

Annotated Section 214 of the Housing Act: 42 U.S. Code § 1436a – Restriction on Use of Public and Assisted Housing By Immigrants

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This document provides annotations and detailed descriptions for each of the forms of categories of immigrants listed in Section 214 of the Housing and Community Development Act of 1980 who are exempt from immigrant restrictions on housing programs covered by Section 214. Eligible immigrants include: lawful permanent residents, VAWA self-petitioners, VAWA cancellation of removal and VAWA suspension of deportation applicants, T visa recipients and certain T visa applicants, human trafficking victims granted continued presence, refugees, asylees, and certain other immigrants. Immigrant who benefit from each of the categories of immigration relief listed below are eligible to access Section 214 housing covered housing programs.¹ It is important to note that all immigrants who are eligible to access Section 214 housing programs are also eligible to access all other housing programs that are open to all immigrants without regard to immigration status including emergency shelter and transitional housing programs.²

(a) CONDITIONS FOR ASSISTANCE-- Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of any alien unless that alien is a resident of the United States and is—

¹ For a list of Section 214 covered housing programs see, National Housing Law Project, Federally Assisted Housing and Immigrant Eligibility Section 214 of the Housing and Community Development Act of 1980 (January 2018) <https://niwaplibrary.wcl.american.edu/pubs/nhlp-federally-assisted-housing-and-immigrant-eligibility-jan-2018-1>.

² See NIWAP and NHLP Webinar (February 22, 2017) Immigrant Access to Federally Assisted Housing <https://niwaplibrary.wcl.american.edu/february-22-2017-immigrant-access-federally-assisted-housing>; NIWAP, Three Federal Agencies Issue Joint Agency Letter On Shelters and Transitional Housing (August 12, 2016) <https://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing>; NASH, NIWAP, and Safe Housing Partnership, What Shelter And Rental Housing Assistance Are Available To Immigrant Survivors During Covid-19? (March 24, 2021) <https://niwaplibrary.wcl.american.edu/pubs/faq-covid-nash-niwap-safehousing-21>.

(1) an alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(15)³ and (20)⁴ of title 8, excluding, among others, alien visitors, tourists,

³ Lawful permanent residents are eligible for Section 214 housing under this provision. Immigrants gain lawful permanent residency in many ways including through marriage and the parent-child relationship. Immigrant spouses of US. citizens can receive lawful permanent residency based on an application filed by their citizen spouse. Since these cases are adjudicated relatively swiftly, immigrant spouses will first receive conditional two year residency. For housing and public benefits purpose conditional permanent residency is a form of and is treated the same as lawful permanent residency. At the end of the two year conditional residency the citizen and immigrant spouse jointly file a request to grant the immigrant spouse full lawful permanent residency. When the immigrant spouse has suffered battering or extreme cruelty in the marriage the immigrant spouse can file a Battered Spouse Waiver. Battered spouse waiver applicants are eligible for Section 214 housing to the same extent as lawful permanent residents but are eligible for the deeming exceptions as VAWA self-petitioners. Leslye E. Orloff, Annotated Statutes Related to Public Benefits Eligibility for Immigrant Survivors of Domestic Violence, Child Abuse, and Human Trafficking (October 31, 2021) <https://niwaplibrary.wcl.american.edu/pubs/annotated-qualified-immigrant-statutes-survivors>.

INA Section 101(a)(15) contains a list of forms of legal immigration status that provide immigrants with legal immigration status in the United States. Many of these forms of legal immigration status lead include paths to lawful permanent residency. Section 214 excludes from immigrant eligibility the forms of immigration relief have no path to lawful permanent residency because the immigrant was granted entry temporarily with no intention of abandoning their residence in a foreign country (e.g. immigrants granted visitor, tourist, diplomatic or student visas.) For a list of Section 101(a)(15) visas and other forms of immigration status that tracks which of these immigration statuses do and do not include a path to lawful permanent residency see, Leslye E. Orloff, Andrea Cavazos Carcamo, and Lucia Macias, Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children (April 17, 2013). <https://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus>

It is important to note that how an immigrant entered the U.S. and with what type of visa, parole, or permission to enter does not always control whether an immigrant may ultimately become a lawful permanent resident. immigrants who enter the U.S. with a form of immigration that does not lead to lawful permanent resident. An immigrant who entered the country on a temporary visa or undocumented may become eligible for a form of immigration status that includes a path to lawful permanent residency because they became a victim of domestic violence, child abuse, stalking, human trafficking or another crime in the U.S., because they married a U.S. citizen or lawful permanent resident; because their employer sought a visa for them that could lead to lawful permanent residency, because a new form of immigration relief was created in the U.S., because country conditions changed in their home country, or for other reasons.

⁴ INA Section 101(a)(20) ; 8 U.S.C. Section 1101(a)(20) The term “lawfully admitted for permanent residence” means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.” Spouses, former spouses, children and step-children abused by the U.S. citizen or lawful permanent resident spouse, former spouse, child, or step-child file VAWA self-petitions which provides them the lawful permanent residency that they would already have had but for the abuse. These applications are filed confidentially without their abusive spouse, former spouse, parent, or step-parent’s cooperation, knowledge or assistance.

HUD confirmed that VAWA self-petitioners can indicate they are in “satisfactory immigration status” when applying for assistance or continued assistance from all Section 214-covered housing providers.

diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;

(2) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of title 8;⁵

See, Eligibility of VAWA Self-Petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act of 1980 (December 15, 2016)

<https://niwaplibrary.wcl.american.edu/pubs/eligibility-of-vawa-self-petitioners-2016-12-15>. This memo also confirmed that VAWA self petitioners “refer to the categories of battered noncitizens seeking VAWA-related relief described in 8 U.S.C. § 1101(a)(51), 8 U.S.C. § 1641(c), 62 Fed. Reg. 61344, 61367 (Nov. 17, 1997), and other VAWA-related petitions or applications for lawful permanent resident status.” For description of the full list of VAWA self-petitioners covered see, Leslye E. Orloff, Annotated Violence Against Women Act (VAWA) Self-Petition Definition INA 101(a)(51) (October 31, 2021) <https://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-annotated-ina-101a51>. For an list battered immigrants and human trafficking victims covered by 8 U.S.C. § 1641(c) see, Leslye E. Orloff, Annotated Statutes Related to Public Benefits Eligibility for Immigrant Survivors of Domestic Violence, Child Abuse, and Human Trafficking (October 31, 2021) <https://niwaplibrary.wcl.american.edu/pubs/annotated-qualified-immigrant-statutes-survivors>. (This section describes that spouses, children and step-children of citizens receive VAWA protections when their spouse files a visa application for them I-130 and when they self-petition and extends benefits access protections to these victims with pending or approved immigration cases when the perpetrator of the abuse is either the spouse or parent or a member of the spouse or parent’s family residing in the household.) Details about VAWA battered immigrants provided benefits and housing access are contained in 62 Fed. Reg. 61344, 61367 (Nov. 17, 1997).

<https://niwaplibrary.wcl.american.edu/pubs/eligibility-of-vawa-self-petitioners-2016-12-15>. To date only the Office on Public and Indian Housing has issued a notice implementing verification procedures that apply in cases of the VAWA related battered immigrants referred to in the General Counsel’s Office memo. Since battered immigrants eligible for VAWA related immigration relief are eligible for all forms of housing that have Section 214 restrictions (including but not limited to housing voucher programs), until other divisions of HUD issue similar implementing memos, all agencies administering Section 214 related housing should follow the same procedures outlined in the Public and Indian Housing memo. These procedures were developed in collaboration and consultation with the U.S. Department of Homeland Security.

⁵ Persons who have a record of admission to the United States prior to January 1, 1972 who were granted lawful permanent residency under INA Section 249; 8 U.S.C. 1259.

(3) an alien who is lawfully present in the United States pursuant to an admission under section 1157 of title 8⁶ or pursuant to the granting of asylum (which has not been terminated) under section 1158 of title 8;⁷

(4) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 1182(d)(5) of title 8;⁸

(5) an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 1231(b)(3) of title 8;⁹

⁶ Immigrants admitted to the United States as refugees under INA Section 207; 8 U.S.C. 1157. The Trafficking Victims Protection Act authorized that victims of human trafficking who have been granted T visas (*See* 22 U.S.C. § 7105(b)(1)(A)) and victims of human trafficking with HHS certification letters are able to access federal and state public benefits including public and assisted housing and all other Section 214 housing to the same extent as refugees. HHS Office on Trafficking in Persons, Services Available to Survivors of Trafficking (July 8, 2020) <https://www.acf.hhs.gov/otip/victim-assistance/services-available-victims-trafficking>; There are two groups of human trafficking victims in addition to T visa holders who will receive HHS certification letters are adult and child victims of severe forms of sex and labor trafficking who have been granted continued presence or who have received bona fide determinations in their T visa application cases. HHS, Office on Trafficking in Persons, Victim Assistance Certification Letters (November 6, 2020) <https://www.acf.hhs.gov/otip/victim-assistance/certification>. The T visa regulations 8 C.F.R. 214.11(e) state the T visa applications receive bona fide determinations when they meet the following criteria: they properly filed a complete application that does not appear to be fraudulent; the application presents a prima facie case for eligibility, USCIS has completed a background check on the applicant and the T visa applicant is admissible to the U.S. or any inadmissibility ground in the victim's case is eligible for a waiver. Continued presence is a temporary form of legal immigration status granted to victims of human trafficking who have suffered severe forms of human trafficking and who are potential witnesses in human trafficking investigations or prosecutions. *See*, Immigration and Customs Enforcement, Center for Countering Human Trafficking, Continued Presence Resource Guide (July 2021) <https://niwaplibrary.wcl.american.edu/pubs/continued-presence-resource-guide-2021>. For more detailed information on the public benefits and services available to help adult and child victims of human trafficking *see*, HHS, Services Available to Victims of Human Trafficking: A Resource Guide for Social Services Providers (May 2012) <https://www.acf.hhs.gov/sites/default/files/documents/otip/trafficking-services.pdf>.

⁷ Immigrants granted asylum INA Section 208; 8 U.S.C. 1158.

⁸ Immigrants who were granted humanitarian parole. INA Section 212(d)(5); 8 U.S.C. 1182(d)(5) authorizes the U.S. Department of Homeland Security to exercise its discretion to grant parole for "urgent humanitarian reasons or significant public benefit" to any immigrant applying for admission to the United States. If DHS determines that there are compelling reasons in the public interest DHS may grant humanitarian parole persons who may also qualify for relief as a refugee under INA Section 207; 8 U.S.C. 1157.

⁹ Withholding of deportation is the pre-1996 version of withholding of removal under INA Section 241(b)(3); 8 U.S.C. 1231(b)(3) which prohibits the removal of an immigrant to a country where their life or freedom would be threatened in that country because of the immigrant's race, religion, nationality, membership in a particular social group or political opinion. For a discussion of withholding of removal and how it differs from asylum *see*, American Immigration Council, Fact Sheet: The Difference Between Asylum and Withholding of Removal (October 6, 2020) <https://www.americanimmigrationcouncil.org/research/asylum-withholding-of-removal>.

(6) an alien lawfully admitted for temporary or permanent residence under section 1255a of title 8;¹⁰

(7) an alien who is lawfully resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia (48 U.S.C. 1901 note) and Palau (48 U.S.C. 1931 note) while the applicable section is in effect: Provided, That, within Guam any citizen or national of the United States shall be entitled to a preference or priority in receiving financial assistance before any such alien who is otherwise eligible for assistance.¹¹

¹⁰ Pre-January 1, 1982 entrants to the U.S. who were authorized by INA Section 245A; 8 U.S.C. 1255a to apply for and be granted lawful permanent residence.

¹¹ Citizens of the Freely Associated States (the Marshall Islands, the Federated States of Micronesia, and Palau) are eligible to receive housing assistance under Section 8, public housing, and other Section 214 programs while lawfully residing in the United States, its territories and possessions. However, while residing in Guam, immigrants from the Marshall Islands, the Federated States of Micronesia and Palau are not entitled to a preference over United States citizens or nationals. See, 24 C.F.R. 5.506(c).