

Filing to Remove Conditions for Legal Permanent Residency for Battered Spouses: Choose Battered Spouse Waiver Over Divorce

By: Gwennyth Szabo and Leslye Orloff
May 23, 2023

In 1986, Congress passed the Immigration Marriage Fraud Amendments (IMFRA) to deter sham or fraudulent marriages in cases where the marriage to a U.S. citizen or legal permanent resident served as the basis for an immigrant spouses' application for lawful permanent residence.¹ In other words, the purpose of the IMFRA was to prevent marriages when the sole purpose of the marriage was to obtain lawful permanent residence and then apply for U.S. citizenship. IMFRA presumes as a matter of law that a marriage is fraudulent until proven otherwise. Under IMFRA, an immigrant spouse receives a conditional green card valid for two years if the immigrant spouse has been found to be married in good faith, but the marriage has been for less than two years from date the U.S. Citizenship and Immigration Services (USCIS) approved the family-based visa petition filed by the citizen or lawful permanent resident spouse.²

To prove that the marriage was in good faith, the citizen or lawful permanent resident (LPR) spouse and the immigrant spouse were required to file a joint petition with USCIS to remove the condition on the immigrant spouse's green card within ninety days of the expiration of the conditional green card.³ Only after the joint petition is approved does the immigrant spouse receive a full, unrestricted lawful permanent residency card.

For battered immigrant spouses, this law trapped victims in abusive relationships because their access to lawful permanent residence depended on the joint filing with their abusive U.S. citizen or lawful permanent resident spouse. If the immigrant spouse failed to file the joint petition with their abusive spouse to remove the condition on their green card, they could face removal from the United States.⁴ To address how this law dangerously trapped immigrant survivors in abusive marriages, Congress passed the Immigration Reform Act (IRA) of 1990

¹ Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537.

² See INA § 216(a)(1); 8 U.S.C. § 1186a(a)(1)(2018); Veronica Tobar Thronson, *Affidavits Are Forever: Public Charge, Domestic Violence, and the Enforceability of Immigration Law's Affidavit of Support*, 41 Yale L. & Pol'y Rev. 69, 113 (2022) <https://ylpr.yale.edu/affidavits-are-forever-public-charge-domestic-violence-and-enforceability-immigration-laws-affidavit>.

³ See INA § 216(c)(1)(A); INA § 216(d)(2)(A); 8 U.S.C. §§ 1186a(c)(1)(A), (d)(2)(A) (2018); Veronica Tobar Thronson, *Affidavits Are Forever: Public Charge, Domestic Violence, and the Enforceability of Immigration Law's Affidavit of Support*, 41 Yale L. & Pol'y Rev. 69, 113 (2022) <https://ylpr.yale.edu/affidavits-are-forever-public-charge-domestic-violence-and-enforceability-immigration-laws-affidavit>.

⁴ See INA §§ 216(c)(2)(A)-(B); 8 U.S.C. §§ 1186a(c)(2)(A)-(B) (2018); Veronica Tobar Thronson, *Affidavits Are Forever: Public Charge, Domestic Violence, and the Enforceability of Immigration Law's Affidavit of Support*, 41 Yale L. & Pol'y Rev. 69, 113 (2022) <https://ylpr.yale.edu/affidavits-are-forever-public-charge-domestic-violence-and-enforceability-immigration-laws-affidavit>.

creating the Battered Spouse Waiver⁵ and allowing waiver of the joint filing requirement when the marriage was entered into in good faith and one of four other conditions were met:⁶

- (1) Battered Spouse Waiver: the marriage was entered in good faith by the immigrant spouse, but the immigrant spouse or child was battered or subjected to extreme cruelty by the U.S. citizen or lawful permanent resident spouse or parent during the marriage.⁷
- (2) Divorce: the marriage was entered in good faith by the immigrant spouse but terminated for reasons other than death by no fault of the immigrant spouse;⁸
- (3) Extreme Hardship: the marriage was entered in good faith by the immigrant spouse, and extreme hardship would result to that immigrant spouse if the immigrant spouse were removed from the United States;⁹
- (4) Bigamous Citizen Spouse: the intended marriage was entered in good faith, and after the marriage ceremony, the bigamous citizen spouse subjected the immigrant intended spouse, who did not know about the bigamy, to battering or extreme cruelty.¹⁰

While the Battered Spouse Waiver included in the Immigration Reform Act of 1990 was intended to make it easier for immigrant survivors to leave their abusers, the application for a waiver originally required extensive evidence, including evidence of a good faith marriage,¹¹ extreme mental cruelty,¹² and imposed a range of other evidentiary burdens, including some that violated the protections of VAWA confidentiality.¹³ To remove these burdensome requirements imposed by the Immigration and Naturalization Service's Battered Spouse Waiver regulations,

⁵ See Cecilia Olavarria and Moira Fisher Preda, *Additional Remedies Under VAWA: Battered Spouse Waiver*, Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (NIWAP), (Updated July 1, 2014) <https://niwaplibrary.wcl.american.edu/pubs/ch3-5-battered-spouse-waiver>; NIWAP, BATTERED SPOUSE WAIVER WEBINAR AND TRAINING MATERIALS, (November 18, 2021) <https://niwaplibrary.wcl.american.edu/bsw-training-materials>.

⁶ See INA § 216(c)(4); 8 U.S.C. § 1186a(c)(4) (2018); Veronica Tobar Thronson, *Affidavits Are Forever: Public Charge, Domestic Violence, and the Enforceability of Immigration Law's Affidavit of Support*, 41 Yale L. & Pol'y Rev. 69, 113 (2022) <https://ylpr.yale.edu/affidavits-are-forever-public-charge-domestic-violence-and-enforceability-immigration-laws-affidavit>.

⁷ INA § 216(c)(4)(C); 8 U.S.C. § 1186a(c)(4)(C).

⁸ INA § 216(c)(4)(B); 8 U.S.C. § 1186a(c)(4)(B).

⁹ INA § 216(c)(4)(A); 8 U.S.C. § 1186a(c)(4)(A); USCIS, Policy Manual, Vol. 9, Part B, Chapter 1 Purpose and Background, Section B Background, Footnote 4 [9 USCCIS-PM B.1(B) Footnote 4], <https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-1> (“under some provisions, discretionary relief may be available upon a showing of extreme hardship to the applicants themselves. These include... waivers of requirements for removing conditions on lawful permanent resident status under INA 216(c)(4)(A)”).

¹⁰ INA § 216(c)(4)(D); 8 U.S.C. § 1186a(c)(4)(D).

¹¹ See 8 U.S.C. § 1186a(c)(2)(4) (2018); Cecilia Olavarria and Moira Fisher Preda, *Additional Remedies Under VAWA: Battered Spouse Waiver*, Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants, NIWAP, 3 (Updated July 1, 2014) <https://niwaplibrary.wcl.american.edu/pubs/ch3-5-battered-spouse-waiver>.

¹² 8 C.F.R. §§ 216.5(e)(3)(iv)-(vii) (overruled by the Violence Against Women Act's “any credible evidence” rules in DEP'T OF JUSTICE, *Memorandum For Terrance M. O'Reilly re: “Extreme Hardship” and Documentary Requirements Involving Battered Spouses and Children*, at 7-8 (October 16, 1998) <https://niwaplibrary.wcl.american.edu/pubs/virtue-memo-on-any-credible-evidence-memo>).

¹³ 8 C.F.R. §§ 216.5(e)(3)(viii) (overruled by VAWA confidentiality 8 U.S.C. § 1367).

Congress, as part of the Violence Against Women Act of 1994 (VAWA),¹⁴ created the VAWA “any credible evidence” requirements, which requires USCIS to accept any credible evidence that abused immigrant spouses filing Battered Spouse Waivers and VAWA self-petitions can safely provide to prove each element of their immigration case.¹⁵

The “any credible evidence” rules were necessary because many immigrant spouses are unable to obtain the specific forms of evidence that USCIS typically prefers and requires as part of applications for immigration benefits.¹⁶ For battered immigrant spouses and their children, obtaining this evidence can be dangerous and/or not possible safely, particularly for those who flee the abusive relationship, leaving important documents behind with their abuser, leaving no paper trail, without access to medical records, and fearful to make police reports.¹⁷ VAWA’s “any credible evidence” rules¹⁸ make it easier for battered immigrant spouses who were granted conditional residency to file for Battered Spouse Waivers that require proof of good faith marriage and battering¹⁹ or extreme cruelty.²⁰

However, despite enactment of VAWA “any credible evidence” rules in 1994 and VAWA confidentiality laws in 1996,²¹ the old statutorily overruled battered spouse regulations

¹⁴ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40001-702, 108 Stat. 1796, 1902-55 (1994).

¹⁵ See Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, § 40701(a)(3), 40702(a) and 40703(b), 108 Stat. 1955 (codified as amended at 8 U.S.C. 1186a(c)(4)).

¹⁶ See 8 C.F.R. § 204.2(e)(1)(i)(E); Leslye E. Orloff, Kathryn C. Isom, and Edmundo Saballos, *Mandatory U-visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act’s Immigration Protections and its “Any Credible Evidence” Rules – A Call for Consistency*, NIWAP (September 10, 2010)

<https://niwaplibrary.wcl.american.edu/pubs/call-for-consistency-mandatory-undermines-vawa> (including detailed information on the legislative history, purpose, and more information on VAWA’s any “credible evidence” rules); 3 USCIS-PM D.5(B)(2)(“For VAWA self-petitioners, the abusive family member may control access to or destroy necessary documents in furtherance of the abuse, which may prevent the applicant from being able to submit specific documentation. Other self-petitioners may have fled the abusive situation without taking important documents with them. Congress created the “any credible evidence” standard for VAWA filings in recognition of these evidentiary challenges. Officers should be aware of and consider these issues when evaluating the evidence.”).

¹⁷ Veronica Tobar Thronson, *Affidavits Are Forever: Public Charge, Domestic Violence, and the Enforceability of Immigration Law’s Affidavit of Support*, 41 Yale L. & Pol’y Rev. 69, 114 (2022) <https://ylpr.yale.edu/affidavits-are-forever-public-charge-domestic-violence-and-enforceability-immigration-laws-affidavit>.

¹⁸ See also, 3 USCIS-PM D.5(B)(2) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-5#S-B-2>. (discussing the VAWA “any credible evidence” rules as applied to cases of VAWA self-petitions, which are the same legal standards applicable in Battered Spouse Waiver cases).

¹⁹ See also 3 USCIS-PM D.2(C) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (discussing proof of good faith marriage as applied to cases of VAWA self-petitions, which are the same legal standards applicable in Battered Spouse Waiver cases).

²⁰ See 8 U.S.C. § 1186a(c)(2)(4) (2018); Cecilia Olavarria and Moira Fisher Preda, *Additional Remedies Under VAWA: Battered Spouse Waiver*, Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants, NIWAP, 3 (Updated July 1, 2014) <https://niwaplibrary.wcl.american.edu/pubs/ch3-5-battered-spouse-waiver> (including evidence checklists); see also 3 USCIS-PM D.2(E) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (discussing battering or extreme cruelty in detail as applied to cases of VAWA self-petitions which is the same legal standards that are applicable in battered spouse waiver cases).

²¹ See generally Alina Husain, Daliana Gomez Garcia, and Leslye E. Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy*, NIWAP (Updated June 7, 2022) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

were never updated and remain in the code of federal regulations.²² This has created confusion in the field resulting in many immigration attorneys opting to take what appears to be the easiest route and file for removal of the condition based on divorce, rather than through the Battered Spouse Waiver. It is important to note that the requirement to prove a good faith marriage is the same for both hardship waivers based on divorce and for Battered Spouse Waivers. Battered Spouse Waiver applicants must additionally prove battering or extreme cruelty.

The decision to seek waiver of the joint filing requirement through divorce rather than through the Battered Spouse Waiver has significant implications for battered immigrant spouses. It is strongly recommended that attorneys screen applicants for hardship waivers for battering or extreme cruelty. For all clients who reveal that they are abused immigrant spouses, the correct legal path in the client's best interests is to apply for the Battered Spouse Waiver.

Filing based on Battered Spouse Waiver has the following advantages for abused immigrant spouses, to which the victim loses access if they file for removal of conditions based on divorce:

- (1) Naturalization in three instead of five years;
- (2) Greater access to more public benefits because the battered spouse waiver adjudication results in an exemption from public benefits program deeming rules; and
- (3) Exemption from the public charge ground of inadmissibility.

Attorneys and victim advocates can use the *Trauma Informed – Structured Interview Questionnaires for Immigration Cases (SIQI)*,²³ which contains lists of questions that will help attorneys and victim advocates interview clients gather documentation of battering or extreme cruelty needed for a victims' Battered Spouse Waiver application. This tool is useful both for screening and to support evidence collection for the Battered Spouse Waiver case. NIWAP also has evidence check lists that can assist in documenting good faith marriage²⁴ and battering or extreme cruelty.²⁵

²² See 8 C.F.R. pt. 216 <https://niwaplibrary.wcl.american.edu/pubs/8-cfr-216-annotated-for-overruled-provisions> (an analysis of which parts of the battered spouse waiver regulations have been overruled and which remain in effect).

²³ See Mary Ann Dutton, et. al., *Trauma Informed Structured Interview Questionnaire for Immigration Cases (SIQI)*, NIWAP (Updated April 27, 2023) <https://niwaplibrary.wcl.american.edu/pubs/siqi-trauma-informed-tool>; Krisztina Szabo, et. al., *Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma Informed Approach*, NIWAP (April 25, 2023) <https://niwaplibrary.wcl.american.edu/pubs/advocates-attorneys-tool-trauma-informed>.

²⁴ See CALIFORNIA COALITION AGAINST SEXUAL ASSAULT (NOW VALOR US) AND NIWAP, DOCUMENTS IN SUPPORT OF GOOD FAITH MARRIAGE, <https://niwaplibrary.wcl.american.edu/pubs/evidence-good-faith-marriage>; NIWAP, EVIDENCE LIST: IMMIGRANT VICTIMS APPLYING FOR VAWA SELF-PETITIONING, (2013) <https://niwaplibrary.wcl.american.edu/pubs/evidence-checklist-vawaselfpetition>.

²⁵ See NIWAP, EVIDENCE LIST: IMMIGRANT VICTIMS APPLYING FOR VAWA SELF-PETITIONING, (2013) <https://niwaplibrary.wcl.american.edu/pubs/evidence-checklist-vawaselfpetition>.

I. A Battered Spouse Waiver Recipient May Naturalize in Three Years Instead of Five Years

Spouses of U.S. citizens may file for naturalization in three years after they are granted lawful permanent residence.²⁶ Generally, if the marriage between the immigrant spouse and the citizen spouse is terminated by divorce or annulment, the immigrant spouse loses the ability to naturalize in three years and must wait five years to naturalize.²⁷ However, Battered Spouse Waiver recipients qualify for an exception to the five-year wait period and may naturalize in three years.²⁸ As a result of this exception, an abused immigrant spouse of a U.S. citizen who divorced or separated from their abusive citizen spouse and gained lawful permanent residence as a Battered Spouse Waiver recipient, can naturalize in three years, but the same abused spouse who was granted a divorce hardship waiver cannot and must wait five years.²⁹ Spouses of U.S. citizens who are battered or subjected to extreme cruelty may escape their abusers while preserving their path to U.S. citizenship because Battered Spouse Waiver survivors are not required to demonstrate that they resided with the U.S. citizen abuser during the three years since they attained lawful permanent residence.³⁰ Battered Spouse Waiver recipients should use Form N-400 to file for naturalization³¹ and follow the form instructions³² as modified by the instruction provided by USCIS in the Fact Sheet Naturalization for VAWA Lawful Permanent Residents.³³

II. Deeming Does Not Apply to Battered Spouse Waiver Recipients Allowing Them to Qualify for More Public Benefits

Whether an abused immigrant spouse of a U.S. citizen or lawful permanent resident qualifies for state or federal public benefits can depend upon whether the abused immigrant is exempt from sponsor deeming rules. All spouses of U.S. citizens or lawful permanent residents who were granted conditional green cards were married spouses who financially sponsored them for lawful permanent residency because the spouse was required to file an affidavit of support.³⁴ For public benefits income eligibility purposes, “deeming” refers to the procedure of calculating

²⁶ 8 C.F.R. §§ 319.1(b)(2)(i), 319.2(c). *See also*, 12 USCIS-PM G.2(C) <https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-2>.

²⁷ *See* Rafaela Rodrigues, Zachary Perez, and Leslye Orloff, *Divorce and Immigration Status Bench Card*, NIWAP, 7 (December 21, 2021) <https://niwaplibrary.wcl.american.edu/pubs/divorce-bench-card>.

²⁸ INA §319(a); 8 U.S.C. § 1430(a); USCIS, *Classification of Classes of Applicants Eligible for Naturalization under Section 319(a) of the Immigration and Nationality Act (INA), as amended by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)*, Pub. L. 106-386, (January 27, 2005)

<https://niwaplibrary.wcl.american.edu/pubs/virtue-memo-on-any-credible-evidence-memo>.

²⁹ USCIS, NATURALIZATION FOR VAWA LAWFUL PERMANENT RESIDENTS, (September 21, 2022)

<https://niwaplibrary.wcl.american.edu/pubs/naturalization-vaawa-lprs>.

³⁰ USCIS, NATURALIZATION FOR VAWA LAWFUL PERMANENT RESIDENTS, (September 21, 2022)

<https://niwaplibrary.wcl.american.edu/pubs/naturalization-vaawa-lprs>.

³¹ DEP'T OF HOMELAND SECURITY, APPLICATION FOR NATURALIZATION, FORM N-400, (Expires 11/30/2025)

<https://niwaplibrary.wcl.american.edu/pubs/n-400instr>.

³² DEP'T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION FOR NATURALIZATION, FORM N-400, (Expires 11/30/2025) <https://niwaplibrary.wcl.american.edu/pubs/n-400instr>. *See* Gwenyth Szabo, Faiza Chappell, and Leslye E. Orloff, NIWAP, 4 (May 19, 2023) <https://niwaplibrary.wcl.american.edu/pubs/fee-waiver-guide> (explaining that the N-400 Form is eligible for fee waivers and how to apply for the waiver).

³³ USCIS, NATURALIZATION FOR VAWA LAWFUL PERMANENT RESIDENTS, (September 21, 2022)

<https://niwaplibrary.wcl.american.edu/pubs/naturalization-vaawa-lprs>.

³⁴ *See* Sarah Hampton, et al., *Affidavits of Support and Enforceability Bench Card*, NIWAP, 8 (September 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/affidavits-of-support-bench-card>.

income eligibility that requires combining an immigrant’s income with that of the immigrant’s “sponsor” for the purpose of determining the immigrant’s financial eligibility for a state or federal means-tested public benefit.³⁵

Battered immigrant spouses of U.S. citizens and lawful permanent residents who gain their full lawful permanent residence through a joint application filed by both spouses, the divorce, or the extreme hardship waivers will be subject to sponsor deeming as long as the affidavit of support remains in effect, which can last indefinitely.³⁶

In contrast battered immigrant spouses who file for Battered Spouse Waivers are qualified for a 12 month exemption from deeming.³⁷ This exemption from sponsor deeming applies to federal means-tested public benefits, including Supplemental Security Income (SSI), Non-Emergency Medicaid, Food Stamps, and Temporary Aid to Needy Families (TANF).³⁸ Once the victim’s Battered Spouse Waiver application has been adjudicated, and USCIS has found that the victim has been battered or subjected to extreme cruelty, this finding qualifies as judicial or administrative finding, allowing the abused immigrant spouse to extend the deeming exception permanently.³⁹

Some states offer victims of abuse and domestic violence more access to public benefits than non-victims. For example, in New Jersey, Battered Spouse Waiver recipients would qualify for state-funded TANF and TANF-funded childcare as abused immigrants. However, other spouses of U.S. citizens who gained their green cards through their spouses or the divorce hardship waiver would face a five-year bar to accessing TANF and TANF-funded childcare.⁴⁰ To determine whether battered immigrant spouses who file for Battered Spouse Waivers will have greater access to state or federally funded public benefits, refer to NWIAP’s screening tools and comprehensive charts for assessing an immigrant survivor’s eligibility for public benefits.⁴¹

³⁵ Catherine Longville and Leslye Orloff, *Public Benefits: What is “Deeming” and What Are its Exception*, NIWAP, 1 (January 13, 2015) <https://niwaplibrary.wcl.american.edu/pubs/deeming-fact-sheet>.

³⁶ Veronica Tobar Thronson, *Affidavits Are Forever: Public Charge, Domestic Violence, and the Enforceability of Immigration Law’s Affidavit of Support*, 41 *Yale L. & Pol’y Rev.* 69, 113 (2022) <https://ylpr.yale.edu/affidavits-are-forever-public-charge-domestic-violence-and-enforceability-immigration-laws-affidavit>.

³⁷ 8 U.S.C. § 1631(f); 7 C.F.R. § 273.4(c)(3)(v); See Soraya Fata, Leslye E. Orloff, and Monique Drew, *Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, NIWAP, 23 (July 1, 2014) <https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims> (citing 8 U.S.C. § 1631(f); Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (November 17, 1997)) (“Battered immigrants with I-864 affidavits of support submitted after December 5, 1997 are explicitly exempted from the I-864 deeming rules for 12 months”); Catherine Longville and Leslye Orloff, *Public Benefits: What is “Deeming” and What Are its Exceptions*, NIWAP, 3 (January 13, 2015) <https://niwaplibrary.wcl.american.edu/pubs/deeming-fact-sheet> (battered immigrant waiver applicants with older I-134 affidavits of support will generally also be eligible for this exemption).

³⁸ See Catherine Longville and Leslye Orloff, *Public Benefits: What is “Deeming” and What Are its Exception*, NIWAP, 3 (January 13, 2015) <https://niwaplibrary.wcl.american.edu/pubs/deeming-fact-sheet>.

³⁹ 8 U.S.C. § 1631(f)(1)(B); Catherine Longville and Leslye Orloff, *Public Benefits: What is “Deeming” and What Are its Exception*, NIWAP, 4 (January 13, 2015) <https://niwaplibrary.wcl.american.edu/pubs/deeming-fact-sheet>.

⁴⁰ Daniel Enos, et. al., *Access to State-Funded Public Benefits in New Jersey for Survivors, Based on Immigration Status*, NIWAP, 1-3 (Updated September 4, 2022) <https://niwaplibrary.wcl.american.edu/pubs/new-jersey-benefits>

⁴¹ NIWAP, ALL STATE PUBLIC BENEFITS CHARTS AND INTERACTIVE PUBLIC BENEFITS MAP, (2022) <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

III. Battered Spouse Waiver Recipients Are Exempt from Public Charge

Public charge ground of inadmissibility refers to the barring of a foreign national from obtaining lawful permanent resident status if they are likely to become a public charge, meaning primarily dependent on government subsistence, as demonstrated by either receiving public cash assistance for income maintenance or long-term institutionalization at government expense.⁴² The Violence Against Women Reauthorization Act of 2013⁴³ exempted immigrant crime victims who pursue immigration relief through VAWA self-petitioning, Battered Spouse Waiver, VAWA cancellation of removal, VAWA suspension of deportation, U visa, and T visa from public charge.⁴⁴ The public charge ground of inadmissibility does not apply, based on statutory and regulatory authority, to VAWA self-petitioners.⁴⁵ The Immigration and Nationality Act defines VAWA self-petitioners to include Battered Spouse Waiver applicants and recipients.⁴⁶

This public charge inadmissibility exemption applies to the survivors' application, granted forms of immigration relief for lawful permanent residency, and any other immigration benefit. As a result, immigrant survivors can seek and receive publicly funded cash assistance, healthcare, and/or other benefits for themselves and their children without any public charge concerns.⁴⁷ When battered immigrant spouses of U.S. citizens or lawful permanent residents receive their lawful permanent residence through a joint petition to remove conditions or through the divorce or extreme hardship waivers, they will not be exempt from public charge, leaving them vulnerable to the immigration consequences of the public charge ground of inadmissibility.

IV. Best Practices

Best practices necessitate that all spouses of U.S. citizens and lawful permanent residents who have been granted conditional permanent residency and considering hardship waivers from the joint petition requirement be screened for battering or extreme cruelty. Absent facts and circumstances precluding an immigrant survivor spouse from obtaining a Battered Spouse Waiver, it is best to file for removal of conditions based on the Battered Spouse Waiver. The Battered Spouse Waiver provides battered immigrant spouses with the enhanced protections with swifter access to naturalization, greater public benefits access, and exemption from public charge inadmissibility. Attorneys who are concerned that their client's Battered Spouse Waiver may not be granted can file two separate hardship waiver applications: one for the Battered Spouse Waiver and a second based on divorce. Filing separately will help ensure the immigrant survivor receives the correct Green Card coding indicating that they received their Green Card as a Battered Spouse Waiver VAWA self-petitioner.

⁴² 8 C.F.R. § 212.21(a).

⁴³ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54.

⁴⁴ INA § 212(a)(4)(E)(i); 8 U.S.C. § 1182(a)(4)(E)(i); 8 C.F.R. § 212.23(a)(20). *See also* Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472, 55514 (Sept. 9, 2022) (codified at 8 C.F.R. pts. 103, 212, 213, 245) <https://niwaplibrary.wcl.american.edu/pubs/dhs-final-public-charge-rule-2022>.

⁴⁵ 8 C.F.R. § 212.23(a)(20); INA § 212(a)(4)(E)(i); 8 U.S.C. § 1182(a)(4)(E)(i); *See also* Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472, 55514 (Sept. 9, 2022) (codified at 8 C.F.R. pts. 103, 212, 213, 245) <https://niwaplibrary.wcl.american.edu/pubs/dhs-final-public-charge-rule-2022>.

⁴⁶ 8 U.S.C. § 1101(a)(51)(C); INA § 216(a)(4)(C); 8 U.S.C. § 1186a(c)(4)(C).

⁴⁷ *See* NIWAP, PUBLIC CHARGE AND DEEMING RULE EXEMPTIONS FOR IMMIGRANT SURVIVORS AND THEIR CHILDREN ELIGIBLE: NEW RULE PUBLISHED, (September 2022) <https://niwaplibrary.wcl.american.edu/public-charge-deeming>.