup>	Varies by state. In most states upon receipt of work authorization. Maine: Upon receiving a prima facie determination in a VAWA self-petitioning case	Varies by state. In most states upon receipt of work authorization. Maine: Evidence of a pending SIJS application.
<b>Access to Means-Tested Benefits</b> <sup>14</sup>		
<b>Temporary Assistance for Needy Families (TANF)</b>	Eligible as qualified immigrants to receive TANF after a 5-year bar. Some states provide state-funded TANF.	Eligible as qualified immigrants to receive TANF after a 5-year bar. Some states provide state-funded TANF.
<b>Food Stamps (SNAP)</b>	Eligible as qualified immigrants to receive SNAP after a 5-year bar. Children VAWA self-petitioners are eligible for SNAP.	Eligible
<b>Medicaid/ CHIP</b>	Eligible as qualified immigrants to receive after a 5-year bar. Medicaid or CHIP may be available depending on the state without a 5-year bar.  As qualified immigrants, VAWA self-petitioners may be able to receive subsidized health care in some states, most often for child health care and prenatal care.	Eligible upon filing the SIJS application as lawfully present children to access health care through the health care exchanges and are eligible for CHIP funded health care if available in their state of residence. <sup>15</sup>

<sup>11</sup> For an overview of public benefits available by state see Public Benefits Toolkit and NIWAP's state by state interactive demographics and benefits map available at <http://niwaplibrary.wcl.american.edu/public-benefits/public-benefits-tool-kit/Map%20Document%20backup%202.swf/view>.

<sup>12</sup> *Id.*

<sup>13</sup> Angela Baker and Leslye Orloff, *Acceptable Forms of Identification for State Drivers License/Identification Card*, NIWAP (March 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-issued-drivers-licenses-and-identification/Drivers-License-Access.pdf/view>

<sup>14</sup> For a full discussion of qualified immigrant access to federal means tested public benefits see Public Benefits Toolkit, *supra* note 6.

<sup>15</sup> For an overview of health care benefits available to lawfully present persons by state see Carly Erickson and Leslye E. Orloff, *Federal, Partnership, and State Exchanges That Provide State and State-Option Funded Medicaid or Medicaid-Like Services*, NIWAP (June 16, 2014) available at <http://niwaplibrary.wcl.american.edu/public-benefits/health-care/Affordable%20Care%20Act%20and%20Exchanges.pdf/view>.