

Preparing the VAWA Self-petition and Applying for Residence¹

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Introduction

The Violence Against Women Act of 1994² created VAWA self-petitioning which is an immigration law remedy designed to offer protection for immigrants who have been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouses, former spouses, parents, stepparents, or by their U.S. citizen adult children or stepchildren. VAWA self-petitions offer immigration protections to a broad range of immigrant survivors including immigrant survivors of domestic violence and child abuse providing certain noncitizen family members of abusive U.S. citizens and lawful permanent residents the ability to self-petition for immigrant relief.³ VAWA self-petitioning allows these abused immigrant family members listed above to confidentially file their own petition without their abusive U.S. citizen or lawful permanent resident family members knowledge, help or agreement.⁴ The self-petition asks that the abused immigrant family member be granted work authorization, protection from deportation and the ability to apply for and be granted lawful permanent residence in the United States. The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all survivors⁵ without regard to the victim's gender identity. VAWA 2013 expanded the definition of underserved populations to include sexual orientation

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² Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40001-702, 108 Stat. 1796, 1902-55 (1994).

³ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 1 – PURPOSE AND BACKGROUND, SECTION A – PURPOSE [3 USCIS-PM D.1(A)] (Last updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-1>. United States Citizenship and Immigration Services Policy Manual 1(A) (Hereinafter USCIS-PM 1(A)).

⁴ For more information on this topic, visit <http://niwaplibrary.wcl.american.edu/vawa-confidentiality>.

⁵ In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in most cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore, we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim.

and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity.⁶

This chapter provides practical tips for filing a self-petition under the Violence Against Women Act of 1994 (VAWA) as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,⁷ VAWA 2000,⁸ VAWA 2005⁹ and VAWA 2013.¹⁰ VAWA 2005 and the 2013 U.S. Supreme Court decision striking down provisions of the Defense of Marriage Act (DOMA)¹¹ expanded Attorneys and advocates unfamiliar with the complex changes that have occurred with VAWA over the years should seek further assistance before helping victims file a self-petition.¹² This chapter is not an exhaustive list of recommendations,¹³ but rather a guide to filing a VAWA self-petition. Before filing a self-petition, review the “VAWA Red-Flags”.¹⁴ If your client has any one of the inadmissibility red-flags, contact an immigration attorney¹⁵ or technical assistance provider¹⁶ with significant experience representing immigrant victims in VAWA cases.

This guide provides information on the following VAWA self-petition topics listed below.

- Eligibility Requirements for Filing a Self-Petition

⁶ Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4 (PDF), 127 Stat. 54, 110 (March 7, 2013). (The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – “actual or perceived gender-related characteristics.”)

⁷ Pub. L. No. 104-208 Div. C, 110 Stat. 3009-546 (1996) [hereinafter IIRIRA].

⁸ Victims of Trafficking and Violence Protection Act of 2000 (VAWA 2000), Pub. L. 106-386, 114 Stat. 1464 (October 28, 2000).

⁹ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162 (PDF), 119 Stat. 2960, 3053 (January 5, 2006); Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments, See Pub. L. 109-271 (PDF), 120 Stat. 750, 762 (August 12, 2006). Hereinafter these two laws are collectively referred to as VAWA 2005.

¹⁰ Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4 (PDF), 127 Stat. 54, 110 (March 7, 2013).

¹¹ On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (United States v. Windsor, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child’s immigrant parent is or was married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse’s gender.

¹² Reading the statutes and regulations is not enough. Statutes have overturned regulations, some new regulations are still pending, and policy directives fill in important gaps.

¹³ New attorneys and advocates are strongly encouraged to seek additional information on self-petitions from the National Immigrant Women’s Advocacy Project (info@niwap.org) or the Advanced Special Immigrant Survivors Technical Assistance (ASISTA) project (questions@asistaonline.org). Expert referrals are available through NIWAP at (202) 274-4457 or niwap@wcl.american.edu.

¹⁴ VAWA “Red Flags” (July 16, 2015) <https://niwaplibrary.wcl.american.edu/pubs/vawa-red-flags>

¹⁵ See, NIWAP’s Directory of Directory of Programs With Experience Serving Immigrant Victims <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>

¹⁶ For technical assistance on VAWA self-petition cases and other forms of immigration relief for immigrant survivors, contact the National Immigrant Women’s Advocacy Project, American University, Washington College of Law. info@niwap.org or (202) 274-4457.

- General Filing Procedures and Practice Pointers
- The Self-Petitioner's Affidavit
- Affidavits from Witnesses and Advocates
- Checklist of Suggested Evidentiary Documents
- Obtaining Lawful Permanent Residence under VAWA

Collaboration between immigration attorneys and domestic violence/sexual assault advocates is vital to a successful VAWA self-petition.¹⁷ Advocates can assist victims in collecting and organizing documentation that will help immigration officials understand the type and extent of battery or extreme cruelty that gave rise to the VAWA self-petition.

This chapter is geared towards advocates and attorneys with little or no immigration law experience. Immigration attorneys looking for more information should contact the National Immigrant Women's Advocacy Project at 202-274-4457, info@NIWAP.org; or visit NIWAP's website at <https://niwaplibrary.wcl.american.edu/>.¹⁸

HISTORY OF THE VIOLENCE AGAINST WOMEN ACT AND SELF-PETITIONING

VAWA, which was enacted as part of the Violent Crime Control Act of 1994, was the first piece of federal legislation in the United States specifically designed to help curb domestic violence.¹⁹ In enacting VAWA, Congress' clear, overarching intent was to strengthen the protections available to battered women, as well as to expand collaboration and cooperation between battered women's support services and the criminal and civil justice systems.

VAWA recognized that immigration laws were being used as tools of power and control over immigrant victims of domestic violence. It also included special protections for immigrants abused by U.S. citizen or lawful permanent resident spouses or parents.²⁰ In many cases, the legal immigration status of non-citizen victims depends upon their relationships to their U.S. citizen or lawful permanent resident abusers.²¹ Abuse often includes various forms of battering, extreme cruelty²² and includes sexual assault. For example: rape, forced or coerced sexual contact, sexual exploitation, molestation, child abuse, and forced prostitution.²³ Abusers use their power over

¹⁷ Pendleton and Block, *Applications for Immigration Status Under the Violence Against Women Act; from the IMMIGRATION AND NATIONALITY LAW HANDBOOK* (Randy P. Auerbach ed., 2001-02).

¹⁸ Technical assistance for experienced immigration attorneys is also available from ASISTA 860-758-0733; questions@asistahelp.org and <https://asistahelp.org/>

¹⁹ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40001-702, 108 Stat. 1796, 1902-55 (1994).

²⁰ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 1 – PURPOSE AND BACKGROUND, Section B – BACKGROUND [3 USCIS-PM D.1(B)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-1> (Because the family-based immigration process requires U.S. citizens and lawful permanent residents to petition for their noncitizen family member, immigration law historically before VAWA gave citizens and lawful permanent residents have control over their spouse, child or parent's immigration case process).

²¹ H.R. REP. NO. 103-395 at 26-27 (1993).

²² USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION E – SUBJECTED TO BATTERY OR EXTREME CRUELTY, SUBSECTION 1 – BATTERY AND EXTREME CRUELTY [3 USCIS-PM D.2(E)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (providing a list of acts of extreme cruelty). For a detailed discussion of extreme cruelty see *Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases* (September 12, 2015) <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>. For lists of factors including coercive control that constitute or contribute to extreme cruelty under U.S. immigration laws see p. 20 table 6 SPARC Judicial Officer Guide: Responding to Stalking (July 5, 2022) <https://niwaplibrary.wcl.american.edu/pubs/sparc-judicial-guide-for-stalking>

²³ 3 USCIS-PM 2(E)(1) (describing the broad range of abusive actions and criminal activities committed against family members that constitute battery under VAWA self-petitioning laws).

their spouse's, children's, or parent's (of an over 21-year-old US citizen) immigration status to control, threaten, isolate, harass, and coerce the immigrant victims. The battered spouse, child, or elderly parent would likely be deterred from taking action to protect herself (such as seeking a civil protection order, filing criminal charges, or calling the police) because of the threat or fear of deportation by the immigration officials.²⁴ Sexual assault within a marriage is a crime in every state in the United States.²⁵ Victims of marital sexual assault who come from other countries may not know that this is criminal behavior in the United States.²⁶ Abusers may play upon this lack of knowledge about legal protections in the U.S. to isolate, further abuse, and prevent the victim (or their family) from seeking help from the authorities.

VAWA contains provisions that limit the ability of an abuser to misuse United States immigration laws, immigration officials, and law enforcement agencies to threaten and control their immigrant spouse or child.²⁷ Specifically, VAWA remedies this situation by enabling battered immigrants to attain *lawful permanent residence* (a “green card”) without the cooperation of their abusive spouse or parent.²⁸ In providing for relief, VAWA includes provisions by which noncitizen spouses, former spouses, children, stepchildren and parents (when the abuser is their over 21 year old son or daughter) who have suffered battering or extreme cruelty can obtain lawful permanent residence including VAWA self-petitions, VAWA cancellation of removal, and VAWA suspension of deportation. These provisions ensure that immigrant victims of domestic violence have access to lawful immigration status without having to depend upon the cooperation or participation of their batterer.

VAWA reauthorizations in 2000, 2005 and 2013 included provisions designed to restore and expand access to a variety of legal protections for battered immigrants by remedying immigration law obstacles standing in the path of battered immigrants seeking to free themselves from abusive relationships that had not been addressed in the first VAWA. For example, VAWA self-petitioning includes adults who are abused by their U.S. citizen children.²⁹ Likewise, it ensures that children who were abused do not lose their chance to self-petition as they grow older (they now have until age 25 to file).³⁰ VAWA 2005 ensures that a survivor who files a VAWA self-petition, or receives any other form of VAWA immigration relief, cannot later file for immigration relief on the abuser's behalf. It also includes increased confidentiality protections

²⁴ H.R. REP. NO. 103-395 at 26-27 (1993).

²⁵ Raquel Kennedy Bergen, *Marital Rape: New Research and Directions*, VAWnet (Feb. 2006), <https://vawnet.org/material/marital-rape-new-research-and-directions> (“On July 5, 1993, marital rape became a crime in all 50 states, under at least one section of the sexual offense codes. In 20 states, the District of Columbia, and on federal lands there are no exemptions from rape prosecution granted to husbands. However, in 30 states, there are still some exemptions given to husbands from rape prosecution.”); *Statutory Compilation Rape and Sexual Assault Laws*, AEQUITAS: THE PROSECUTOR’S RESOURCE ON VIOLENCE AGAINST WOMEN, 98 (Last Updated May 2012) <https://evawintl.org/wp-content/uploads/StatutoryCompilation-RapeandSexualAssaultLaws.pdf>.

²⁶ The Department of Homeland Security’s Council on Combatting Gender-Based Violence created a pamphlet that is available in multiple language that explaining that perpetrators of sexual violence as it is defined in the United States can be current or former partners. See, Council on Combatting Gender-Based Violence, Gender-Based Violence (GBV) (October 20, 2022) <https://www.dhs.gov/blue-campaign/publication/gender-based-pamphlets-and-flyers>.

²⁷ 3 USCIS-PM D.1(B) (With the passage of VAWA, Congress created a path for domestic violence and abuse to independently petition for themselves, or self-petition, for immigrant classification).

²⁸ *Id.*

²⁹ Immigration and Nationality Act of 1952 § 204(a)(1)(A)(vii) [hereinafter INA], 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).

³⁰ INA § 204(a)(1)(D)(v), 8 U.S.C. § 1154(a)(1)(D)(v) (2000).

for those who self-petition.³¹ The following section provides a brief overview the VAWA self-petition.³²

VAWA Self-Petitions

Certain immigrants may obtain lawful permanent resident status (a green card) without the participation or cooperation of their United States citizen or legal permanent resident abusive spouse, parent, or over 21-year-old U.S. citizen child by filing a VAWA self-petition.³³ Use the VAWA Self-petitioning flow charts (adult, child, and elder)³⁴ to help you determine your client's and their children's eligibility for a self-petition. Self-petitions were created by Congress as an alternate safe route to lawful permanent residence, for victims of violence who were eligible for a green card but would have to rely on an abusive U.S. citizen or lawful permanent resident family member to file the application with DHS.³⁵ VAWA created a route to lawful permanent residency for victims, which was safe and confidential, that they could pursue without their abusive family member's knowledge or cooperation. Attaining lawful permanent residency through a VAWA self-petition is a two-step process. First, an eligible applicant must file a VAWA self-petition, which must be approved by the Department of Homeland Security (DHS) formerly known as the Immigration and Naturalization Service (INS). Second, the applicant must apply for lawful permanent residence either through the "adjustment of status" process in the United States or at a consulate abroad.

WHO IS ELIGIBLE TO FILE A VAWA SELF-PETITION?

Under the Violence Against Women Act, certain abused spouses, children, parents abused by their over 21-year-old U.S. citizen children, or parents of abused children can file their own petitions to obtain lawful permanent resident status.³⁶ These victims can file in a way that is confidential and without the abuser's cooperation if the abuser is a U.S. citizen or lawful permanent resident. Examples of individuals covered by VAWA include:

- Abused spouses or former spouses of U.S. citizens or lawful permanent residents may file a VAWA self-petition. They may also include their children, even if the children are not abused or are not related to the U.S. citizen or the lawful permanent resident³⁷

³¹ 8 U.S.C. § 1367(a)-(d) (2000). The VAWA confidentiality statute is not part of the Immigration and Nationality Act.

³² For more information on the battered immigrant provisions of VAWA 2000 see LEGAL MOMENTUM, SECTION BY SECTION CHART OF THE BATTERED IMMIGRANT PROVISIONS OF VAWA 2000 (2000).

<https://niwaplibrary.wcl.american.edu/pubs/nowldef-section-by-section-summary-va-wa-2000-immigration>

³³ 3 USCIS-PM 1(B) (defining a self-petitioner as an individual who independently petitions for immigrant status).

³⁴ VAWA Self-Petitioning Flow Charts (June 19, 2019) <https://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioning-intro-and-flow-charts-pdf>.

³⁵ *Id.* (Some U.S. citizens and lawful permanent residents use their control over this process as a tool to further abuse the noncitizen, threatening to withhold or withdraw the petition to control, coerce, and intimidate their family members).

³⁶ 3 USCIS-PM 2(A)(Self-petitioners must file a Form I-360 and submit evidence to establish, by a preponderance of the evidence, that they meet the general eligibility requirements outlined). *See also* INA 204(a). *See* 8 CFR 204.1(a)(3). *See* 8 CFR 204.2(c)(1). *See* 8 CFR 204.2(c)(1). Although 8 CFR 204.2(c)(1) and 8 CFR 204.2(e)(1) require self-petitioners to demonstrate extreme hardship to themselves or their children if deported; that they reside in the United States at the time of filing; and that their shared residence with the abuser takes place in the United States, the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (PDF), 114 Stat. 1464 (October 28, 2000) removed these as eligibility requirements and supersedes this part of the regulation. *See* Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (PDF), 108 Stat. 1796, 1902 (Sept. 13, 1994).

³⁷ INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii) (2000). Children included in their parent's VAWA self-petition are known as derivative children. To be included in the parent's self-petition, derivative children must be under twenty-one at the time of filing. These children are "derivatives" or "derivative beneficiaries" because they derive a benefit from the parent's application for legal immigration status.

- Abused children of a U.S. citizen or lawful permanent resident may file a VAWA self-petition.³⁸
- Spouses or former spouses (whether abused or not) whose children are abused by their U.S. citizen or lawful permanent resident spouse may apply for themselves.³⁹
- Parents who are victims of elder abuse by a U.S. citizen son or daughter are eligible.⁴⁰
- Battered spouse waiver applicants,⁴¹
- VAWA Cuban adjustment applicants,⁴²
- VAWA HRIFA (Haitian) applicants,⁴³ and
- VAWA NACARA applicants (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners, under VAWA 2005⁴⁴

WHAT ARE THE REQUIREMENTS FOR ESTABLISHING ELIGIBILITY FOR A VAWA SELF-PETITION?⁴⁵

A self-petitioning spouse must satisfy **seven requirements** to establish eligibility for a VAWA self-petition.⁴⁶

³⁸ INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000). A self-petitioning child must prove he or they are the child (natural, step, or adopted) of a citizen or lawful permanent resident. See *Arguijo v. USCIS*, 991 F.3d 736 (7th Cir. 2021). Self-petitioning stepchildren may still file if the parent and stepparent are divorced.

³⁹ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION B – QUALIFYING RELATIONSHIP, SUBSECTION 2 – SELF-PETITIONING SPOUSE [3 USCIS-PM D.2(B)(2)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (generally, to establish a qualifying relationship, self-petitioning spouses must have a legally valid marriage to their abusive U.S. citizen or lawful permanent resident at the time the self-petition is filed). INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii) (2000).

⁴⁰ INA § 204(a)(1)(A)(vii); See also “Introduction to Immigration Relief” in this manual for more information.

⁴¹ INA § 216(c)(4)(C); INA § 101(a)(51)(C); See also Leslye E. Orloff et al., Chapter 6: *Introduction to Immigration Relief for Immigrant Victims of Domestic Violence and Sexual Assault and Glossary of Terms*, in Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault (2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-1-imm-relief-victims-domestic-violence> (defining battered spouse waivers).

⁴² INA § 101(a)(51)(D); See Leslye E. Orloff et al., Chapter 6: *Introduction to Immigration Relief for Immigrant Victims of Domestic Violence and Sexual Assault and Glossary of Terms*, in Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault (2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-1-imm-relief-victims-domestic-violence> (defining VAWA Cuban Adjustment Act eligible applicants (VAWA CAA)).

⁴³ INA § 101(a)(51)(E); See Leslye E. Orloff et al., Chapter 6: *Introduction to Immigration Relief for Immigrant Victims of Domestic Violence and Sexual Assault and Glossary of Terms*, in Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault (2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-1-imm-relief-victims-domestic-violence> (defining VAWA Haitian Refugee Immigration Fairness Act eligible applicants (VAWA HRIFA)).

⁴⁴ INA § 101(a)(51)(F) and (G); See Leslye E. Orloff et al., Chapter 6: *Introduction to Immigration Relief for Immigrant Victims of Domestic Violence and Sexual Assault and Glossary of Terms*, in Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault (2013), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-1-imm-relief-victims-domestic-violence> (defining VAWA Nicaraguan Adjustment and Central American Relief Act eligible applicants (VAWA NACARA)).

⁴⁵ For more information on evidence to prove VAWA cases, please consult VAWA DOCUMENTARY EVIDENCE MEMO. <https://niwaplibrary.wcl.american.edu/pubs/doc-req-vawa-cases>.

1. Relationship to the abuser:⁴⁷

- **Proof of Marital Relationship:**⁴⁸ Generally, self-petitioning spouses can demonstrate the existence of a marital relationship with:
 - A valid marriage certificate;
 - Common law marriage announcements or certificates,;
 - Affidavits and photos of a wedding ceremony;
 - Any credible evidence demonstrating a common law marriage if no certificate or announcement is available in states where common law marriages may be contracted;
 - Any other credible evidence to establish a marital relationship.⁴⁹
 - For example, a protection order or court order in a custody case that contains findings that a marriage exists.

Furthermore, if the self-petitioner or US citizen or lawful permanent resident spouse was previously married, evidence must be submitted to establish that all prior marriages were legally terminated.⁵⁰ A self-petitioning child must prove that they are the natural child, stepchild, or adopted child of a citizen or lawful permanent resident.⁵¹ A self-petitioning parent must prove a parental relationship to their U.S. citizen son or

⁴⁶ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION A – GENERAL OVERVIEW OF ELIGIBILITY REQUIREMENTS [3 USCIS-PM D.2(A)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (Self petitioners must file a self-petition (Form I-360) and submit evidence to establish, *by a preponderance of the evidence*, that they meet the general eligibility requirements for VAWA self-petitioners); *see also*, INA 204(a); *see* 8 C.F.R. 204.1(a)(3). *See* 8 CFR 204.2(c)(1). *See* 8 CFR 204.2(e)(1). Although the 1996 VAWA self-petitioning regulations 8 CFR 204.2(c)(1) and 8 CFR 204.2(e)(1) require self-petitioners to demonstrate extreme hardship to themselves or their children if deported; that they reside in the United States at the time of filing; and that their shared residence with the abuser takes place in the United States, the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (PDF). 114 Stat. 1464 (Oct. 28, 2000) removed these as eligibility requirements and supersedes this part of the 1996 regulation.

⁴⁷ 3 USCIS-PM D.2(A)(General Eligibility Requirements for VAWA Self-Petitioners Table). The discussion of evidence found at 8 CFR 103.2(b)(2)(iii) and 8 CFR 204.1(f)(1) regarding self-petitions filed under INA 204(a)(1)(A)(iii) and (iv) and INA 204(a)(1)(B)(ii) and (iii) is applicable to self-petitions filed by abused parents of U.S. Citizens sons or daughters under INA 204(a)(1)(A)(vii). For more information see the USCIS Policy Manual 3 USCIS-PM D.5(B)(2).

⁴⁸ There are two circumstances in which VAWA self-petitioners will have to provide additional evidence to prove the validity of their marriage to their U.S. citizen or lawful permanent resident spouse in order to for their VAWA self-petition to be approved. If the self-petitioner was in removal proceedings when they married their abusive citizen or lawful permanent resident spouse, they will need to obtain a good faith marriage exemption. *See*, USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION C – MARRIAGE RELATED PROHIBITIONS ON SELF-PETITION APPROVAL, SUBSECTION 1 - SELF-PETITIONING SPOUSES – MARRIAGE WHILE IN REMOVAL PROCEEDINGS [3 USCIS-PM D.3(C)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3> (Providing a detailed explanation of the process and the types of evidence the self-petitioner can submit to gain approval of a good faith marriage exception). VAWA self-petitioners whom USCIS believes committed prior marriage fraud are barred from having their VAWA self-petitions approved. *See*, 3 USCIS-PM D.3(C)(2) (Describing how these cases are adjudicated and opportunities that must be provided self-petitioners to rebut evidence of prior marriage fraud).

⁴⁹ 3 USCIS-PM D.2(B)(2) (USCIS generally considers a marriage as legally valid according to the laws of the place where the marriage was celebrated. However, if a marriage is valid in the country where celebrated but considered contrary to US public policy, the marriage is not recognized for immigration purposes. Bigamist and polygamist marriages and child marriages are examples).

⁵⁰ *See* INA 204(a)(1)(A)(iii)(II)(aa)(BB). *See* INA 204(a)(1)(B)(ii)(II)(aa)(BB); 3 USCIS-PM D.2(B)(2) (If the abusive U.S. citizen or lawful permanent resident spouse's marriages were not legally terminated, however, abused immigrant self-petitioners may continue to be eligible as intended spouses. These protections help immigrant victims who unknowingly married U.S. citizens or lawful permanent residents who were bigamists.).

⁵¹ INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000).

daughter.⁵² When the marriage to the abuser occurred while the victim was in removal proceedings, VAWA self-petitioners are eligible to request an exemption from this bar to attaining legal immigration status based on the marriage.⁵³

If the self-petitioner is currently not married to the abuser by reason of the abuser's bigamy, death, or divorce, the self-petitioner may still qualify if they can prove that:

- They believed that they have legally married the abuser, but the marriage was invalid due to their abuser's bigamy or polygamy.⁵⁴ Abused spouses who did not know they married a bigamist need to provide evidence that their marriage ceremony was actually performed.⁵⁵ The self-petitioner must establish that they believed that: a legal marriage was created, a marriage ceremony was performed, the elements of a legal marriage were met, and the apparent marriage is not legitimate solely because of the other preexisting marriage of their abusive citizen or lawful permanent resident spouse.⁵⁶
- They were the spouse of a U.S. citizen who died within the past two years.⁵⁷ The self-petitioner must prove that they were the spouse of an abusive citizen and that their spouse died within the past two years. If a self-petitioning spouse, child, or parent has a pending self-petition at the time of the death, the death does not impact the petitioner's eligibility for the pending self-petition to be approved. Also, death following approval of the VAWA self-petition will not lead to revocation of the approved petition and the self-petitioner is able to apply for and have their application for lawful permanent residency approved despite the death of the abusive spouse, parent, son or daughter. Self-petitioners must notify USCIS of the death of the qualifying relative and submit evidence of the death, such as a death certificate.⁵⁸ It is important to note that a child is not eligible for self-petition if they fail to file for immigration status prior to a U.S. citizen parent's or stepparent's death.⁵⁹

⁵² INA § 204(a)(1)(A)(vii), 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).

⁵³ 3 USCIS-PM D.3(C)(1) (To be granted the exemption the self-petitioner must provide clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, their marriage was not entered into to circumvent immigration laws, and no fee or other consideration was given for the filing of the self-petition. Alternatively, the self-petitioner may show that they resided outside of the U.S. for a 2-year period beginning after the date of the marriage). For more information about the good faith marriage requirement for self-petitioning spouses, see 3 USCIS-PM D.2(C) (Self-Petitioning Spouses Only).

⁵⁴ 3 USCIS-PM D.2(B)(2) (If the U.S. citizen or lawful permanent resident spouse's marriage was not legally terminated, self-petitioners may continue to be eligible as intended spouses).

⁵⁵ H.R. CONF. REP. NO. 106-939, at 112-13 (2000) (Conf. Rep.).

⁵⁶ 3 USCIS-PM D.2(B)(2) (if a self-petitioner was previously married, they must submit evidence to demonstrate that all their prior marriages were legally terminated; however, evidence of the termination of the abusive citizen's prior marriages is not required.)

⁵⁷ INA 204(1)(A)(iii)(II)(aa)(CC)(aaa). See INA 204(a)(1)(A)(vii); USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION D - DEATH OF THE U.S. CITIZEN, LAWFUL PERMANENT RESIDENT, OR SELF-PETITIONER, SUBSECTION 1 - ABUSIVE U.S. CITIZEN'S DEATH [3 USCIS-PM D.3(D)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3>.

⁵⁸ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION D - DEATH OF THE U.S. CITIZEN, LAWFUL PERMANENT RESIDENT, OR SELF-PETITIONER [3 USCIS-PM D.3(D)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3>.

⁵⁹ 3 USCIS-PM D.3(D)(1) (Impact of the U.S. Citizen Relative's Death on the Self-Petition table).

- They were divorced from the abuser within the past two years.⁶⁰ The self-petitioner must demonstrate that they were legally divorced from the abuser within the past two years, and that there was a connection between the divorce and the battery or extreme cruelty by the abusive spouse.⁶¹ However, the legal ground for the divorce stated in the divorce complaint or court's rulings does not need to be abuse.⁶²

In the case of a self-petitioning child, the applicant must prove that they are the natural child, stepchild, or adopted child of a citizen or lawful permanent resident.⁶³ The child must be unmarried and less than 21 years when the battering or extreme cruelty occurred.⁶⁴ Child self-petitioners who are battered or subjected to extreme cruelty when they are under 21 years old can must file their self-petitions before they turn age 25.⁶⁵ Children who turn 21 after filing self-petitions continue to remain eligible to have their self-petitions adjudicated and eligible to obtain lawful permanent residency based on the approved VAWA self-petition.⁶⁶ Further, a self-petitioning parent must prove a parental relationship to their U.S. citizen son or daughter.⁶⁷

- Marriage and remarriage can result in the self-petition being denied:
 - Self-petitioning children: To qualify to self-petition a child must be unmarried at the time the self-petition is filed **AND** at the time the self-petition is adjudicated.⁶⁸ If a self-petitioning child marries after filing and remains married their self-petition when adjudicated will be denied⁶⁹ unless the child's marriage terminates before the child's self-petition is finally adjudicated.⁷⁰
 - Self-Petitioning Spouses: USCIS policy requires that divorced self-petitioning spouses cannot remarry until after the self-petition has been filed and has been approved.⁷¹ After the immigrant spouse's self-petition has been approved,

⁶⁰ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION A – DIVORCE PRIOR TO FILING THE SELF-PETITION, SUBSECTION 1 – SELF-PETITIONING SPOUSE'S DIVORCE [3 USCIS-PM D.3(A)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3> (Impact of self-petitioning spouse's divorce on filing and adjudication of a VAWA self-petition).

⁶¹ INA § 204 (a)(1)(A)(iii)(II)(CC)(ccc); *see also* INA § 204 (a)(1)(B)(ii)(II)(aa)(CC)(bbb).

⁶² 3 USCIS-PM D.3(A)(1)(Self-petitioning spouse's divorce – evidence.).

⁶³ INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000).

⁶⁴ INA § 204(a)(1)(D)(v); USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION G – CHILD TURNING 21 YEARS OLD, SUBSECTION 1 – SELF-PETITIONING CHILD TURNING 21 YEARS OLD BEFORE FILING THE SELF-PETITION [3 USCIS-PM D.3(G)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3> (The child must be or have been eligible to self-petition on the day before they turned age 21).

⁶⁵ INA 204(a)(1)(D)(v); 3 USCIS-PM D.3(G)(1) (Children filing between age 21 and the day before they turn age 25 must prove that the abuse was one central reason for the child's delay in filing their self-petition.)

⁶⁶ INA § 204(a)(1)(D)(i); INA § 204(a)(1)(D)(v); INA § 201(f); INA 203(h). 3 USCIS-PM (2)(B)(3).

⁶⁷ INA § 204(a)(1)(A)(vii); 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).

⁶⁸ INA § 101(b)(1); 8 CFR 204.2(e)(1)(ii); USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 - EFFECT OF CERTAIN LIFE EVENTS, SECTION B – SELF-PETITIONER'S MARRIAGE OR REMARRIAGE, SUBSECTION 1 – SELF-PETITIONING CHILD'S MARRIAGE [3 USCIS-PM D.3(B)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3>.

⁶⁹ INA 204(a)(1)(A)(iv); INA 204(a)(1)(B)(iii) (requiring that the child be eligible for immigrant classification under INA 201(b)(2)(A)(i) and INA 203(a)(2)(A)); 3 USCIS-PM D.3(B)(1) (Self-Petitioning Child's Marriage).

⁷⁰ INA 201(f); 8 CFR 204.2(e)(1)(ii); 3 USCIS-PM D.3(B)(1) (Self-Petitioning Child's Marriage).

⁷¹ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 - EFFECT OF CERTAIN LIFE EVENTS, SECTION B – SELF-PETITIONER'S MARRIAGE OR REMARRIAGE, SUBSECTION 2 – SELF-PETITIONING SPOUSE'S REMARRIAGE [3 USCIS-PM D.3(B)(2)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3>. There is

remarriage has no effect on either the approval or the self-petitioning spouse's ability to obtain lawful permanent residency based on the approved self-petition.⁷²

- Self-Petitioning Children:
 - Biological Children: Self-petitioning children may demonstrate a qualifying relationship to the abusive U.S. citizen or lawful permanent resident parent. If the child's abusive parent is their biological mother, the child must provide evidence of the biological relationship.⁷³ If the child was born in wedlock and the biological father is the abuser, the child must provide evidence of the biological relationship, the marriage of the child's parents, and the legal termination of all prior marriages.⁷⁴ If the child was legitimated and the abuser is the biological father, the child only needs to provide evidence of the biological relationship and of the child's legitimation.⁷⁵ Finally, if a child is born out of wedlock and the abuser is the biological father, the child must provide evidence of the biological relationship and evidence that a parent-child relationship has been established between the child and the abusive parent.⁷⁶
 - Stepchildren: A stepchild relationship is created when a child's biological or legal parent marries a person who is not the child's other biological or legal parent before the child turns 18.⁷⁷ If the marriage is terminated prior to filing due to divorce the stepchild is still be eligible to petition.⁷⁸ If the marriage ends do to death of the child's biological, legal or stepparent the child must prove that a family relationship has continued to exist as a matter of fact at the time of the filing between the stepparent and stepchild.⁷⁹
 - Adopted Child: Abused adopted children are **not** required to demonstrate that the U.S. citizen had 2 years of legal custody and 2 years of joint residence to be eligible for a VAWA self-petition.⁸⁰ Generally, the adoptive parent or lawful permanent resident must have legally adopted the child while the child was under

legislative history that is contrary to this position. NIWAP provides technical assistance on this issue. Contact info@niwap.org or (202) 274-4457.

⁷² INA 204(h); 3 USCIS-PM D.3(B)(2) (Self-Petitioning Spouse's Remarriage).

⁷³ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION B – QUALIFYING RELATIONSHIP, SUBSECTION 3 – SELF-PETITIONING CHILD [3 USCIS-PM D.2(B)(3)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (Self-Petitioning Child: Required Evidence for Biological Children Table).

⁷⁴ 3 USCIS-PM D.2(B)(3) (Self-Petitioning Child: Required Evidence for Biological Children Table).

⁷⁵ 3 USCIS-PM D.2(B)(3) (Self-Petitioning Child: Required Evidence for Biological Children Table).

⁷⁶ 3 USCIS-PM D.2(B)(3) (Self-Petitioning Child: Required Evidence for Biological Children Table).

⁷⁷ 3 USCIS-PM D.2(B)(3) (Stepchild).

⁷⁸ See *Arguijo v. USCIS*, 991 F.3d 736 (7th Cir. 2021), holding that divorce does not terminate a stepchild relationship for the purposes of eligibility for a VAWA self-petition. 3 USCIS-PM 2(B)(3)(Stepchild). (if the relationship ends due to death, the child must prove that a family relationship has continued to exist as a matter of fact at the time of the filing).

⁷⁹ 3 USCIS-PM D.2(B)(3) (Stepchild). For these cases, please contact NIWAP for technical assistance info@niwap.org or (202) 274-4457.

⁸⁰ See INA 101(b)(1)(E)(i); 3 USCIS-PM D.2(B)(3) (VAWA created special rules for abused adopted children to prevent them from having to continue to live in the custody of their abusive adoptive parent. Generally, for an adoption to be the basis for granting immigration benefits, an adoption must comply with the following requirements: the adopted child has been in the legal custody of and jointly resided with the adoptive parent(s) for at least 2 years).

the age of 16.⁸¹ Evidence of the adoption may include a copy of the legal adoption decree.⁸²

- Self-Petitioning Parents:⁸³ Biological, adoptive, and stepparents abused by their U.S. citizen sons or daughters who are over 21 years are eligible to self-petition. They must prove that the biological, adoptive or stepparent relationship was established before the U.S. citizen son or daughter turned age 21 and at the time of filing of the self-petition the child must be age 21 or older. Parents of lawful permanent resident abusive sons or daughters are not eligible to self-petition.⁸⁴
 - Biological Parent:⁸⁵ A self-petitioner who is the biological mother of an abusive U.S. citizen son or daughter must provide evidence of the biological relationship.⁸⁶ When the abusive son or daughter was born in wedlock, self-petitioning fathers must provide evidence of the biological relationship, of the marriage of the child's parents, and of the legal termination of all prior marriages.⁸⁷ If the abusive son or daughter was legitimated the self-petitioning father must provide evidence of the biological relationship and of the child's legitimation.⁸⁸ If the abusive citizen son or daughter was born out of wedlock, that self-petitioning father must provide evidence of the biological relationship and evidence that a bona fide parent-child relationship has been established between the father and the abusive son or daughter.⁸⁹
 - Stepparent: A stepparent relationship is created when a son or daughter's biological or legal parent marries a person who is not the son or daughter's other biological or legal parent before the son or daughter turns 18.⁹⁰ If the marriage is terminated prior to filing due to divorce the stepparent is still be eligible to petition.⁹¹ If the marriage ends do to death of the parent's biological, legal or stepchild the self-petitioning parent must prove that a family relationship has

⁸¹ See INA 101(b)(1)(E)(i). See INA 101(b)(1)(F). ⁸¹ USCIS, POLICY MANUAL: VOL. 5, PART E, CHAPTER 2 – ELIGIBILITY, SECTION B – QUALIFYING RELATIONSHIP, SUBSECTION 14 – AGE AT TIME OF ADOPTION [5 USCIS-PM E.2(B)(1)] <https://www.uscis.gov/policy-manual/volume-5-part-e-chapter-2> (Last Updated Aug. 11, 2023).

⁸² See 8 CFR 204.2(e)(2)(ii)(F). Although 8 CFR 204.2(e)(2)(ii)(F) requires that self-petitioners submit evidence that they have been residing with and in the legal custody of the abusive adoptive parent for at least 2 years, the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162 (PDF), 119 Stat. 2960 (January 5, 2006) removed this as an eligibility requirement and supersedes this part of the regulation. 3 USCIS-PM D.2(B)(3) (Adopted child).

⁸³ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION B – QUALIFYING RELATIONSHIP, SUBSECTION 4 – SELF-PETITIONING PARENT [3 USCIS-PM D.2(B)(4)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>.

⁸⁴ 3 USCIS-PM D.2(B)(4) (Self-Petitioning Parent).

⁸⁵ 3 USCIS-PM D.2(B)(4) (Includes a detailed discussion of the types of evidence that can be submitted to establish the parent/child biological relationship)

⁸⁶ 3 USCIS-PM D.2(B)(4) (Self-Petitioning Parent: Required Evidence for Biological Parents Table).

⁸⁷ 3 USCIS-PM D.2(B)(4) (Self-Petitioning Parent: Required Evidence for Biological Parents Table).

⁸⁸ 3 USCIS-PM D.2(B)(4) (Self-Petitioning Parent: Required Evidence for Biological Parents Table).

⁸⁹ 3 USCIS-PM D.2(B)(4) (Self-Petitioning Parent: Required Evidence for Biological Parents Table).

⁹⁰ 3 USCIS-PM D.2(B)(4) (Stepparent).

⁹¹ See *Arguijo v. USCIS*, 991 F.3d 736 (7th Cir. 2021), holding that divorce does not terminate a stepchild relationship for the purposes of eligibility for a VAWA self-petition. 3 USCIS-PM D.2(B)(4) (However, if the relationship ends due to death, the stepparent must prove that a family relationship has continued to exist as a matter of fact at the time of the filing).

continued to exist as a matter of fact at the time of the filing between the stepparent and stepchild.⁹²

- **Adoptive Parent:** The relationship between the self-petition adoptive parent and the abusive U.S. citizen adopted son or daughter must have been established through legal adoption when the son or daughter was a child and before the child turned age 16.⁹³ Abused adoptive parents must demonstrate that they had 2 years of legal custody (child the son or daughter was a child) and 2 years of joint residence (at any time) with the abusive adopted son or daughter to be eligible for a VAWA self-petition.⁹⁴ Evidence of the adoption may include a copy of the legal adoption decree.⁹⁵

2. The abusive spouse or parent is a U.S. citizen or Lawful Permanent Resident:⁹⁶

A self-petitioner must prove that their spouse or parent is a U.S. citizen or lawful permanent resident.⁹⁷

- **Loss of citizenship or lawful permanent resident status:**⁹⁸ In cases where the abuser has lost or renounced his immigration or citizenship status within the past two years prior to the filing of a self-petition, the self-petitioner must demonstrate that the loss of status or renunciation of citizenship is related to an incident of domestic violence.⁹⁹ (for example being found deportable under 237(a)(2)(E)) When evaluating whether the abuser's loss or renunciation of lawful permanent residency or citizenship is related to domestic violence, USCIS considers the full history of the domestic violence in the relationship including but not limited to the circumstances surrounding the loss or renunciation.¹⁰⁰ If the abusive citizen or lawful permanent resident lost status after the petition was filed, the self-petition would retain their eligibility without having to show a connection between the loss of citizenship and an incident of domestic violence.¹⁰¹
- **Death of the U.S. Citizen Abuser:** The impact that the death of the abuser has on the ability of an abused family member to file a self-petition varies by the type of family

⁹² 3 USCIS-PM D.2(B)(4) (Stepparent). For these cases, please contact NIWAP for technical assistance info@niwap.org or (202) 274-4457.

⁹³ INA 101(b)(1)(E); 3 USCIS-PM D.2(B)(4) (Adoptive Parent).

⁹⁴ See INA 101(b)(1)(E)(i); 3 USCIS-PM D.2(B)(4) (Adoptive Parent).

⁹⁵ 3 USCIS-PM D.2(B)(4) (Adoptive Parent).

⁹⁶ 3 USCIS-PM D.2(A) (General Overview of Eligibility Requirements). See also Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (PDF), 114 Stat. 1464 (October 28, 2000) removed these as eligibility requirements and supersedes this part of the regulation.

⁹⁷ See INA 204(a)(1). See 8 CFR 103.2(b)(1); USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION B – QUALIFYING RELATIONSHIP, SUBSECTION 1 - ABUSER'S U.S. CITIZENSHIP OR LAWFUL PERMANENT RESIDENT STATUS [3 USCIS-PM D.2(B)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>.

⁹⁸ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION E – LOSS OR RENUNCIATION OF U.S. CITIZENSHIP OR LOSS OF LAWFUL PERMANENT RESIDENT STATUS [3 USCIS-PM D.3(E)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3>. See also INA 204(a)(1); 8 C.F.R. 204.2(c)(2)(ii); 8 C.F.R. 204.2(e)(2)(ii).

⁹⁹ H.R. CONF. REP. NO. 106-939 § 1503(b)(1) (2000); 146 Cong. Rec. S10195 (2000).

¹⁰⁰ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION E – LOSS OR RENUNCIATION OF U.S. CITIZENSHIP OR LOSS OF LAWFUL PERMANENT RESIDENT STATUS, SUBSECTION 1 - LOSS OR RENUNCIATION OF U.S. CITIZENSHIP OR LOSS OF LAWFUL PERMANENT RESIDENT STATUS PRIOR TO FILING [3 USCIS-PM D.3(E)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3>.

¹⁰¹ See INA 204(a)(1)(A)(vi). See INA 204(a)(1)(B)(v)(1); 3 USCIS-PM 3(E)(2) (Loss or Renunciation of U.S. Citizenship or Loss of Lawful Permanent Resident Status After Filing).

relationship.¹⁰² Former spouses and parents of U.S. citizen abusers who die before the abused immigrant spouse or parent has filed their self-petition will have up to 2 years after the abusive citizen's death to file their self-petition.¹⁰³ Abused children and stepchildren of U.S. citizens are only eligible to self-petition if they filed their VAWA self-petition before their abusive citizen parent or stepparent's death.¹⁰⁴ Once a VAWA self-petition has been filed the death of the U.S. citizen spouse, parent, or over 21 year old son or daughter will have no impact on the approvability of the VAWA self-petition or the abused self-petitioner's ability to gain lawful permanent resident status based on an approved self-petition.¹⁰⁵

- **Death of a Lawful Permanent Resident Abuser:** If a lawful permanent resident relative dies, a spouse's or child's self-petition is impacted differently than in the event of a U.S. citizen's death. If the lawful permanent resident dies before an abused spouse or child files a self-petition, the self-petitioner is ineligible for to file a VAWA self-petition.¹⁰⁶ If the VAWA self-petition was pending, the USCIS may approve the petition and the approved self-petitioner is eligible to apply for lawful permanent residence.¹⁰⁷ However, a self-petitioner must remain eligible by demonstrating they resided in the United States when the lawful permanent resident relative died and they continue to reside in the United States on the date the pending self-petition or application for lawful permanent residency is approved.¹⁰⁸

3. Residence within the United States:¹⁰⁹

Generally, self-petitioning spouses, former spouses, intended spouses, children, stepchildren, and abused parents¹¹⁰ must currently reside in the United States at the time of application. Some self-petitioners may file from abroad if they meet one of three requirements:

¹⁰² 3 USCIS-PM D.3(D)(1) (Abusive U.S. Citizen's Death).

¹⁰³ 3 USCIS-PM D.3(D)(1) (Abusive U.S. Citizen's Death); See INA 204(1)(A)(iii)(II)(aa)(CC)(aaa). See INA 204(a)(1)(A)(vii). It is important to note that spouses of U.S. citizens who have not legally separated or divorced at the time of the U.S. citizen's death may also be eligible as a widow or widower under INA 201(b)(2)(A)(i) if they file a petition within 2 years of the death. However, this option could impact the survivor's eligibility for federal and state public benefits because VAWA self-petitioners often receive greater access to public benefits than spouses of U.S. citizens generally. See All State Public Benefits Charts and Interactive Public Benefits Map (2022) <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

¹⁰⁴ See INA 204(a)(1)(A)(iv); 3 USCIS-PM D.3(D)(1) (Abusive U.S. Citizen Dies Prior to the Filing of the Self-Petition).

¹⁰⁵ See INA 204(a)(1)(A)(vi); 3 USCIS-PM D.3(D)(1) (Abusive U.S. Citizen Relative Dies While the Self-Petition is Pending or Approved).

¹⁰⁶ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION D - DEATH OF THE U.S. CITIZEN, LAWFUL PERMANENT RESIDENT, OR SELF-PETITIONER, SUBSECTION 2 - ABUSIVE LAWFUL PERMANENT RESIDENT'S DEATH [3 USCIS-PM D.3(D)(2)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3>.

¹⁰⁷ 3 USCIS-PM D.3(D)(2) (Abusive Lawful Permanent Resident's Death).

¹⁰⁸ INA 204(I); 3 USCIS-PM D.3(D)(2) (Abusive Lawful Permanent Resident's Death).

¹⁰⁹ 3 USCIS-PM D.2(A) (Eligibility Requirements and Evidence). See also, INA 204(a). See 8 CFR 204.1(a)(3). See 8 CFR 204.2(c)(1). See 8 CFR 204.2(e)(1). Although 8 CFR 204.2(c)(1) and 8 CFR 204.2(e)(1) required that self-petitioners demonstrate extreme hardship to themselves or their children if deported; that they reside in the United States at the time of filing; and that their shared residence with the abuser takes place in the United States, the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (PDF), 114 Stat. 1464 (October 28, 2000) removed these as eligibility requirements overruling the 1996 regulations.

¹¹⁰ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION H – SELF-PETITIONERS FILING FROM OUTSIDE THE UNITED STATES [3 USCIS-PM D.2(H)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (“ See INA 204(a)(1)(A)(v). See INA 204(a)(1)(B)(iv). There is no statutory requirement that a self-petitioning parent be living in the United States at the time the self-petition is filed. The filing requirements at INA 204(a)(1)(A)(v) relating to a self-petitioning spouse,

- The abusive spouse or parent is an employee of the U.S. government;¹¹¹
- The abusive spouse or parent is a member of the uniformed¹¹² services;¹¹³ or
- The abusive spouse or parent has subjected the immigrant spouse to battery or extreme cruelty that occurred in the United States.¹¹⁴

4. Residence with the abuser:¹¹⁵

To qualify to self-petition the self-petitioning immigrant must have resided with the abuser at some point in the time prior to filing or be residing with the abuser when the self-petition is filed. Residence is defined as the location of a person's general place of abode or principal or actual dwelling. Intent is not considered. A self-petitioner does not have to reside with the abuser at the time of filing but must still prove that they at one time resided with the abuser.¹¹⁶ There are no requirements that the self-petitioner:

- Lived with the abuser in the United States;
- Lived with the abuser for any specific length of time; or
- Lived with the abuser during the qualifying relationship;¹¹⁷

Although self-petitioning children must have been residing with the abuser when the abuse occurred¹¹⁸ residence for a child may include any period of visitation.¹¹⁹

intended spouse, or child living abroad of a U.S. citizen are applicable to self-petitions filed by an abused parent of a U.S. citizen son or daughter.”)

¹¹¹ When the abusive spouse, parent, son or daughter is an employee of the U.S. government the self-petitioner can file from abroad without regard to where the abuse occurred. The abuse can occur in the United States or abroad. 3 USCIS-PM D.2(H) (Self-Petitioners Filing from Outside the United States).

¹¹² Uniformed services include the: Department of Defense (Army, Marine Corps, Navy, Air Force, Space Force, Coast Guard, National Guard) <https://www.defense.gov/About/our-forces/>; the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Commissioned Corps of the Public Health Service 31 USC Section 3701(a)(7).

¹¹³ When the abusive spouse, parent, son or daughter is a member of the U.S. uniformed services stationed outside of the United States the self-petitioner can file from abroad without regard to where the abuse occurred. The abuse can occur in the United States or abroad. 3 USCIS-PM D.2(H) (Self-Petitioners Filing from Outside the United States).

¹¹⁴ 3 USCIS-PM D.2(H) (Self-Petitioners Filing from Outside the United States).

¹¹⁵ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION F – RESIDENCE WITH THE ABUSIVE RELATIVE [3 USCIS-PM D.2(F)] (Last Updated May 04, 2023)

<https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>. See also INA 204(a)(1)(A)(iii)(II)(dd). See INA 204(a)(1)(A)(iv). See INA 204(a)(1)(A)(vii)(IV). See INA 204(a)(1)(B)(ii)(II)(dd). See INA 204(a)(1)(B)(iii). See 8 CFR 204.2 (c)(1)(i)(D). See 8 CFR 204.2(e)(1)(i)(D). USCIS implemented this new interpretation on February 10, 2022, implementing several federal court decisions holding that the statutory language does not require shared residence during the qualifying relationship. See *Dartora v. U.S.*, No. 4:20-CV-05161-SMJ (E.D.W.A. June 7, 2021). See *Bait It v. McAleenan*, 410 F. Supp. 3d 874 (N.d. Ill. 2019). See *Hollingsworth v. Zuchowski*, 437 F. Supp. 3d 1231 (S.D. Fla. 2020).

¹¹⁶ 3 USCIS-PM D.2(F) (Residence with the Abusive Relative). See INA 204(a)(1)(A)(iii)(II)(dd); see also INA 204(a)(1)(A)(iv); INA 204(a)(1)(A)(vii)(IV); INA 204(a)(1)(B)(ii)(II)(dd); INA 204(a)(1)(B)(iii); 8 C.F.R. 204.2(c)(1)(i)(D); 8 C.F.R. 204.2(e)(1)(i)(D). USCIS implemented this new interpretation on February 10, 2022 implementing several federal court decisions holding that the statutory language does not require shared residence during the qualifying relationship. See *Dartora v. U.S.*, No. 4:20-CV-05161-SMJ (E.D.W.A. June 7, 2021). See *Bait It v. McAleenan*, 410 F. Supp. 3d 874 (N.D. Ill. 2019). See *Hollingsworth v. Zuchowski*, 437 F. Supp. 3d 1231 (S.D. Fla. 2020).

¹¹⁷ 3 USCIS-PM D.2(F) (Residence with the Abusive Relative).

¹¹⁸ 8 CFR 204.2(e)(1)(i)(E); USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION E – SUBJECTED TO BATTERY OR EXTREME CRUELTY [3 USCIS-PM D.2(E)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>.

¹¹⁹ INA 204(a)(1)(A)(iv); 3 USCIS-PM D.2(E) (Subjected to Battery or Extreme Cruelty).

Self-petitioners **DO NOT** have to separate from the abuser in order to file a self-petition.¹²⁰ For self-petitioning children, there is a requirement that they resided with the abuser when the abuse occurred.¹²¹ However, residence for a child may also include periods for visitation.¹²²

Examples of evidence to demonstrate a shared residence may include, but is not limited to:¹²³

- Shared leases, deeds, mortgages, or rental agreements listing the self-petitioner and the abuser as occupants or owners;
- Insurance policies, utility bills, bank statements, or other financial documents listing a common address for the self-petitioner and abuser;
- Income tax filings listing the self-petitioner and the U.S. citizen or lawful permanent resident abuser;
- School records listing the parent and address of record;
- Medical records or a statement from the self-petitioner's physician;
- Affidavits of friends or family who can verify that the self-petitioner and abuser resided together during the marriage; and/or
- Any other evidence of shared residence.¹²⁴

5. Battery or extreme cruelty:¹²⁵

- **Abused Spouse:** The self-petitioner spouses must demonstrate that they or their child or stepchild was battered or subjected to extreme cruelty by the immigrant self-petitioner's U.S. citizen or lawful permanent resident spouse or former spouse.¹²⁶

¹²⁰ VAWA confidentiality and safe address protections were designed to promote access to self-petitioning as early as possible by offering confidentiality protections that bar access to information about the existence of the self-petitioner's case, the contents of information filed in the case, and any actions taken in the case while providing as safe address at which Department of Homeland Security can communicate with self-petitioners about actions and activities related to the victim's self-petitioning case. *See*, VAWA Confidentiality Statutes, Legislative History and Implementing Policy (Updated June 7, 2022) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>; and USCIS Policy Update: VAWA Confidentiality and Safe Address for Survivor-Based Petitions (April 11, 2023) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-policy-update-safe-address>.

¹²¹ 3 USCIS-PM D.2(F) (Residence with the Abusive Relative).

¹²² 3 USCIS-PM D.2(F) (Residence with the Abusive Relative).

¹²³ 3 USCIS-PM D.2(F) (Residence with the Abusive Relative).

¹²⁴ 8 CFR 204.2(c)(2)(iii); 8 CFR 204.2(e)(2)(iii); 3 USCIS-PM D.2(F)(Residence with the Abusive Relative).

¹²⁵ It is recognized that abuse is a pattern. *See generally*, 8 C.F.R. 204.2(c) (1) (i) (H) (vi); *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003) Some portion of the pattern of abuse must have occurred while in one of the following relationships: *In marriage based petitions*: some portion of the abuse must have occurred during the time a couple was married. *In parent to child relationship based petitions*: some portion of the abuse must have occurred during the parental relationship; however, termination of parental rights does not end the relationship for VAWA immigration relief. *In step-parent to child based petitions*: Some portion of the abuse must have occurred while the marriage creating the step-parent relationship existed.

Other abusive actions may also be acts of violence under this rule. For example, individual acts or threatened acts that may not initially appear violent may be part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi) (2007). *See Hernandez v. Ashcroft*, 345 F.3d 824,840 (9th Cir. 2003). "Non-physical actions rise to the level of domestic violence when 'tactics of control are intertwined with the threat of harm in order to maintain the perpetrator's dominance through fear . . .' Because every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence ... Congress required a showing of extreme cruelty in order to ensure that [the VAWA suspension statute] protected against the extreme concept of domestic violence, rather than mere unkindness" (internal citations omitted).

¹²⁶ INA 204(a)(1)(A)(iii)(I)(bb); INA 204(a)(1)(B)(ii)(I)(bb); 3 USCIS-PM D.2(E) (Subjected to Battering or Extreme Cruelty).

Battered Immigrants and Immigration Relief

- Abused Children: Self-petitioning children and stepchildren must demonstrate that *they were* battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident parent, or stepparent.¹²⁷
- Abused parents: Self-petitioning parents must demonstrate that they were battered or subjected to extreme cruelty by their U.S. citizen over 21 year old son or daughter.¹²⁸

USCIS has clarified that if the self-petitioner is a spouse, child, or parent, they must establish that the battery or extreme cruelty must have taken place during the qualifying relationship.¹²⁹ If the self-petitioner is a child, the battery must have occurred while the child was 21 years old and while the child was residing with or visiting the parent.¹³⁰ If the self-petitioner is a parent, the battery must have occurred while the son or daughter was 21 years old or older.¹³¹

The Department of Homeland Security will consider any credible evidence,¹³² including civil protection orders, police and court records, medical reports, and affidavits of school officials, social workers, and shelter workers.¹³³ VAWA self-petition regulations¹³⁴ and the USCIS Policy Manual¹³⁵ provide helpful descriptive examples of “battery” or “extreme cruelty” that include:

- Any act or threatened act of violence (including forced detention) which results or threatens to result in physical or mental injury
- Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution;
- Acts that may not initially appear violent but are a part of an overall pattern of violence;
- Acts aimed at some other person or thing may be considered abuse if the acts were deliberately used to perpetrate extreme cruelty against the self-petitioner or the self-petitioner’s child;
- Acts by a third party when the abusive U.S. citizen or LPR acquiesced to, condoned,

¹²⁷ INA 204(a)(1)(A)(iv); INA 204(a)(1)(B)((iii); 3 USCIS-PM D.2(E)(Subjected to Battering or Extreme Cruelty).

¹²⁸ INA 204(a)(1)(A)(vii).

¹²⁹ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION E SUBJECTED TO BATTERY OR EXTREME CRUELTY, SUBSECTION 1 – BATTERY AND EXTREME CRUELTY [3 USCIS-PM D.2(E)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>.

¹³⁰ 3 USCIS-PM D.2(E)(1).

¹³¹ 3 USCIS-PM D.2(E)(1).

¹³² For detailed information on the legislative history, purpose, and more information on VAWA’s any credible evidence rules *see*. 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 (September 10, 2010), <https://niwaplibrary.wcl.american.edu/pubs/any-credible-evidence-history>; *See also*, USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 5 – ADJUDICATION, SECTION B – REVIEW OF EVIDENCE, SUBSECTION 2 – ANY CREDIBLE EVIDENCE PROVISION [3 USCIS-PM D.5(B)(2)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-5> (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.”)

¹³³ *See* 8 C.F.R. 204.2(e)(1)(i)(E).

¹³⁴ 8 C.F.R. §204.2(c)(1); 8 CFR 204.2(e)(1)(vi); 61 Fed. Reg. 13061, 13065-66 (March 26, 1996) (“It is not possible to cite all perpetrations that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase “was battered by or was the subject of extreme cruelty.”)

¹³⁵ *See* 8 C.F.R. 204.2(e)(1)(i)(E).

- or participated in the abuse; and
- Spousal abuse, if witnessed by the child of the victim, may be used as the basis for a self-petition by that child

Extreme cruelty is a non-physical act of violence or threat of violence demonstrating a pattern or intent to attain control over the self-petitioner.¹³⁶ Extreme cruelty is determined on a case-by-case basis; however, acts of extreme cruelty may include:

- Isolation, humiliation, degradation, coercion;
- Use of guilt, minimizing, blaming;
- Economic control;
- Threatening to commit a violent act toward the self-petitioner or the self-petitioner's children;
- Acts intended to create fear, compliance or submission by the self-petitioner;
- Controlling what self-petitioners do, who they see and/or who they talk to;
- Denying access to food, family, or medical treatment;
- Threats of deportation; and
- Threats to remove a child from the self-petitioner's custody.¹³⁷

According to VAWA regulations, sexual assault is a form of battery and extreme cruelty.¹³⁸ The Department of Justice defines sexual assault as any nonconsensual sexual act proscribed by Federal, tribal or State law, including when the victim lacks capacity to consent.¹³⁹ This includes sexual assault in a marriage or family relationship, as any type of non-consensual sexual contact or behavior.¹⁴⁰ This includes forced sexual intercourse, sodomy, child molestation, incest, fondling, forced prostitution, and attempted rape. Other examples of sexual assault include¹⁴¹:

- Unwanted vaginal, anal, or oral penetration with any object;
- Forcing an individual to perform or receive oral sex;
- Forcing an individual to masturbate, or to masturbate someone else;
- Forcing an individual to look at sexually explicit material or forcing an individual to pose for sexually explicit pictures;
- Touching, fondling, kissing, and any other unwanted sexual contact with an individual's body;
- Exposure and/or flashing of sexual body parts;

¹³⁶ 3 USCIS-PM D.2(E)(1)(Battery and Extreme Cruelty). (“See *Hernandez v. Asheroft*, 345 F.3d 824, 840 (9th Cir. 2003). (“Non-physical actions rise to the level of domestic violence when ‘tactics of control are intertwined with the threat of harm in order to maintain the perpetrator’s dominance through fear...’ Because every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence... Congress required a showing of extreme cruelty in order to ensure that [the VAWA suspension statute] protected against the extreme concept of domestic violence, rather than mere unkindness” (internal citations omitted).”)

¹³⁷ 3 USCIS-PM D.2(E) (Extreme Battery or Extreme Cruelty).

¹³⁸ 3 USCIS-PM D.2(E) (Extreme Battery or Extreme Cruelty). *See also*, 8 C.F.R. §204.2(c)(1)(vi) (2007).

¹³⁹ Office on Violence Against Women, U.S. Dep’t of Justice <https://www.justice.gov/ovw/sexual-assault> (last visited May 17, 2023).

¹⁴⁰ RAINN, Intimate Partner Sexual Violence <https://www.rainn.org/articles/intimate-partner-sexual-violence> (last visited May 17, 2023); RAINN, Surviving Sexual Abuse by as Family Member <https://www.rainn.org/news/surviving-sexual-abuse-family-member> (August 25, 2022).

¹⁴¹ *Rape and Sexual Assault in the Legal System*, AEQUITAS (2013) https://evawintl.org/wp-content/uploads/03_Rape_SexAsslt_LegalSystem_WLP_AEquitas_20120605.pdf; and *Rape and Sexual Assault Analyses and Laws*, AEQUITAS (Part II) <https://aequitasresource.org/wp-content/uploads/2019/10/Rape-and-Sexual-Assault-Analyses-and-Laws-10.10.19.pdf>.

- Nonconsensual distribution of intimate images;¹⁴² and
- Sextortion and online sexual harassment or abuse.¹⁴³

State sexual assault laws generally presume there is no consent if a person is forced, threatened, unconscious, drugged, a minor, developmentally disabled, chronically mentally ill, or believes they are undergoing a medical procedure.¹⁴⁴ Sexual assault very often involves psychological coercion taking advantage of an individual who is incapacitated or under duress and, therefore, is not capable of making a decision on their own.¹⁴⁵

Perpetrators could be anyone - strangers, friends, acquaintances, or family members.¹⁴⁶ Perpetrators commit sexual assault using violence, threats, coercion, manipulation, pressure, or tricks.¹⁴⁷ In extreme cases, sexual assault may involve the use of force, including but not limited to:

- Physical violence;
- Use or display of a weapon;
- Immobilization of victim.¹⁴⁸

6. Good moral character:¹⁴⁹

“Good moral character,” as described in more detail in a section of this chapter below, is a term of art in immigration law.¹⁵⁰ Good moral character is evaluated on a case-by-case basis.¹⁵¹ Self-petitioning children under the age of 14 are presumed to be a person of good moral character and are not required to provide additional evidence.¹⁵²

¹⁴² *Nonconsensual Distribution of Intimate Imagery*, AMERICAN BAR ASSOCIATION (Jun. 29, 2022), https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/june-22-wl/intimate-imagery-0622wl/.

¹⁴³ *What is Sextortion*, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/video-repository/newss-what-is-sexortion/view>.

¹⁴⁴ *Rape and Sexual Assault Analyses and Laws*, AEQUITAS (Part II) 9-15 <https://aequitasresource.org/wp-content/uploads/2019/10/Rape-and-Sexual-Assault-Analyses-and-Laws-10.10.19.pdf>.

¹⁴⁵ Safe Project, *Sexual Assault, What is Sexual Assault*, <https://www.safeproject.org/sexual-assault> (last visited May 17, 2023).

¹⁴⁶ National Center for Victims of Crime, Office on Victims of Crime, U.S. Department of Justice, *Help Brochure Sexual Violence*, (Last Updated Mar. 29, 2022) https://niwaplibrary.wcl.american.edu/pubs/helpbrochure_sexualviolence-english.

¹⁴⁷ RAINN, *Sexual Assault*, <https://www.rainn.org/articles/sexual-assault> (last visited May 17, 2023) U.S.

¹⁴⁸ *Safe Project, Sexual Assault, What is Sexual Assault* <https://www.safeproject.org/sexual-assault> (last visited May 17, 2023).

¹⁴⁹ USICS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION G – GOOD MORAL CHARACTER, SUBSECTION 2 - SPECIAL CONSIDERATIONS FOR CHILDREN UNDER 14 YEARS OF AGE [3 USCIS-PM D.(2)(G)(2)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>. See 8 C.F.R. 204.2(e)(2)(v). Affirmative evidence of good moral character is required for all self-petitioning children age 14 or older.

¹⁵⁰ USICS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION G – GOOD MORAL CHARACTER, SUBSECTION 1 – GENERAL REQUIREMENTS [3 USCIS-PM D.(2)(G)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (Self-petitioners must demonstrate that they are persons of good moral character in order to be eligible for a VAWA self-petition). See INA 204(a)(1)(A)(iii)(II)(bb). See INA 204(a)(1)(A)(iv). See INA 204(a)(1)(A)(vii)(II). See INA 204(a)(1)(B)(ii)(II)(bb). See INA 204(a)(1)(B)(iii). See 8 CFR 204.2(c)(1)(i)(F). See 8 CFR 204.2(e)(1)(i)(F).

¹⁵¹ 3 USCIS-PM D.2(G)(2) (Evaluating Good Moral Character).

¹⁵² 8 CFR 204.2(e)(2)(v); 3 USCIS-PM D.2(G)(2) (Special Considerations for Children Under 14).

To show good moral character, a self-petitioner should submit a local police clearance or state-issued criminal background check from each locality or state, within or outside the United States, in which they have lived for six or more months during the three years immediately preceding the filing of the self-petition.¹⁵³ However, the adjudicating officer may investigate beyond the three-year period if there is reason to believe the self-petitioner may not have been a person of good moral character during that time.¹⁵⁴

Under INA 101(f), there are certain individuals who are statutorily barred from being considered a person of good moral character. These include self-petitioners who:

- Have at any time on or after November 29, 1990 been convicted of an aggravated felony; or
- Have engaged in conduct relating to assistance in Nazi persecution, participation in genocide, commission of acts of torture or extrajudicial killings, or severe violations of religious freedoms.¹⁵⁵

There are also several conditional bars under INA 101(f). As will be discussed in detail below, these are triggered by specific acts, offenses, activities, circumstances, or convictions that occurred in the 3-year period immediately preceding the filing of the self-petition.¹⁵⁶

7. Marriage in good faith:

Self-petitioners, whose petition is based on a marriage relationship,¹⁵⁷ need to demonstrate that they married or intended to marry (in cases of bigamy) in “good faith,” and not for the purpose of evading immigration laws. Note that self-petitioning parents, children, stepparents, and stepchildren do not need to satisfy this requirement to be eligible to receive a VAWA self-petition.¹⁵⁸

Examples of evidence that can be used to demonstrate good faith may include, but are not limited to:

- Documentation that one spouse has been listed as the other spouse’s beneficiary on insurance policies;
- Joint property leases, income tax forms, or accounts;
- Evidence of a wedding ceremony, shared residence or experiences;

¹⁵³ 61 FR 13061, 13066 (PDF) (Mar. 26, 1996). (“The statute requires all self-petitioners to be persons of good moral character but does not specify the period for which good moral character must be established. The regulations require evidence of good moral character for the 3 years immediately preceding the date the self-petition is filed.”)

¹⁵⁴ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION G – GOOD MORAL CHARACTER [3 USCIS-PM D.2(G)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>.

¹⁵⁵ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION G – GOOD MORAL CHARACTER, SUBSECTION 3 – EVALUATING GOOD MORAL CHARACTER [3 USCIS-PM D.2(G)(3)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (Permanent and Conditional Bars Under INA 101(f)).

¹⁵⁶ 3 USCIS-PM D.2(G)(3) (these bars include, but are not limited to: habitual drunkenness, engaging in prostitution in the last 10 years, involvement in the smuggling of a person into the United States, practicing polygamy, or violating laws relating to a controlled substance).

¹⁵⁷ These include those: 1) between two spouses in a marriage, 2) between a child and a step-parent, 3) between an intended spouse and a bigamist U.S. citizen or legal permanent resident spouse, where the marriage ceremony was actually performed (INA 204(a)(1)(A)(iii) (codified at 8 USC 1154)).

¹⁵⁸ USCIS, POLICY MANUAL, VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION C – GOOD FAITH MARRIAGE (SELF-PETITIONING SPOUSES ONLY) [3 USCIS-PM D.2(C)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>.

- Birth certificates of children born to the self-petitioner and the abusive spouse;
- Police, medical, or court documents about the relationship;
- Affidavits of persons with personal knowledge of the relationship;
- Any other credible evidence that demonstrates the self-petitioner's intentions for entering the marriage.¹⁵⁹

DIVORCE & VAWA SELF-PETITIONERS

Prior to October 2000, battered immigrants who were divorced from their abusers could not file VAWA self-petitions. VAWA 2000 enabled divorced immigrants who had been battered during marriage to file VAWA self-petitions “if the marriage was legally terminated during the two-year period immediately preceding the filing of the self-petition for a reason connected to the battering or extreme mental cruelty.”¹⁶⁰ This change is effective for all VAWA self-petitions pending or filed on or after October 28, 2000.¹⁶¹

The VAWA applicant must provide evidence that the battering or extreme cruelty, which can include sexual assault, stalking, or coercive control¹⁶² led to or caused the divorce.¹⁶³ The evidence submitted must demonstrate that the abuse occurred during the marriage, that the abuser was a citizen or permanent resident when the abuse occurred, and that the divorce took place within the two-year period immediately preceding the filing of the VAWA self-petition.¹⁶⁴ The divorce decree does not have to state specifically that the marriage was terminated due to domestic violence.¹⁶⁵

When an immigrant victim seeks help after a divorce has become final, the advocate or attorney should gather pre-divorce evidence demonstrating battering or extreme cruelty. Such evidence may include protection orders, police reports, medical records, and affidavits of advocates, neighbors, family members, shelter workers or social workers who have knowledge about the domestic violence and its connection to the divorce. In some cases, when the immigrant victim flees or goes into hiding, the abuser may obtain a divorce by publication in their absence. In such cases, although the decree will not state that the divorce is domestic violence-related, counsel for the victim can demonstrate that the divorce was part of the ongoing pattern of battery and extreme cruelty.

If a battered immigrant seeks help after the abuser files for divorce but before the divorce decree is final, advocates and attorneys working with the immigrant victim should, if possible,

¹⁵⁹ 3 USCIS-PM D.2(C) (Good Faith Marriage) (Self-Petitioning Spouses Only). See [8 CFR 204.2\(c\)\(2\)\(vii\)](#).

¹⁶⁰ U.S. DEP'T OF JUSTICE, IMMIGRATION & NATURALIZATION SERV. MEMORANDUM HQADN/70/8, ELIGIBILITY TO SELF-PETITION AS A BATTERED SPOUSE OF A U.S. CITIZEN OR LAWFUL PERMANENT RESIDENT WITHIN TWO YEARS OF DIVORCE 1 (2002), <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-dojmemoeligibilityselfpetition-01-02-02>.

¹⁶¹ *Id.* at 2.

¹⁶² *SPARC Judicial Officer Guide: Responding to Stalking*, (Last Updated Jul.5, 2022) <https://niwaplibrary.wcl.american.edu/pubs/sparc-judicial-guide-for-stalking>.

¹⁶³ 3 USCIS-PM D.3(D)(1) (Self-Petitioning Spouses – Marriage While in Removal Proceedings). See INA 204(1)(A)(iii)(II)(aa)(CC)(aaa). See INA 204(a)(1)(A)(vii). Note that spouses of U.S. citizens who have not legally separated or divorced at the time of the U.S. citizen's death may also be eligible as widow(er)s under INA 201(b)(2)(A)(i) if they file a petition within 2 years of the death.

¹⁶⁴ U.S. DEP'T OF JUSTICE, IMMIGRATION & NATURALIZATION SERV. MEMORANDUM HQADN/70/8, ELIGIBILITY TO SELF-PETITION AS A BATTERED SPOUSE OF A U.S. CITIZEN OR LAWFUL PERMANENT RESIDENT WITHIN TWO YEARS OF DIVORCE 2 (2002), <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-dojmemoeligibilityselfpetition-01-02-02>.

¹⁶⁵ *Id.*

file the VAWA self-petition before the divorce becomes final.¹⁶⁶ This is the safest approach for immigrant victims and eliminates the need to establish that the divorce was causally related to the battery or extreme cruelty. Also, if the divorce action is ongoing, counsel for the victim can use discovery in the divorce case to obtain information and documentation that can be submitted in support of the self-petition.

“GOOD MORAL CHARACTER”¹⁶⁷

At the time of the filing of the initial VAWA self-petition, a petitioner (or a child self-petitioner who is fourteen years of age or older) must demonstrate that they are a person of “good moral character.”¹⁶⁸ The most significant factor that can undermine an immigrant victim’s ability to prove good moral character is a criminal history.¹⁶⁹ Battered immigrant victims can end up as defendants in criminal cases for a variety of reasons. Examples include:

- The police made a dual arrest rather than determining who was the predominant perpetrator;
- The perpetrator spoke English with the police and the police could not or did not communicate with the victim when the police arrived, and the abuser convinced the police to arrest her;
- The victim was forced into criminal behavior by their abuser; or
- The victim shoplifted essential survival items while escaping abuse.

When a potential VAWA self-petitioner or VAWA cancellation of removal applicant¹⁷⁰ is a defendant in a criminal case that could lead to a finding of bad moral character, consult with an immigration expert with expertise on VAWA immigration cases

¹⁶⁶ See 3 USCIS-PM D.2(B)(2) (“Note that if a divorce decree requires a waiting or revocable period that has not concluded (for example, a ‘nisi’ period in a domestic decree or an ‘idda’ period in a foreign decree), the decree is not considered final and the marriage has not been legally terminated). A nisi period is a mandatory waiting period between when the judge grants a divorce and when the divorce is finalized. An “idda” or “iddah” period is the 3-4 month window expressed in the Qur’an that divorced and widowed women must observe following a separation between a husband and a wife.

¹⁶⁷ The USCIS Policy Manual contains a detailed discussion of good moral character in VAWA self-petitioning cases discussing how adjudicators are required to evaluate good moral character; the permanent and conditional bars under INA 101(f), acts and convictions that occur outside of the 3-year period, unlawful acts, other conduct and acts, and helpful evidence. Attorneys representing immigrant survivors with arrests and criminal histories should read this policy manual section closely including its footnotes and citations. 3 USCIS-PM D.2(G)(1) (Good Moral Character General Requirements).

¹⁶⁸ See 3 USCIS-PM D.2(G)(1)(Good Moral Character General Requirements), see also 8 C.F.R. § 204.2(c)(1)(i)(F) (2007). USICS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION D – ELIGIBILITY FOR IMMIGRANT CLASSIFICATION [3 USCIS-PM D.2(D)] (Last Updated May 04, 2023)

<https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>; See INA 204(a)(1)(A)(iii)(II)(bb); see also INA 204(a)(1)(A)(iv); see also INA 204(a)(1)(A)(vii)(II); see also INA 204(a)(1)(B)(ii)(II)(bb); see also INA 204(a)(1)(B)(iii).

¹⁶⁹ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION G – GOOD MORAL CHARACTER, SUBSECTION 3 – EVALUATING GOOD MORAL CHARACTER [3 USCIS-PM D.2(G)(3)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2> (“if the results of criminal records checks conducted prior to the approval of the self-petition or adjustment of status application disclose that the self-petitioner is no longer a person of good moral character or that the self-petitioner has not been a person of good moral character [...], USCIS denies the self-petition”).

¹⁷⁰ Chapter 03.4: VAWA Cancellation of Removal, in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Jul. 10, 2013) <https://niwaplibrary.wcl.american.edu/pubs/ch3-4-avaa-cancellation-of-removal>.

immediately. Without appropriate counsel, the victim may plead guilty to charges that will render them ineligible for VAWA relief and could lead to their deportation.¹⁷¹

While there is no statutory definition of good moral character, the Immigration and Naturalization Act (INA) lists actions which presumptively bar an individual from demonstrating good moral character.¹⁷² It is not always easy to determine whether a specific crime established a lack of good moral character. Convictions for many crimes are statutory bars to good moral character, but other crimes, such as involuntary manslaughter or lesser offenses such as simple possession of a controlled substance, driving under the influence, or petty theft do not always bar a showing of good moral character. A prior removal order, in and of itself, does not constitute a bar to establishing good moral character.¹⁷³

Proving Good Moral Character

Moral character is evaluated by the government on a case-by-case basis, taking into consideration the standards to which the average citizen in the community is held.¹⁷⁴ The petitioner must prove that they have maintained good moral character throughout the three-year period immediately preceding the filing of a self-petition.¹⁷⁵ Prior conduct may also be examined to determine good moral character at the discretion of DHS.¹⁷⁶ Self-petitioners must submit a police clearances letter from any state or locality where they have resided for at six months during the past three years.¹⁷⁷ USCIS will consider any credible evidence of good moral character which can include affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character. Examples of the evidence such affidavits would contain include:¹⁷⁸

- The affiant's full name, address, telephone number, date and place of birth;
- Their relationship to the parties;
- Details concerning how the affiant acquired knowledge of the self-petitioner's good moral character; and

¹⁷¹ Attorneys and advocates with self-petitioners in this situation should contact NIWAP by phone at (202) 274-4457 or by email at info@niwap.org.

¹⁷² INA § 101(f), 8 U.S.C. § 1101(f) (2000). The list of acts barring findings of good moral character is discussed later in this chapter.

¹⁷³ INA § 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A) (2000).

¹⁷⁴ 3 USCIS-PM D.2(G)(1) (Good Moral Character General Requirements). See 8 C.F.R. 204.2(c)(1)(vii); see also 8 C.F.R. 204.2(e)(1)(vii); see also 8 C.F.R. 316.10(a)(2).

¹⁷⁵ 3 USCIS-PM D.2(G)(3) (Evaluating Good Moral Character) (Although the evidentiary requirements for good moral character focus on the 3-year period preceding the filing of the self-petition, the eligibility requirements do not specify a time during which self-petitioners must demonstrate their good moral character). 8 C.F.R. § 204.2(c)(2)(v) (2007).

¹⁷⁶ NAT'L IMMIGRATION PROJECT OF THE NAT'L LAWYERS GUILD, 1 IMMIGR. LAW & DEF. § 8:32 (3d ed. 2004); see also *In re Sanchez-Linn*, 20 I. & N. Dec. 362, 365 (B.I.A. 1991) (holding that past conduct is relevant in determining good moral character). See also 3 USCIS-PM D.2(G)(3) (Evaluating Good Moral Character).

¹⁷⁷ 3 USCIS-PM D.2(G)(3) (Self-petitioners who have resided abroad should submit a police clearance, criminal background check or similar report issued by the appropriate authority in each foreign country in which they have resided for 6 months or more during the 3 year period immediately preceding the filing of the self-petition.)

¹⁷⁸ 3 USCIS-PM D.2(G)(3) (Evaluating Good Moral Character) See [INA 204\(a\)\(1\)\(J\)](#). See [8 CFR 103.2\(b\)\(2\)\(iii\)](#). See [8 CFR 204.1\(f\)\(1\)](#). See [8 CFR 204.2\(c\)\(2\)\(i\)](#). See [8 CFR 204.2\(e\)\(2\)\(i\)](#). [INA 204\(a\)\(1\)\(J\)](#) was not specifically amended to encompass the consideration of secondary evidence submitted by self-petitioning parents. The discussion of evidence found at [8 CFR 103.2\(b\)\(2\)\(iii\)](#) and [8 CFR 204.1\(f\)\(1\)](#) regarding self-petitions filed under [INA 204\(a\)\(1\)\(A\)\(iii\)](#) and [\(iv\)](#) and [INA 204\(a\)\(1\)\(B\)\(ii\)](#) and [\(iii\)](#) is applicable to self-petitions filed by abused parents of U.S. citizen sons or daughters under [INA 204\(a\)\(1\)\(A\)\(vii\)](#). For more information about the any credible evidence provision, see Chapter 5, Adjudication, Section B, Review of Evidence, Subsection 2, Any Credible Evidence Provision [[3 USCIS-PM D.5\(B\)\(2\)](#)].

- Details regarding the self-petitioner's good moral character.

According to the USCIS Policy Manual, adjudicators may not deny self-petitioners for a failure to submit criminal background checks or police clearances if self-petitioners have submitted an affidavit attesting that they have never been arrested.¹⁷⁹ However, if the results of criminal records checks conducted prior to the approval of the self-petition or application for lawful permanent residence disclose that the self-petitioner is no longer a person of good moral character or that the self-petitioner in the past, USCIS will deny the self-petition or revoke the self-petition if it was previously approved.¹⁸⁰

Petitioners should always state in their affidavits if they have ever been arrested, and submit records of any previous arrests or convictions, or information concerning any other bad conduct (such as fraud).¹⁸¹ Before obtaining lawful permanent residence based on the approved self-petition, battered immigrants will need to be fingerprinted and the DHS will use these fingerprints to run a criminal records search. This search will reveal all prior arrests in the United States, regardless of when they occurred. A battered immigrant with a criminal history should consult an immigration lawyer before filing the self-petition to determine whether they are barred from showing good moral character.¹⁸²

Keep in mind that the victim may meet the requirements for one of the domestic violence-related exceptions or waivers for criminal convictions or other ineligibility grounds.¹⁸³ It is better to reveal criminal or other behavior at the onset of a VAWA case, rather than to wait for DHS to discover it at a later stage. Failure to disclose an arrest can undermine a person's credibility and may lead to denial of the self-petitioner's application for permanent residence or revocation of the approved self-petition.¹⁸⁴ There are DHS officers who may discover a criminal record at a later step in the proceedings even if it is not brought up during the first steps of an

¹⁷⁹ 3 USCIS-PM D.2(G)(3) (Evaluating Good Moral Character). See [INA 204\(a\)\(1\)\(J\)](#). See [8 CFR 103.2\(b\)\(2\)\(iii\)](#). See [8 CFR 204.1\(f\)\(1\)](#). See [8 CFR 204.2\(c\)\(2\)\(i\)](#). See [8 CFR 204.2\(e\)\(2\)\(i\)](#). [INA 204\(a\)\(1\)\(J\)](#) was not specifically amended to encompass the consideration of secondary evidence submitted by self-petitioning parents. The discussion of evidence found at [8 CFR 103.2\(b\)\(2\)\(iii\)](#) and [8 CFR 204.1\(f\)\(1\)](#) regarding self-petitions filed under [INA 204\(a\)\(1\)\(A\)\(iii\)](#) and [\(iv\)](#) and [INA 204\(a\)\(1\)\(B\)\(ii\)](#) and [\(iii\)](#) is applicable to self-petitions filed by abused parents of U.S. citizen sons or daughters under [INA 204\(a\)\(1\)\(A\)\(vii\)](#). For more information about the any credible evidence provision, see Chapter 5, Adjudication, Section B, Review of Evidence, Subsection 2, Any Credible Evidence Provision [[3 USCIS-PM D.5\(B\)\(2\)](#)].

¹⁸⁰ 3 USCIS-PM D.2(G)(3) (A self-petitioner is also required to maintain good moral character through the time of final adjudication of both the self-petition and the adjustment of status application).

¹⁸¹ 3 USCIS-PM D.2(G)(3) ("officers may not deny self-petitioners for a failure to submit criminal background checks or police clearances if self-petitioners have submitted an affidavit attesting that they have never been arrested").

¹⁸² 3 USCIS-PM D.2(G)(3) (Evaluating Good Moral Character). See [8 C.F.R. 204.2\(c\)\(1\)\(vii\)](#); see [8 C.F.R. 204.2\(e\)\(1\)\(vii\)](#); see also [8 C.F.R. 205.2\(d\)](#).

¹⁸³ A waivable criminal conviction or act under immigration law will not bar a finding of good moral character for a VAWA self-petitioner if the crime or act is connected to the abuse. 3 USCIS-PM D.2(G)(3) (the self-petitioner may have a conditional bar that is triggered by specific acts, offenses, activities, circumstances, or convictions. When a conditional bar is triggered, USCIS has the discretion to make a finding of good moral character despite an act or conviction falling under the conditional bar). See [INA 204\(a\)\(1\)\(C\)](#). Note that USCIS applies [INA 204\(a\)\(1\)\(C\)](#) to all self-petitioners, including those filing under [INA 204\(a\)\(1\)\(A\)\(v\)](#), [INA 204\(a\)\(1\)\(A\)\(vii\)](#), and [INA 204\(a\)\(1\)\(B\)\(iv\)](#), despite the fact that these self-petitioners are not specifically referenced in [INA 204\(a\)\(1\)\(C\)](#); 8 U.S.C. § 1154(a)(1)(C) (2000); see also [INA 101\(b\)\(1\)](#). An act or conviction with "a causal or logical relationship" to the abuse is "connected to" the abuse. See *Da Silva v. Attorney General*, 948 F.3d 629 (3rd Cir. 2020). For more information on waivers, read the discussion on obtaining lawful permanent residence later in this section.

¹⁸⁴ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 5 – ADJUDICATION, SECTION C – DECISION, SUBSECTION 3 – DENIALS [[3 USCIS-PM D.5\(C\)\(3\)](#)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-5>. See [INA § 205](#); 8 U.S.C. § 1155 (2000). See also [8 C.F.R. § 205.2](#) (2007). An immigration or consular officer may return the petition to the HART Service Center for revocation if the petition was mistakenly approved.

application. VAWA self-petition adjudicators working at the specialized HART Service Center¹⁸⁵ have specialized training on domestic violence and are better able to assess whether there is a connection between the domestic violence and any criminal activity and evaluating conduct within the context of the domestic violence.¹⁸⁶

Statutory Bars to Good Moral Character

If the conduct of the self-petitioner falls under one of the statutory bars listed in INA Section 101(f), the DHS generally is not permitted to waive this mandatory finding of a lack of good moral character.¹⁸⁷ An exception may exist for VAWA self-petitioners if they can establish a connection between the conduct and the domestic violence.¹⁸⁸ According to INA section 101(f), a person engaging in any of the acts listed below during the requisite period presumptively lacks good moral character.

- Habitual drunkenness;
- Prostitution within ten years of the date of application for a visa, admission, or adjustment of status;
- Smuggling a person into the United States;
- Polygamy;
- Conviction of or admission to an act constituting a crime relating to a controlled substance (excluding a single offense for simple possession of thirty grams or less of marijuana),¹⁸⁹
- Conviction of or admission to a crime of moral turpitude (excluding petty or juvenile offenses);
- Conviction of two or more offenses resulting in a total imposed sentence of five or more years;
- Trafficking or assisting with the trafficking of any illicit substance;
- Conviction of two or more gambling offenses or deriving their principal income source from illegal gambling;
- Giving false testimony to obtain immigration benefits;
- Detention in a penal institution for an aggregate period of 180 days or more; or

¹⁸⁵ The Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center (Hereinafter HART Service Center) opened in January 2023 and assumed responsibility for adjudicating all VAWA self-petitions that had historically been adjudicated by the VAWA Unit at the Vermont Service Center.

<https://www.uscis.gov/sites/default/files/document/notices/USCISOpenstheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf>

¹⁸⁶ 3 USCIS-PM D.2(G)(3) (Conditional and Statutory Bars under 101(f)(this finding may result in a conditional bar to approval). See [INA 204\(a\)\(1\)\(C\)](#). Note that USCIS applies [INA 204\(a\)\(1\)\(C\)](#) to all self-petitioners, including those filing under [INA 204\(a\)\(1\)\(A\)\(v\)](#), [INA 204\(a\)\(1\)\(A\)\(vii\)](#), and [INA 204\(a\)\(1\)\(B\)\(iv\)](#), despite the fact that these self-petitioners are not specifically referenced in [INA 204\(a\)\(1\)\(C\)](#). See *Da Silva v. Attorney General*, 948 F.3d (3rd Cir. 2020), holding that “connected to” as it is used in INA § 204(a)(1)(C) means “having a causal or logical relationship.”

¹⁸⁷ 3 USCIS-PM D.2(G)(3) (Self-petitioners who willfully failed or refused to support dependents, committed unlawful acts that adversely reflect on their moral character, or were convicted or imprisoned for such acts will be considered lacking good moral character). See 8 C.F.R. 204.2(c)(1)(vii) ; *see also* 8 C.F.R. 204.2(e)(1)(vii) ; *see also* 8 C.F.R. 316.10(a)(2). CHARLES GORDON ET AL., 6 IMMIGR. LAW & PROC. § 74.07[5][d] at 74-86 n.132 (release 119, 2007) (citing *Miller v. INS*, 762 F.2d 21, 24 (3d Cir. 1985)).

¹⁸⁸ INA § 204(a)(1)(C); 8 U.S.C. § 1154(a)(1)(C) (2000).

¹⁸⁹ Drug offenses are never considered petty offenses under immigration law. See INA § 212(a)(2), 8 U.S.C. § 1182(a)(2) (2000). Any sale, however small, is considered trafficking under the Immigration and Nationality Act. See *id.* While some expunged drug convictions may be erased for immigration purposes, most expungements have no effect. See *Murillo-Espinoza v. INS*, 261 F.3d 771 (9th Cir. 2001); *In re Roldan-Santoyo*, Interim Decision 3377 (B.I.A. 1999), *vacated sub nom.* *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000) (finding *In re Roldan* inapplicable in certain state expungements of first-time drug offenses).

- Convicted of an aggravated felony.¹⁹⁰

In many cases there will be a connection between conduct that would preclude the establishment of good moral character and the abusive relationship.¹⁹¹ For example, a self-petitioner may be found to be a person of good moral character, despite their conviction on numerous counts of petty theft, if it is revealed that they stole food for their children because their spouse would not give them enough food or money. Self-petitioners should also submit character-references and other evidence that may offset such negative factors. Any form of community involvement, such as volunteer work or participation in religious and school activities, can help counter the effects of past criminal behavior and other bad conduct.¹⁹²

“EXTREME CRUELTY”

VAWA’s immigration provisions define domestic violence more broadly than most state domestic violence statutes.¹⁹³ In addition to physical and sexual abuse, VAWA’s definition includes “extreme cruelty,” defined as:

*Being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.*¹⁹⁴

The USCIS policy manual defines extreme cruelty as a non-physical act or acts of violence or threat of violence demonstrating a pattern or intent on the part of the U.S. citizen or lawful permanent resident family member to attain compliance from or control over the self-petitioner.¹⁹⁵

Practice Pointer: Some immigrant spouse abuse victims who report various forms of extreme cruelty, but no physical abuse may in addition of extreme cruelty be victims of sexual assault within the family. It is important, particularly in these cases to work with your client to determine whether they have also been a victim of sexual assault. Many immigrant victims of spousal abuse assume that their spouse has the right force sexual relations and may not raise this as part of the abuse. Sexual assault (including sexual assault in a marriage or family relationship) is battery, not extreme cruelty. Similarly, stalking is a particularly dangerous form of abuse that may not involve any physical act of violence.¹⁹⁶ Stalking and sexual assault, like threats to kill

¹⁹⁰ 3 USCIS-PM D.2(G)(3) (Conditional Bars to Good Moral Character). See [INA 101\(f\)\(8\)-\(9\)](#).

¹⁹¹ 3 USCIS-PM D.2(G)(3)(Evaluating Good Moral Character)(Step 2 Determine Whether the Act or Conviction is ‘Connected’ to the Battery or Extreme Cruelty).

¹⁹² For a complete list please see the VAWA Red Flags list at <https://niwaplibrary.wcl.american.edu/pubs/vawa-red-flags>.

¹⁹³ Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POL’Y & L. 95, 106 (2002); Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 870 (1993).

¹⁹⁴ 3 USCIS-PM D.2(E)(1) (Abusive actions may, under certain circumstances, include acts that in and of themselves may not initially appear violent but that are part of an overall pattern of violence). 8 C.F.R. § 204.2(c)(vi) (2007). See INA 204(a)(1)(A)(iii)(ii)(aa)(CC)(ccc); see also INA 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

¹⁹⁵ 3 USCIS-PM D.2(E)(1) (Battering and Extreme Cruelty).

¹⁹⁶ SPARC Judicial Officer Guide: Responding to Stalking, (Last Updated Jul.5, 2022). <https://niwaplibrary.wcl.american.edu/pubs/sparc-judicial-guide-for-stalking>.

and threats of violence are criminal acts in all states.¹⁹⁷ Criminal acts as defined by state and federal laws are fall within the definition of battery for immigration relief purposes. Attorneys should ensure that immigration officials do not confuse acts of battery with acts of extreme cruelty. Depending on the facts of your case it may be harder to show “extreme cruelty” than it is to show “battery.”

Family law courts¹⁹⁸ have held that many non-physical forms of abuse constitute extreme cruelty against the victim.¹⁹⁹ Courts have examined whether acts of cruelty are “of such nature and character as to destroy the peace of mind and happiness of the injured party,”²⁰⁰ and whether the perpetrator intended to distress and humiliate the victim.²⁰¹ The victim’s self-esteem, dependency on the abuser, and ability to communicate are also factors abusers use to inflict and perpetuate extreme cruelty.

The Importance of Documenting Extreme Cruelty

In preparing a VAWA self-petitioning case, advocates and attorneys should document the existence of each of the factors listed below that constitute or contribute to extreme cruelty.²⁰² These issues should be addressed whether the immigrant victim has also suffered battering. Describing the extreme cruelty in a relationship, in addition to the physical abuse, gives the adjudicator a more complete description of the abuse the victim has suffered and the impact on the victim and their children.

The existence of extreme cruelty, in addition to physical abuse, may also enhance the victim’s credibility and may contribute to an immigrant victim’s success in proving other elements of a VAWA case, including good faith marriage and good moral character. For example, the concept of extreme cruelty may be particularly important for survivors of sexual assault filing self-petitions. While sexual assault is battery for a self-petition, a survivor will want to document all forms of domestic violence they experienced including battery, other criminal acts and extreme cruelty, in addition to sexual assault, in filing their petition. In this way a survivor of sexual assault will help those adjudicating the self-petition understand how sexual assault, which may have only occurred once, was part of a larger pattern of domestic violence.

Examples of evidence to demonstrate battery or extreme cruelty include but are not limited to:

¹⁹⁷ *Rape and Sexual Assault Analyses and Laws*, AEQUITAS (Part II) <https://aequitasresource.org/wp-content/uploads/2019/10/Rape-and-Sexual-Assault-Analyses-and-Laws-10.10.19.pdf>; *U.S. Stalking Laws & Statutes*, SPARC (Last Updated Jan. 2022) <https://www.stalkingawareness.org/map/>.

¹⁹⁸ For a detailed discussion see <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>.

¹⁹⁹ See, e.g., *Keenan v. Keenan*, 105 N.W.2d 54 (Mich. 1960) (holding that husband’s disparaging statements to wife constituted extreme cruelty); *Muhammad v. Muhammad*, 622 So.2d 1239 (holding that husband’s religiously-motivated harsh treatment of wife constituted extreme cruelty) (Miss. 1993); *Ormachea v. Ormachea*, 217 P.2d 355 (Nev. 1950) (holding that husband’s indifferent and sometimes hostile treatment of wife constituted extreme cruelty); but see *Carpenter v. Carpenter*, 193 P.2d 196 (Kan. 1948) (holding that wife’s refusal to live with husband did not constitute extreme cruelty).

²⁰⁰ See *Veach v. Veach*, 392 P.2d 425, 429 (Idaho 1964); *Pfalzgraf v. Pfalzgraf*, No. 52-CA-80, 1981 WL 6119 (Ohio Ct. App. Feb. 11, 1981); *Conner v. Conner*, No. CA-1953, 1981 WL 6290 (Ohio Ct. App. June 4, 1981); *Dickson v. Dickson*, No. D-98306, 1982 WL 5380 (Ohio Ct. App. May 27, 1982).

²⁰¹ *Wolf v. Wolf*, 333 A.2d 138, 140 (R.I. 1975).

²⁰² USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 4 – FILING REQUIREMENTS, SECTION B – DOCUMENTATION REQUIREMENTS [3 USCIS-PM D.(4)(B)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-4> (self-petitioners must submit evidence for each of the eligibility requirements, including battery or extreme cruelty).

- Reports and affidavits from police, judges, or other court officials;
- Reports and affidavits from medical personnel, medical records;
- Reports and affidavits from school officials or members of a religious authority;
- Reports and affidavits from social workers;
- Documentation showing the self-petitioner sought safe-haven or services from a domestic violence shelter or other service provider;
- Photographs of injuries; or
- Protection orders.²⁰³

Self-petitioners are also encouraged to submit a detailed personal statement as evidence, proving as much detailed information as possible addressing specific incidents of battery or extreme cruelty.²⁰⁴

Range of Forms of Abuse²⁰⁵

Abusers use many tactics to establish and retain control over their victims including battering, sexual assault, stalking, other criminal acts, coercive control, and extreme cruelty. In some cases only one instance of abuse will be sufficient to establish a case of battering or extreme cruelty. Other cases may require a victim to establish that different acts, when examined collectively over a period, constitute extreme cruelty. Extreme cruelty can include the following conduct:

- Isolation, humiliation, degradation, coercion;
- Use of guilt, minimizing, blaming;
- Possessiveness and harassment;
- Economic control;
- Economic and employment-related abuse (such as forced labor or unemployment);
- Threatening to commit a violent act toward the self-petitioner or the self-petitioner's children;
- Acts intended to create fear, compliance or submission by the self-petitioner;
- Controlling what self-petitioners do, who they see and/or who they talk to;
- Denying access to food, family, or medical treatment;
- Threats of deportation;
- Immigration related abuse; and
- Threats to remove a child from the self-petitioner's custody.²⁰⁶

²⁰³ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION E – SUBJECTED TO BATTERY AND EXTREME CRUELTY, SUBSECTION 2 – EVIDENCE [3 USCIS-PM D.2(E)(2)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>. See 8 CFR 204.2(c)(2)(iv). See 8 CFR 204.2(e)(2)(iv).

²⁰⁴ 3 USCIS-PM D.2(E)(2) (Evidence).

²⁰⁵ 3 USCIS-PM D.2(E)(1) (Listing acts of extreme cruelty and forms of abuse including: offensive touching, punching, slapping, spitting, biting, kicking, choking, kidnapping, rape, molestation, forced prostitution, sexual abuse, and sexual exploitation).

²⁰⁶ 3 USCIS-PM D.2(E) (Extreme Battery or Extreme Cruelty).

Intimidation and Degradation²⁰⁷

Experts acknowledge that batterers commonly use a variety of tactics beyond violence to keep women in abusive relationships.²⁰⁸ Abusers use threats to enhance a victim's dependence on them by creating fear, stress, and humiliation, if the victim tries to leave or if the victim does not comply with the abuser's demands. Abusers use different forms of threats including standing too close to victims, clenching their fists, giving "warning" looks, or displaying weapons to their intimate partners.²⁰⁹ In cases where the victim is also an immigrant, abusers often threaten to report them to the immigration authorities.²¹⁰ Threats, intimidation, and degradation trap victims in abusive relationships, and can often form the basis for proving extreme cruelty.

Economic and Employment Related Abuse²¹¹

Lack of access to economic resources is the single largest barrier to a victim who seeks to leave an abusive relationship.²¹² Victims may be prevented from participating in the labor market, or sabotaged at their workplaces.²¹³ Abusers are known to stalk or harass victims at work, and to send threatening e-mail or voice-mail messages that may cause the immigrant victim to be fired, or force them to leave their job for safety reasons. Furthermore, many illegal and undocumented immigrant victims are forced by their abusers to work illegally without being allowed to share in the monetary compensation associated with employment.

²⁰⁷ 3 USCIS-PM D.2(E)(1) (Extreme cruelty is defined as a non-physical act of violence or threat of violence or threat of violence demonstrating a pattern or intent on the part of the U.S. citizen or lawful permanent resident to attain compliance from or control over the self-petitioner). See *Hernandez v. Ashcroft*, 345 F.3d 824,840 (9th Cir. 2003). "Non-physical actions rise to the level of domestic violence when 'tactics of control are intertwined with the threat of harm in order to maintain the perpetrator's dominance through fear. . .' Because every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence ... Congress required a showing of extreme cruelty in order to ensure that [the VAWA suspension statute] protected against the extreme concept of domestic violence, rather than mere unkindness."

²⁰⁸ See K.J. WILSON, WHEN VIOLENCE BEGINS AT HOME 17-18 (2d ed. 2005)

<https://www.scribd.com/book/264129978/When-Violence-Begins-at-Home-A-Comprehensive-Guide-to-Understanding-and-Ending-Domestic-Abuse> (listing various forms of economic, sexual, and emotional abuse, as well as the threats, intimidation, and isolation tactics used by batterers); see also JUDITH HERMAN, TRAUMA AND RECOVERY 77 (1997).

²⁰⁹ Mary Ann Dutton, *Understanding Woman's Response to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1206 n.70 (1993) <https://scholarlycommons.law.hofstra.edu/hlr/vol21/iss4/2/>.

²¹⁰ LETI VOLPP, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 6 (1995)

<https://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/Working%20with%20Battered%20Immigrant%20Women%20Handbook%20English.pdf>.

²¹¹ 3 USCIS-PM D.2(F) (Residence with the Abusive Relative). Although 8 C.F.R. 204.2(c)(1)(v) states that "[a] self-petition will not be approved if the self-petitioner is not residing in the United States," this portion of the regulation has been superseded by the Victims of Trafficking and Violence Protection Act of 2000, 114 Stat. 1464 (Oct. 28, 2000), which removed the requirement for the self-petitioner to reside in the United States.

²¹² Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L.& POL'Y 245, 295-96 (2000) <https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors>; see generally Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WM. & MARY J. WOMEN & L. 597, 617-21 (2001) <https://niwaplibrary.wcl.american.edu/pubs/wm-2001>.

²¹³ A study of domestic violence survivors found that seventy four percent of employed battered women were harassed at work by their partner. FAMILY VIOLENCE PREVENTION FUND, THE WORKPLACE GUIDE FOR EMPLOYERS, UNIONS, AND ADVOCATES (1998), available at <http://www.endabuse.org/resources/facts/Workplace.pdf>. According to an earlier study, twenty percent of all employed battered women lose their jobs because of abuser harassment at the workplace. Susan Schechter & Lisa T. Gray, *A Framework for Understanding and Empowering Battered Women*, in ABUSE AND VICTIMIZATION ACROSS THE LIFE SPAN 242 (Martha Straus ed., 1988) <https://www.ojp.gov/ncjrs/virtual-library/abstracts/abuse-and-victimization-across-life-span>.

Social Isolation

Abusers may attempt to isolate their victims by prohibiting them from escaping, seeking help, and developing support systems, or maintaining the victim's existing support systems.²¹⁴ The abuser may restrict the victim from using the phone,²¹⁵ prohibit them from going to work or school,²¹⁶ make them depend on the abuser for transportation, limit the victim's contact with family or friends,²¹⁷ or prevent them from attending social activities.

Battered immigrants may be even further susceptible to social isolation due to the fact that many are far from any supportive community of family and friends.²¹⁸ To ensure isolation, an abuser might prevent a victim from learning English, or from having contact with people who speak English. A linguistic barrier minimizes a victim's ability to access health care, social services, domestic violence programs, immigrant rights agencies, law enforcement, and the courts.²¹⁹ Further, abusers often aggravated this sense of isolation by threatening to have their victims deported if they attempted to avail themselves of outside assistance or support.

Sexual Abuse²²⁰

Sexual abuse encompasses both the criminal legal definition of sexual assault, requiring elements of lack of consent, force or threat of force, and sexual penetration, as well as a broad range of behavior, including unwanted sexual conduct or nonconsensual distribution of intimate images that employs more subtle or implicit threats.²²¹

Rape, sexual assault, and any unwanted sexual contact are crimes that constitute battery.²²² In some VAWA self-petitioning cases, immigration attorneys, advocates, judges, and DHS adjudicators make the mistake of treating cases involving sexual assault or threats or attempts of sexual assault as cases of emotional abuse, in which sexual abuse is also present, as extreme cruelty cases and not battery cases. This approach is not correct, it downplays the sexual assaults occurring in the relationship and minimizes the impact of the sexual assault on survivors.

When sexual abuse is present in a self-petitioners case it should be documented factually, and the self-petition should demonstrate how the facts of what occurred to the victim meet the definition of sexual assault, sexual exploitation, incest, or other sex crimes under state law. The

²¹⁴ See, e.g., *People v. Humphrey*, 921 P.2d 1 (Cal. Rptr. 2d 1996); see also Ruth Jones, *Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser*, 88 GEO. L.J. 605 (2000).

²¹⁵ See, e.g., *Harshbarger v. Harshbarger*, No. 92-CA-111, 1993 WL 221269 (Ohio Ct. App. June 11, 1993) (considering husband's prevention of wife from talking on the phone for more than twenty minutes a factor in finding that he had committed extreme cruelty).

²¹⁶ FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE IN CIVIL COURT CASES 23 (1992).

²¹⁷ See CHARLES EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AND LEGAL JUSTIFICATION 9-10 (1987). Nearly half of the women studied were forbidden by their batterers to have personal friends or have friends in the home. A husband's refusal to allow his wife to invite their relatives to visit constitutes extreme cruelty. See, e.g., *Gazzillo v. Gazzillo*, 379 A.2d 288 (N.J. 1977); *Harshbarger*, 1993 WL 221269.

²¹⁸ Leslye E. Orloff et al., *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 314 (1995) <https://niwaplibrary.wcl.american.edu/pubs/with-no-place-to-turn-1995>.

²¹⁹ *Id.* at 317.

²²⁰ See 3 USCIS-PM D.2(E)(1) (battery or extreme cruelty may also include psychological or sexual abuse or exploitation, including rape, molestation, incest, or forced prostitution).

²²¹ Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 FLA. B.J. 24, 25 (1994).

²²² 3 USCIS D.2(G)(1) (sexual abuse is an example of battery). See Merriam-Webster Dictionary's law definition of "[battery](#)."

victim's affidavit should also separately describe the impact that the sexual assault related acts committed against them had physically and emotionally. When appropriate, depending on the facts of the sexual violence that occurred, these events collectively may constitute both battery and extreme cruelty.

Immigration-Related Abuse

When immigration related abuse is present in a relationship it is a key indicator of extreme cruelty.²²³ Abusers of immigrant women often threaten to report their victims to the immigration authorities.²²⁴ When immigrant women are dependent on their partners for legal immigration status, are undocumented, or have a vulnerable non-permanent immigration status,²²⁵ the power of immigration related abuse is accentuated.²²⁶ Immigrant women are placed in the untenable position of having to choose between living with ongoing and escalating abuse or taking action to stop the abuse and risking deportation. Others believe that they will be turned away from help by social services, health care and the justice system because they are non-citizens.²²⁷

Possessiveness and Harassment

Possessiveness and harassment also provide important evidence of extreme cruelty. Possessiveness may or may not be apparent to those around the abuser and/or victim. An abuser may be jealous and possessive of the victim.²²⁸ The abuser might accuse the victim of infidelity and of attempts to attract other men.²²⁹ Courts have ruled in family law cases that such behaviors can, in certain circumstances, constitute extreme cruelty. An abuser may open the victim's mail;²³⁰ call the victim frequently at home and at work or drive or loiter around the victim's home, work, or shelter;²³¹ constantly write letters to the victim;²³² contact the victim's friends, family, or employer;²³³ interrogate children or other family members; stalk the victim or victim's friends, family, and co-workers;²³⁴ chase the victim's car;²³⁵ or file frivolous legal actions against the victim.²³⁶

²²³ Giselle Aguilar Hass, Mary Ann Dutton & Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 105 (2000) <https://niwaplibrary.wcl.american.edu/pubs/lifetime-prevalence-dv-latinas>; see also Leslye E. Orloff & Janice V. Kaguayutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 108 (2002) <https://niwaplibrary.wcl.american.edu/pubs/imm-rsch-offeringhelpinghand-03-01-02>.

²²⁴ See Leti Volpp, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 6 (1995).

²²⁵ Examples include student visas that can be violated by working, and work visas tied to a particular employer.

²²⁶ Giselle Aguilar Hass, Mary Ann Dutton & Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 105 (2000) <https://niwaplibrary.wcl.american.edu/pubs/lifetime-prevalence-dv-latinas>;

²²⁷ *Id.*

²²⁸ In a survey of 234 physically abused women, seventy-three percent experienced excessive jealousy and possessiveness. Diane R. Follingstad et al., *The Role of Emotional Abuse in Physically Abusive Relationships*, 5 J. FAM. VIOLENCE 101, 113 (1990).

²²⁹ Courts dealing with divorce cases have recognized false accusations of infidelity as extreme cruelty. See, e.g., *Keenan v. Keenan*, 105 N.W.2d 54 (Mich. 1960) (holding that grounds for divorce exist where a husband falsely accuses his wife of adultery); *Mark v. Mark*, 29 N.W. 2d 683 (Mich. 1947).

²³⁰ *Knuth v. Knuth*, No. C1-92-482, 1992 WL 145387 (Minn. Ct. App. June 30, 1992).

²³¹ See *Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. Ct. App. 1989).

²³² See *State v. Sarlund*, 407 N.W.2d 544, 546 (Wis. 1987).

²³³ *Id.*

²³⁴ States have recognized stalking as a ground for issuing a civil protection order. See, e.g., N.J. STAT. ANN. §§ 2C:25-19 and 2C:12-10 (West 2005); N.M. STAT. ANN. § 40-13-2-C-9 (LexisNexis Supp. 1993); OKLA. STAT. ANN. TIT. 22, § 60.1 (West 2003); R.I. GEN. LAWS § 11-59-2 (2003). Stalking is generally defined as the intentional commission of

Like possessiveness, open harassment is destructive to a victim's peace of mind and security. Through open harassment, the abuser publicly demonstrates his control over the victim. Harassment can humiliate a victim by portraying them as weak and subordinate. Public humiliation may also be a culturally based form of extreme cruelty, particularly among cultural groups that highly value privacy.

General Filing Procedures and Practice Pointers

Self-petitioners must complete and file DHS Form I-360 (Petition for Amerasian, Widow or Special Immigrant) and include all supporting documentation. Forms are available at <https://www.uscis.gov/i-360>.

There are no fees for VAWA self-petitions. However, VAWA self-petitioners are required to pay filing fees or request fee waivers when filing applications for employment authorization and lawful permanent residency applications.²³⁷ Low-income victims can apply for waivers of these fees and all fees associated with a VAWA self-petition.²³⁸ It is important to note that when filing fee waiver requests that victim's work authorization or lawful permanent residency application is not considered filed unless and until the fee waiver request has been granted.

Self-petitioners should keep a copy of everything they submit to the DHS, including the application, accompanying documents, and proof of mailing. **Do not send original birth certificates, legal documents, or photographs with the petition. Send copies.** Within a few weeks after mailing the application and fees or fee waiver request, the self-petitioner should receive an acknowledgement or Notice of Receipt. The case processing priority date for the victim's self-petition application is the date on the receipt notice.

Practice Pointer: Battered immigrant women often seek help at shelters, rape crisis centers and victim advocates based a range of other organizations. Victim advocates are in the best position to help battered immigrants begin gathering the necessary documents and information for their self-petition. Immigration attorneys helping clients with VAWA self-petitions should work with victim advocates who can help the attorney and client develop the case affidavit and properly document the full history of violence, controlling behavior, and emotional abuse. Victim advocates can also help create a safety plan for your client. The safety plan may include providing a safe space for the collected information and documents to prevent

more than one act which reasonably causes a victim to fear serious bodily injury. U.S. DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, STRENGTHENING ANTISTALKING STATUTES, NCJ 189192 (2002), *available at* <http://www.ovc.gov/publications/bulletins/legalseries/bulletin1/ncj189192.pdf>. Every state has passed an anti-stalking law criminalizing this behavior. *Id.* A 1996 study estimated that over one million women are stalked every year. PATRICIA TJADEN AND NACY THOENNES, STALKING IN AMERICA: NATIONAL VIOLENCE AGAINST WOMEN SURVEY (1998), *available at* http://www.ncvc.org/src/main.aspx?dbID=DB_NVAW587.

²³⁵ See Christenson v. Christenson, 472 N.W.2d 279, 280 (Iowa 1991).

²³⁶ See Johnson v. Cegielski, 393 N.W.2d 547 (Wis. Ct. App. 1986).

²³⁷ U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS SETS FINAL FEE SCHEDULE TO BUILD AN IMMIGRATION SERVICE FOR THE 21ST CENTURY (2007), <http://www.uscis.gov/files/pressrelease/FinalFeeRulePressRelease052907.pdf> (last visited Feb. 23, 2008). See INA 245(e)(3).

²³⁸ Section 201(d)(7) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 Public Law 110-457 (December 23, 2008) created fee waivers for all filings related to or arising in connection with a VAWA self-petition, VAWA cancellation, VAWA suspension of deportation, U visa or T visa case from filing through adjustment of status to lawful permanent residency. Removing mandatory non-waivable fees greatly increases access to immigration relief for immigrant victims of violence against women.

the papers from being found and destroyed by the abuser.

An attorney working with a self-petitioner should make sure to:

- Collect all necessary details of the client's story by asking open-ended questions through a series of interviews. Advocates can collect this information for the attorney.
- Obtain the draft affidavit the advocate developed in collaboration with the client and organize it in a format that will be most effective for the adjudicator.
- Collect affidavits and other documents corroborating the existence of domestic violence and a good faith marriage.
- Index and summarize supporting documents by elements of proof so DHS examiners may easily understand which documents support which elements of proof and how.
- Include a cover letter providing a road map through the case, using bullets or a similar technique to maximize reader-friendliness.

The Self-Petitioner's Affidavit

The self-petitioner's personal affidavit is the most important piece of evidence; it is the first document that most VAWA adjudicators review, and should, if done well, support a finding that the applicant is credible. The affidavit should provide as much detail as possible in the applicant's own words.²³⁹ The affidavit is essentially the story of the client's relationship with their spouse and should explain why they are entitled to relief pursuant to the seven factors identified above. Likewise, the affidavit should be written in a personal, humanizing manner, thus better eliciting the reader's sympathy.

NIWAP has developed a set of tools designed to help attorneys and victim advocates to support victim's writing affidavits using a trauma informed approach. The trauma informed structured interview questionnaire (SIQI) incorporates evidence-based research tested tools used by psychologists, therapists and researchers and incorporates questions designed to document patterns of coercive control and stalking. Using the SIQI will help attorneys and advocates document the full range of abuse suffered by the victim and the impact that the abuse had on the victim and their children.²⁴⁰

The affidavit should address each element of proof. The attorney can recognize the affidavit and reword certain passages if they are unclear but should not write the affidavit and should not use legal terminology. Attorneys and advocates should organize the victim's affidavit in chronological order, making it easier for the adjudicator to understand the development of the relationship and the history and patterns of abuse. This can be done while keeping the story as much as possible in the victim's own words.

²³⁹ 3 USCIS-PM D.2(E)(2) (personal statements) ("The self-petitioner's personal statement should provide as much detailed information as possible addressing specific incidents of battery or extreme cruelty").

²⁴⁰ See Trauma Informed – Structured Interview Questionnaires for Immigration Cases (SIQI)(April 27, 2023) <https://niwaplibrary.wcl.american.edu/pubs/siqi-trauma-informed-tool>; see also, Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma Informed Approach (April 27, 2023) <https://niwaplibrary.wcl.american.edu/pubs/advocates-attorneys-tool-trauma-informed>; Multilingual translations of the SIQI are available at: <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

In addition to all the eligibility requirements, immigration officials look for consistency in the affidavit. It is important to include dates, places, and detailed descriptions of events only when the petitioner is certain that the information is correct. When inconsistencies arise between the affidavit and supporting documentation, the affidavit should address the inconsistency. For example, a victim might have denied to a hospital worker that their injuries were caused by domestic violence. The affidavit should acknowledge this inconsistency and explain why they did not reveal to the hospital staff the cause of their injuries. Immigration adjudicators are trained in recognizing domestic violence and should understand the legitimate safety-related reasons why a battered woman may not reveal the domestic violence to a health-care provider. However, failure to explain the inconsistency could call their credibility into question.

The affidavit should include:

- The client's full name, place, and date of birth
- Proof of good faith marriage: including details regarding how the client and their spouse met, how the relationship developed, why and when they decided to get married and details about the wedding.²⁴¹
 - It should also provide a description about their daily lives (who paid the bills, who prepared meals, cleaned the house, took care of the children) and information about their social life together.
 - If the marriage was arranged, it should explain how the marriage was consistent with the practices of either the client's or their spouse's culture.²⁴²
- Residence with the abusive spouse/parent: The affidavit should state when, where, and for how long the petitioner resided with the abuser, and the nature of the relationship while living together.²⁴³
-
- Information about the self-petitioner's children: It should also state where and when the client had children, and any plans to have children with their spouse, whether they have children from other relationships that they want to include in their self-petition, and when and where these children were born.
- Citizenship or Lawful Permanent Resident status of abusive spouse or parent: It should also include any information they have about their abusive spouse's status, U.S. citizenship, or lawful permanent resident status.²⁴⁴ This may include a statement that the victim had seen the abuser's passport or green card, or information about the abuser's passport or Alien number; or statements made by the abusive spouse or parent to others about his citizenship or resident status.

²⁴¹ 3 USCIS-PM D.4(B) (Self-petitioners must provide evidence of that the qualifying relationship demonstrates familial, legal relationship to the abuser. The self-petitioner could provide birth certificates, marriage certificates, and divorce decrees).

²⁴² 3 USCIS-PM D.4(B) (Self-petitioners must demonstrate that the marriage was entered in good faith).

²⁴³ 3 USCIS-PM D.4(B) (Self-petitioners must provide evidence of shared residence with the abusive U.S. citizen such as leases, deeds, mortgages or rental agreements listing the abuser and the self-petitioner).

²⁴⁴ 3 USCIS-PM D.4(B) (Self-petitioners can demonstrate the abusive relative's U.S. citizenship or lawful permanent resident status through a birth certificate, an unexpired U.S. passport, a Certificate of Naturalization, or a copy of a Permanent Resident card.)

- **Battering or Extreme Cruelty Description:** A description of how and when the physical and/or psychological abuse began, and the client's fears, hopes, and other feelings about it. Descriptions of the abuser's use of intimidation, economic abuse, isolation, immigration-related abuse, and sexual abuse to exert power and control over them and perpetuate extreme cruelty.
 - A description of the incidents in which the spouse harmed the petitioner and/or their children and the abuser's tendencies to attempt to control them.²⁴⁵
 - Any threats should be described. So should attempts to get help and the results when the victim did, or their fear to ask for help.
 - Also include observations, reactions, and physical and emotional injuries.
 - Her fear of reporting the abuse to other people or to the police should be explained, including any attempts to seek help both through formal service providers (police, shelter, courts, hospitals, social service agencies) and informal methods (talking to friends, family members, community members, leaders, elders, or clergy).
 - It should state the petitioner's relationship with the abuser's family and their role (if any) in the abuse, including whether they pressured the client not to report the abuse to the police.
 - It should describe the petitioner's fears for their own personal safety, the safety of their children, or that of their family.
- **Good Moral Character:** A self-petitioner over the age of 14 should demonstrate good moral character.²⁴⁶
 - A petitioner who has no arrests should clearly state this in their affidavit.
 - They should also discuss their involvement in community, faith-based organizations, their children's school, and support groups.
 - A petitioner with any arrests or convictions should immediately be referred to an immigration attorney with experience working on criminal law and domestic or family violence issues.
- **Affidavit Conclusion:** At the end of the declaration, it is important to include the following phrase:
 - "I affirm, under penalty of perjury, that all the foregoing statements are true to the best of my knowledge." (The Petitioner's signature and the date should follow the statement).

Affidavits from Witnesses and Advocates

1) Corroborating witness affidavits:

Under the VAWA any credible evidence rules victims can submit any credible evidence they can safely gather to prove each element of VAWA self-petitioning eligibility. Affidavits

²⁴⁵ 3 USCIS-PM D.4(B) (Evidence of battery or extreme cruelty perpetrated by the U.S. citizen or lawful permanent resident during the qualifying relationship can also be shown in reports or affidavits from police, judges, other court officials, medical personnel, school officials, clergy, social workers, and other social service personnel; court or medical records; or protection orders).

²⁴⁶ 3 USCIS-PM D.4(B) (Evidence of good moral character can be demonstrated in affidavits and local police clearance or state-issued criminal background checks from each locality or state in or outside the United States where the self-petitioner has resided for 6 months or more during the 3-year period immediately preceding the filing of the self-petition).

from witnesses, victim advocates, and other professional can be very useful in helping VAWA self-petitioners meet their burden of proof. Affidavits can be obtained from:

a) Witnesses to the abuse or the effects of the abuse:

The self-petitioner should describe in their affidavit incidents where the witness was present and seek affidavits from those individuals who:

- Were present during the incident;
- Saw or heard an assault, harassment, threat, act of humiliation, or other form of extreme cruelty;
- Saw the battered immigrant's bruises or injuries; and/or
- Were told by the battered immigrant about abusive incidents.

b) Victim Advocates:

Victim advocates who work at shelters, rape crisis centers, faith-based or community-based organizations, in healthcare settings, for culturally specific organizations or for other agencies often are able to work with survivors over time and gain their trust. This combined with victim advocates' expertise detecting crime victimization and supporting survivors make them an excellent source for affidavits to support the victim's VAWA self-petition case. Victim advocates can attest to time spent in the shelter, involvement in programs or receipt of victim services, incidents of abuse disclosed by the victim to the advocate, and the impact of that the trauma from the abuse had on the victim. Affidavits from victim advocates should include:

- The advocate's experience in the area of domestic violence and/or sexual assault (how long, in what capacity, how many clients served);
- What the petitioner told the advocate about the sexual assault/ domestic violence (including acts of psychological abuse);
- An assessment that the victim seemed credible to the advocate given their experience with victims of domestic violence/sexual assault;
- An explanation of why the treatment experienced by the victim amounts to domestic violence/sexual assault; and
- Any suggestions or recommendations the advocate provided to the petitioner (safety-planning measures, counseling resources, or any other information related to the domestic violence/ sexual assault they had experienced).

c) Psychologists, counselors or mental health workers:

If the applicant attended individual or group counseling sessions or received therapy from a mental health professional, these professionals can explain the abuse disclosed by the applicant, describe how the survivor's behavior follows patterns to be expected of someone who has been a victim of intimate partner or family violence. Affidavits of this nature should include:

- The number of years the mental health worker has worked in the field;
- The number of domestic and family violence victims the mental health worker has treated or seen; and
- The number of counseling visits or group sessions in which the self-petitioner participated.

d) Co-workers, religious leaders, neighbors, and friends:

This group of individuals can provide affidavits that describe any abuse they witnessed and/or describe their observations about how the abuse has affected the victim and their children. Affidavits of this nature should include:

- The length of time they have known the self-petitioner;
- Any knowledge they have about the marital relationship, including documentation of the courtship and/or marriage;
- The fact that the victim and abuser resided together;
- Information about any abusive (both physical and emotional) incidents they witnessed;
- A description of any injuries sustained by the self-petitioner or their children that they are aware of as well as any other effects, psychological or emotional, of the abuse on the immigrant victim and their children;
- Information about any help they offered the immigrant victim, and
- Any concerns/fears for themselves, the victim or their children the witness may have.

e) Affidavits of Children:

When children are self-petitioners, or have witnessed abuse, they can file their own affidavit in support of their own or their parent's or stepparent's self-petition. While these affidavits can be useful to the case, preparing them can traumatize the children. It is therefore recommended that only older children be asked to prepare affidavits. It is further recommended that children who have witnessed or experienced domestic violence be referred to counseling and treatment. Children involved in counseling can be assisted by their mental health treatment providers in preparing their affidavits.

In cases of children who will be filing self-petitions and children of parent or stepparent self-petitioners therapists and counselors who work with children who have experienced or witnessed domestic violence, child abuse, coercive control, and any forms of battering or extreme cruelty occurring in families, can prepare and submit affidavits on the children's behalf documenting the abuse the child suffered or witnessed at home and the impact that the abuse has had on the child and their emotional, physical and educational development. These affidavits can be extremely useful in cases of young and older children.

Checklist of Suggested Supporting Documents

The regulations interpreting VAWA recommend the submission of certain types of documents with the self-petition.²⁴⁷ However, DHS is required to consider "any credible evidence."²⁴⁸ The suggested evidentiary documents provided in this section are meant to serve as a guide. These documents are not an exhaustive list of the types of evidence that may be offered

²⁴⁷ See 8 C.F.R. § 204.2(c)(2)(ii) (2007).

²⁴⁸ See 8 C.F.R. § 204.4 (2007); INA § 204(a)(1)(H), 8 U.S.C. § 1154(a)(1)(H) (2000); see also U.S. CITIZENSHIP & IMMIGRATION SERVS. MEMORANDUM FROM PAUL VIRTUE, EXTREME HARDSHIP AND DOCUMENTARY REQUIREMENTS INVOLVING BATTERED SPOUSES AND CHILDREN (Oct. 16, 1998).

to support a petition under VAWA. Petitioners do **NOT** need to provide all the documents listed below; these are examples of evidence an applicant may provide.

1) What additional evidence should accompany the application?

In addition to properly completing the self-petition, Form I-360, and preparing the victim's and witness' affidavits, the petitioner should prove each element of their VAWA case through accompanying documentation whenever possible. The types of additional evidence that can be submitted to support a VAWA self-petition include the following items, listed by element of proof:

a) Marriage to the abuser:

The following documents are acceptable as proof of marriage:

- A marriage certificate;
 - Self-petitioner's affidavit stating the fact of the marriage, when and where the ceremony occurred, and who performed the ceremony; and/or
 - Affidavits by persons with knowledge of the marriage.²⁴⁹
- i) The self-petition must be filed within two years of divorce: where the self-petitioner is divorced from the abuser, the petition must be filed within two years of the date the divorce became final. The following should be submitted:
- A divorce order establishing the date the divorce became final;
 - An affidavit from the self-petitioner detailing the battery or extreme cruelty and its connection to the divorce;
 - Other evidence of battery and extreme cruelty, including any protection order issued for them or their children (including any court papers they filed seeking the protection order which outline the abuse in the relationship)²⁵⁰ medical records, affidavits from health, mental health or domestic violence service providers documenting domestic violence in the marriage.
- ii) Marriage in case of bigamy, divorce or death: If the self-petitioner is not legally married to the abuser because of the abuser's bigamy, they may still qualify if they can prove that they believed they legally married the abuser.²⁵¹ The following forms of evidence may be used:

- Marriage certificate;

²⁴⁹ 3 USCIS-PM D.2(B)(2) (Qualifying Relationship – Self-Petitioning Spouse). See INA 204(a)(1)(A)(iii)(II)(aa)(CC). See INA 204(a)(1)(B)(ii)(II)(aa)(CC). For more information, see 3 USCIS-PM D.3(A) and 3 USCIS-PM D.3(D). Although 8 CFR 204.2(c)(1)(i)(A) requires that the self-petitioner demonstrate an existing marriage to the abuser at the time of filing, the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386 (PDF), 114 Stat. 1464 (October 28, 2000) amended this requirement to allow abused spouses to remain eligible for VAWA benefits if the marriage was terminated due to divorce or death in certain circumstances. VTVPA supersedes this part of the regulation.

²⁵⁰ Review all official documents submitted in support of the self-petition for consistency with the self-petitioner's affidavit. The self-petitioner should explain any inconsistencies with their affidavit in a cover letter prepared by an attorney.

²⁵¹ INA § 204(a)(1)(A)(iii)(II)(aa)(BB), 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(BB) (2000)(relating to U.S. citizens); INA § 204(a)(1)(B)(ii)(II)(aa)(BB), 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(BB) (2000)(relating to lawful permanent residents).

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- Marriage license application;
- Photographs of the wedding ceremony;
- Affidavits from persons attending the wedding ceremony; and/or
- An affidavit from self-petitioner stating facts supporting why they believed they legally married the abuser, and why they believed their marriage was valid.

iii) Widow of a U.S. citizen who died within the past two years: If the self-petitioner was the spouse of an abusive U.S. citizen (not permanent resident) who died within the past two years, the victim can still file a self-petition.²⁵² The following documents must be provided:

- Marriage certificate;
- Death certificate of the U.S. citizen spouse; and
- Proof of U.S. citizenship (including, U.S. passport, birth certificate, or naturalization certificate).

b) Children filing for VAWA:

i) A child who files a VAWA self-petition must prove that s/he is the natural child, stepchild, or adopted child of a U.S. citizen or permanent resident.²⁵³ There is no longer a requirement that they reside with their abusive parent for 2 years for abused adopted children.²⁵⁴ The relationship may be proven with:

- A birth certificate or other document establishing that the child is under 21 years of age listing the parents' names;
- The parents' marriage certificate;
- If the child was born out of wedlock, documents showing legitimation (legal acknowledgment or other evidence or proof that the country where the child was born does not distinguish between children born in and out of wedlock)²⁵⁵
- For adopted children, an adoption decree, or an affidavit of adoption and evidence of the abuser's legal custody.²⁵⁶

ii) Stepchild of the abuser:²⁵⁷ In case of an abusive stepparent, the abused child's relationship with the abusive stepparent may be proven by submitting:

²⁵² INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154 (a)(1)(B)(ii)(II)(aa)(BB) (2000).

²⁵³ INA § 204 (a)(1)(A)(iv) and (B)(iii), 8 U.S.C. § 1154(a)(1)(A)(iv) and (B)(iii) (2000). *See* INA 101(b)(1); *see also* 8 C.F.R. 204.2(e)(1)(ii).

²⁵⁴ This requirement appears in old versions of the Immigration and Nationality Act, but no longer applies. Adopted children can also apply for lawful permanent residency directly.

²⁵⁵ These requirements vary depending on the laws of the country where the child was born. *See generally* INA § 101(b)(1)(C), 8 U.S.C. § 1101(b)(1)(C) (2000); *In re Obando*, 16 I. & N. Dec. 278 (B.I.A. 1977); *In re Cabrera*, 21 I. & N. Dec. 589 (B.I.A. 1996); *In re Martinez*, 21 I. & N. Dec. 1035, 1038 (B.I.A. 1997).

²⁵⁶ Section 805(d) of the Violence Against Women Act of 2005 most recently modified the requirements for abused adopted children removing the two year custody and residency requirement for abused adopted children. § 101 (b) (1) (E) (i) of the INA; 8 U.S.C. 1101 (b) (1) (E) (i) (2008). PLEASE NOTE that this statutory language overrules the existing section of the Code of Federal Regulations on abused adopted children.

²⁵⁷ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 3 – EFFECT OF CERTAIN LIFE EVENTS, SECTION A – DIVORCE PRIOR TO FILING THE SELF-PETITION, SUBSECTION 2 – TERMINATION OF A STEP-RELATIONSHIP DUE TO DIVORCE OR DEATH [3 USCIS-PM D.3(A)(2)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d->

- If either the child's natural parent or step-parent were previously married, evidence that prior marriage or marriages have been terminated;
- Child's birth certificate proving the child's relationship with his/her natural parent;
- The marriage certificate of the natural parent and the stepparent.

iii) Children included in the self-petition: A self-petitioner who wants to include their child/children in the self-petition must prove their parent/child relationship with the children. The children must also be under the age of 21 to be included in the application. The following documentation must be included for each child:

- Child's birth certificate, listing the names of the child's parents along with an English translation, where applicable;
- If the self-petitioner is the child's father:
- Marriage license or certificate documenting the child's parents were married;
- Evidence of the child's legitimation; or
- Evidence of a bona fide parent-child relationship (pictures, letters).

c) Good-faith marriage

A self-petitioner must be able to demonstrate that their marriage to an abusive spouse was entered into in good faith and not as a means to circumvent immigration laws.²⁵⁸ USCIS cannot deny self-petitions solely because the spouses are not living together or the marriage is no longer viable.²⁵⁹ Furthermore, separation from the U.S. citizen or lawful permanent resident spouse does not prove alone that a marriage was not entered into good faith.²⁶⁰ In addition to the evidence listed in the "Residence with the Abuser" section below, a victim may submit the following to prove good faith marriage:

- Description in the self-petitioner's affidavit of courtship, wedding (include pictures), shared residence, and shared experiences (one affidavit describing this and the abuse or other relevant information can be submitted);
- Insurance policies listing their spouse, joint leases, jointly filed income tax returns, bank accounts, and other evidence of shared household and financial obligations;
- Birth certificates of their children;
- Photographs of the wedding;
- Photographs of the self-petitioner with their spouse and other family members, preferably taken on different dates and at different locations;
- Letters or cards exchanged with their spouse and between their family members and spouse;
- Names, addresses and phone numbers of people who knew the abuser and the applicant as a married couple;
- Photo IDs with the applicant's married name;

[chapter-3](#). See *Arguijo v. USCIS*, 991 F.3d 736 (7th Cir. 2021), holding that divorce does not terminate a stepchild relationship for the purposes of eligibility for a VAWA self-petition. USCIS has chosen to apply this holding regardless of where the self-petitioner resides.

²⁵⁸ See 8 C.F.R. 204.2(c)(1)(ix).

²⁵⁹ 3 USCIS-PM D.2(C).

²⁶⁰ 3 USCIS-PM D.2(C).

- Letters from their employer or healthcare provider stating that they changed their name or listed the abuser as an emergency contact.²⁶¹

d) Residence with the abuser

A self-petitioner is not required to be residing with the abuser at the time of filing, but they must prove that they resided with the abuser at any time in the past when filing the self-petition.²⁶² No specific length of residency with the abuser is required. Evidence may include:

- Self-petitioner's affidavit describing residency with the abuser;
- Joint auto, health or life insurance, tax returns or bank accounts, lease agreements, property deeds, or rent receipts with both names on them;
- Employment or school records that list the names of both the applicant and the abuser at the same residence;
- Letters or cards addressed to both the applicant and the abuser at the same residence;
- Utility bills, medical records, credit card bills, magazine subscriptions in both names or to each spouse at the same address;
- An affidavit of the landlord, apartment manager or neighbors at the address where the couple lived attesting to their residence at that location.

e) Evidence demonstrating the abusive spouse or parent is a U.S. citizen or lawful permanent resident:

A self-petitioner must prove that their spouse or parent is a U.S. citizen or lawful permanent resident.²⁶³ The following is a list of documents that can be used to prove the abuser's U.S. citizenship or lawful permanent resident status:

-
- Abuser's birth certificate indicating birth in the United States;
- Abuser's naturalization certificate, green card, 'A' number, or any DHS document indicating immigration status;
- Abuser's U.S. passport or passport number;
- A copy of the I-551 stamp in the abuser's passport, indicating lawful permanent resident status; or
- Upon request, DHS will attempt to electronically verify abusers' citizenship or immigration status from their computerized records.²⁶⁴

f) Battery or extreme cruelty during the marriage

²⁶¹ 3 USCIS-PM D.2(C). See [8 CFR 204.2\(c\)\(2\)\(vii\)](#).

²⁶² 3 USCIS-PM D.3(C)(1) (Self-Petitioning Spouses – Marriage While in Removal Proceedings). See INA 204(a)(1)(A)(iii)(II)(dd) ("has resided with the alien's spouse or intended spouse") more broadly, which USCIS agrees is also a reasonable interpretation. See *Dartora v. U.S.*, No. 4:20-CV-05161-SMJ (E.D.W.A. June 7, 2021); *Bait It v. McAleenan*, 410 F. Supp. 3d 874 (N.D. Ill. 2019); and *Hollingsworth v. Zuchowski*, 437 F. Supp. 3d 1231 (S.D. Fla. 2020) (holding that self-petitioners are not required to have resided with the abuser during the qualifying relationship but must have resided with the abuser at some point before filing the self-petition).

²⁶³ 3 USCIS-PM D.3(E) (Loss or Renunciation of Lawful Permanent Resident Status); See INA 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb). See INA 204(a)(1)(A)(iv). See INA 204(a)(1)(A)(vii). See INA(a)(1)(B)(ii)(II)(aa)(CC)(aaa). See INA 204(a)(1)(B)(iii).

²⁶⁴ 8 C.F.R. § 204.1(g)(3)(2007). This can be useful if the abuser is a naturalized citizen, a lawful permanent resident, or a U.S. born citizen who previously filed an immigration case for the self-petitioner or a child.

One of the most important elements of a VAWA self-petition is proof that battery or extreme cruelty took place. VAWA does not explicitly require any particular quantity of abuse. Proof of one incident of battery or extreme cruelty is legally sufficient.²⁶⁵ Sexual Assault is battery and extreme cruelty under this definition.²⁶⁶ It is strongly recommended, however, that advocates and attorneys work with immigrant victims to include as much of the history of battery and extreme cruelty in the victim's affidavit as possible. Advocates and attorneys should provide evidence for as many incidents as possible to establish a pattern of violence and extreme cruelty. Using NIWAP's trauma informed interview tools can assist in the development of a strong, thorough, and convincing self-petitioner affidavit.²⁶⁷

Types of documentation to obtain are:

i) Affidavit of the battered spouse telling their story: It is important to focus on the facts of the violence or cruelty, mentioning each incident separately, and in chronological order, listing when each incident occurred, and describing the applicant's fears and injuries (both physical and psychological), and the effect that each abusive incident had on any children.

The history of power, control, and extreme cruelty should also be described as part of the chronology. The effect that this pattern of power and control had on the self-petitioner and their children should be discussed. The affidavit should establish that the self-petitioner is credible, explain why they are entitled to relief, and elicit the reader's sympathy.

Types of evidence establishing abuse or extreme cruelty have occurred are:²⁶⁸

- Restraining orders or civil protection orders that are obtained in any state, along with the pleadings (petition/affidavit) signed by the self-petitioner that were filed with the court in the civil protection order case.
- Police reports, records of phone calls to the police, or police visits to the couple's address. This may include phone calls to the police registering a complaint, a log of police runs made to the couple's address, and copies of all tapes of calls to the police for help.

²⁶⁵ VAWA self-petitioners and VAWA cancellation of removal applicants need not prove any specific amount of abuse. In contrast, battered immigrants who can only file for U visas (crime victim visas) must prove that they suffered substantial physical or mental harm because of criminal activity. This is a much higher standard. Refer to Chapter 3.6 of this manual, "Alternative Forms of Relief for Battered Immigrants and Immigrant Victims of Crime: U Visas and Gender-Based Asylum", for more information on U visas.

²⁶⁶ 8 C.F.R. §204.2(c)(1)(vi) (2007).

²⁶⁷ See Trauma Informed – Structured Interview Questionnaires for Immigration Cases (SIQI)(Apr. 27, 2023) <https://niwaplibrary.wcl.american.edu/pubs/siqi-trauma-informed-tool>; See also, Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma Informed Approach (Apr. 27, 2023) <https://niwaplibrary.wcl.american.edu/pubs/advocates-attorneys-tool-trauma-informed>; Multilingual translations of the SIQI are available at: <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>.

²⁶⁸ 3 USCIS-PM D.2(E)(2) (Examples of evidence to demonstrate battery or extreme cruelty occurred includes but is not limited to restraining orders or civil protection orders, court records, medical records, affidavits from a member of a religious authority, documentation showing the self-petitioner sought safe-haven or services from a domestic violence shelter, photographs of injuries, or any other credible evidence). See 8 C.F.R. 204.2(c)(1)(vi); see also 8 C.F.R. 204.2(e)(1)(vi).

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- Photographs of the injuries sustained: that have been taken by the police, family, advocate, victim's attorney, or the victim herself. If possible, for larger injuries, take a photo holding a ruler next to the injury so that the factfinder can ascertain the size and scale of the injury. Include the woman's face within every photo, or take a full-body photo and then close ups. The local police station may also take photos. Include an affidavit of the person who took the photograph about their observations, including the time and date the photograph was taken, the fact that they took the photograph, and an attestation to the accuracy of the photograph compared to the photographer's in-person observations of the bruises. Take several extra photos to be sure you will end up with one of good quality that will be useful to the case.
- Photographs of damaged property If a batterer has damaged any property during a violent incident, such as ripping clothes, smashing sentimental objects, pulling phone cords out of the wall, etc., if possible. The damaged property should be photographed where it was damaged, and then the object should be collected and retained. The woman's affidavit should state that the applicant still has the object and that it can be inspected by the DHS.
- Corroborating witness affidavits for each incident of abuse where another person was present, or from witnesses who saw or heard an assault or threat, saw the victim with bruises or injuries, or was told by them about abusive incidents close to the time they occurred. Reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel are very helpful.
- Medical records If the account told by the victim to the health professional differs from their true story (e.g. the victim initially reported falling down the stairs rather than revealing the truth that they had been battered), the applicant's affidavit and the cover letter from the attorney or advocates to DHS must address and explain any inconsistencies between the two stories. Advocates and attorneys should develop a specific HIPPA compliant doctor/patient privilege-waiver form to obtain copies of their medical records and mental health treatment records. Such a waiver should limit the scope of release to obtaining medical documentation for use solely in a victim's VAWA self-petition. VAWA confidentiality provisions, in conjunction with a limited release waiver, protect against the records being used in any family or criminal court proceeding without the victim's consent.
- Criminal court records if a batterer was arrested or convicted for any act of violence or destruction of property relating to the applicant (certified copies if possible); a victim's own statements to police or prosecutors may be released to them by the prosecutor's office for this purpose.
- Victim advocate program records: Domestic or sexual violence program or shelter records or affidavits attesting to the time the victim spent in the shelter, services sought from a rape crisis center, and the incidents of abuse disclosed to victim advocates. If the applicant attended counseling sessions, records indicating their attendance should also be added.

f) **Good moral character**

Convictions for certain crimes, as well as other actions, will bar a self-petitioner from establishing good moral character.²⁶⁹ To demonstrate good moral character, the petitioner should present:

- Information in their affidavit attesting to their own good moral character, lack of a criminal record, and involvement in their community, church, or their children's school;
- Local police clearance or state-issued background checks from each locality or state in the United States in which the victim has resided for six months or more during the three years immediately preceding the petition date. A police clearance or "good conduct" letter can be obtained from the local or county police department in each locality where they live or has lived. If the victim has moved, these letters can be requested in writing, normally with proof of identity and a small fee for the search. Further, it may be necessary to obtain similar clearance letters from foreign countries if the victim lived abroad during the requisite time period;
- An explanation of why police clearances or background checks cannot be safely obtained or are not available, submitted along with other evidence of good moral character with their affidavit;
- Affidavits from responsible persons who can knowledgeably attest to their good moral character and lack of criminal record may also be submitted; and/or
- *If the battered immigrant was arrested, accused or has committed a crime, it is absolutely essential to consult with an immigration lawyer prior to filing the self-petition in order to assure that the victim's affidavit and/or documentary submissions adequately address and mitigate the consequences such past criminal activity may have on a finding of good moral character. Failure to do so could place the victim at strong risk of deportation.*

h) **Petitioner's residence in the U.S. or abroad:**

To file a self-petition, victims must either reside in the United States, have been abused in the United States, or be the abused spouse of a U.S. government employee, or member of the military working or stationed abroad.²⁷⁰ Self-petitioners residing in the United States may provide proof of current U.S. residence through the following documents:

- Employment or school records;
- A property deed with their name on it, rent or mortgage receipts, utility bills, insurance policies, hospital or medical records;

²⁶⁹ 3 USCIS-PM D.2(G)(3) (Good moral character is evaluated on a case-by-case basis but the USCIS may consider provisions of INA 101(f), the standards of the average citizen in the community, and conduct, behavior, acts, or other convictions). *See also* INA § 101(f); 8 U.S.C. § 1101(f) (2000).

²⁷⁰ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 2 – ELIGIBILITY REQUIREMENTS AND EVIDENCE, SECTION H – SELF-PETITIONERS FILING FROM OUTSIDE THE UNITED STATES, SUBSECTION 1 – DERIVATIVE BENEFICIARIES [3 USCIS-PM D.2(H)(1)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2>.

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- Birth certificates of children born in the United States and children's school records;
- Cards or letters addressed to their address, affidavits by their neighbors, landlords, and friends attesting to their residence in the United States; and/or
- The self-petitioner's affidavit stating their residence in the United States. No specific length of the residence in the United States is required as long as the victim resides in the United States at the time of filing.

Some self-petitioners may file from abroad if the abusive spouse or parent falls into one of three categories:²⁷¹

1) Where the abusive spouse or parent is an employee of the U.S. government:²⁷²

Evidence should include:

- Spouse's or parent's employment records, pay stubs, employment identification card, and/or
- Other documentation of the spouse's or parent's employment with the U.S. government.

2) Where the abusive spouse or parent is a member of the uniformed services:²⁷³

Evidence should include:

- Spouse's or parent's military identification card,
- Military orders, pay stubs,
- DD-214, or
- Documentation that the self-petitioner is a dependent member of the U.S. military of uniformed services.

3) Victims subjected to battery or extreme cruelty in the United States who are currently residing abroad or filing from abroad should submit documentation showing the abuse occurred in the United States.²⁷⁴

i) Loss of citizenship or lawful permanent resident status:

In cases where the abuser lost or renounced his immigration or citizenship status within the past two years, the abuse victim can still file the self-petition if they demonstrate that the loss of status or renunciation of citizenship or lawful permanent resident status is related to the domestic violence.²⁷⁵

²⁷¹ 3 USCIS-PM D.2(H) (If self-petitioners are outside the United States when they file the self-petition, they must demonstrate one of the following criteria in addition to the general eligibility requirements).

²⁷² 3 USCIS-PM D.2(H) (Self-Petitioners Filing from Outside the United States). The abuse can occur in the United States or abroad.

²⁷³ 3 USCIS-PM D.2(H) (Self-Petitioners Filing from Outside the United States). The abuse can occur in the United States or abroad. Uniformed services include all branches of the United States military, the Coast Guard, and the Public Health Service.

²⁷⁴ 3 USCIS-PM D.2(H) (Self-Petitioners Filing from Outside the United States).

²⁷⁵ 3 USCIS-PM D.2(E) (Congress recognized that an abuser's loss of U.S. citizenship or lawful permanent resident status may have been related to an incident of domestic violence, and that the loss would then impact a self-petitioner's eligibility for VAWA benefits). INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb), 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb) (2000) (relating to loss of U.S. citizenship); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154§ 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa)(2000) (relating to loss of lawful permanent resident status).

Self-petitioners should submit evidence proving that the domestic violence predated the renunciation.²⁷⁶ This is particularly important in cases where lawful permanent resident abusers flee the country after the issuance of a protection order or a warrant in a criminal case.

Primary evidence to demonstrate the abuser's U.S. citizenship includes, but is not limited to:

- A birth certificate (or legible photocopy) issued by a civil authority that establishes the abuser's birth in the United States;
- A copy of an unexpired U.S. passport issued initially for a full 5 or 10-year period to the abuser over the age of 18 at the time of issuance;
- A statement executed by a U.S. consular officer certifying the abuser to be a U.S. citizen and the bearer of a currently valid passport;
- The abuser's Certificate of Naturalization or Certificate of Citizenship or a copy of either document; or
- The abuser's report of Birth Abroad of a Citizen of the United States.²⁷⁷

Obtaining Lawful Permanent Residence under VAWA

Obtaining lawful permanent residence status through the VAWA self-petition involves two steps. First, DHS must approve the VAWA self-petition. Once approved, the applicant must apply for lawful permanent residence. There are two ways in which an applicant can obtain their lawful permanent residence or green card which provides proof of lawful permanent residence. These are: 1) receiving lawful permanent residence in the United States through a process called "adjustment of status" and 2) consular processing.

"Adjustment of status" is the procedure for obtaining a green card for applicants present in the United States. Applicants submit their application for lawful permanent residence to local DHS District Offices and await an interview with DHS examiners.

"Consular processing" is the procedure for obtaining legal permanent resident status for self-petitioners who are not in the United States, and self-petitioners who do not qualify to adjust status (obtain lawful permanent residency) within the United States. Applicants who fall into this category must apply for immigrant visas abroad at a U.S. consulate in their home country.

Battered immigrants with approved self-petitions who are in the United States can obtain their green cards through adjustment of status. They are not required to leave the U.S. and apply for immigrant visas at U.S. consulates abroad.²⁷⁸ VAWA legislation enabled a battered immigrant self-petitioners to adjust their status while in the United States, provided that they have an approved self-petition, that they are not inadmissible,²⁷⁹ and that they have a visa immediately available to them. This section provides basic information on adjustment of status as a means of

²⁷⁶ 3 USCIS-PM D.2(B)(1) (Abuser's U.S. Citizenship or Lawful Permanent Resident Status)(the self-petitioner's abusive qualifying family member must usually be a U.S. citizen or lawful permanent resident; however, if the abuser lost or renounced their citizenship or lawful permanent resident status for a reason related to an incident of abuse, the self-petitioner may preserve their eligibility).

²⁷⁷ 3 USCIS-PM D.2(B)(1) (Abuser's U.S. Citizenship or Lawful Permanent Resident Status).

²⁷⁸ All VAWA self-petitioners may adjust their status in the United States under INA §§ 245(a) and (c) without paying the \$1000 fine. Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1506(a), 114 Stat. 1464, 1527 (2000).

²⁷⁹ To enter the United States or be granted lawful permanent residence, an applicant must not fall within any of the inadmissibility grounds listed in INA section 212(a). See INA § 212(a), 8 U.S.C. § 1182(a) (2000).

obtaining lawful permanent residence for battered immigrants with approved VAWA self-petitions.

ELIGIBILITY FOR LAWFUL PERMANENT RESIDENCY

Being a permanent resident, also called having a ‘green card,’ means that a person has lawful permission to live and work in the United States. Permanent residents can petition for spouses and children to come to the United States. When someone has an approved VAWA Self-petition and they want to become a permanent resident they must apply to change their immigration status to that of a permanent resident, this is called “adjustment of status.” Not everyone who has an approved self-petition is eligible to obtain lawful permanent resident status immediately following the approval of the petition. However, **VAWA self-petitioners who are married to, or are the minor unmarried children (under age 21) of U.S. citizens, are considered “immediate relatives”** and can file for lawful permanent residency as soon as their VAWA self-petitions are approved.²⁸⁰

VAWA self-petitioners who are married to (or the children of) **lawful permanent residents** are subject to a “visa quota” system.²⁸¹ VAWA self-petitioners who are married to, or the children of **US citizens** do not fall into the visa quota system. The visa quota system is a limit on the number of people that can apply for and be granted permanent residency. The visa quota system limits the number of visas provided for relatives of lawful permanent residents and in some cases U.S. citizens. Since there are more people each year seeking to become lawful permanent residents than there are available visas, immigrants restricted by the visa quota system must wait for a visa to become available before they can adjust their status and become lawful permanent residents. This process can take up to five years, and is dependent on the applicant’s country of origin, and when they filed their self-petition with the DHS.²⁸²

HOW TO APPLY FOR LAWFUL PERMANENT RESIDENCY

Once a self-petitioner qualifies to apply²⁸³ to become a lawful permanent resident they must submit the “application for adjustment of status”²⁸⁴ and supporting documents, along with the filing fee (listed below) to the local DHS District Office with jurisdiction over the applicant’s residence. The documents can be downloaded on the United States Citizenship and Immigration Services (USCIS) website at <https://www.uscis.gov/i-485>. The self-petitioner and any dependents will each need:

²⁸⁰ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 4 – FILING REQUIREMENTS, SECTION A – FILING REQUIREMENTS AND INITIAL REVIEW [3 USCIS-PM D.4(A)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-4>. See [INA 201\(b\)](#). See [INA 245\(a\)](#). See [8 CFR 245.2\(a\)\(2\)\(i\)](#).

²⁸¹ 3 USCIS-PM D.4(A) (“If the self-petitioner is a spouse or child of a lawful permanent resident and seeking to adjust under a family-based preference category, the self-petitioner may need to wait for a visa to become available before filing a Form I-485”). To check the current wait times for spouses and children of lawful permanent residents to file lawful permanent residency applications see the Department of State’s Visa Bulletin <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>.

²⁸² If the abusive spouse previously filed a family-based I-130 petition for the immigrant victim, that petition date may be used to shorten the wait time.

²⁸³ USCIS, POLICY MANUAL: VOL. 3, PART D, CHAPTER 5 – ADJUDICATION, SECTION C – DECISION, SUBSECTION 2 – APPROVALS [3 USCIS-PM D.5(C)(2)] (Last Updated May 04, 2023) <https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-5>. See the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, [Pub. L. 104-193 \(PDF\)](#), 110 Stat. 2105 (August 22, 1996) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, [Pub. L. 104-208 \(PDF\)](#), 110 Stat. 3009 (September 30, 1996), which restricted eligibility for public assistance to “qualified aliens.”

²⁸⁴ “Adjustment of Status” is the DHS legal phrase that means to apply for and attain legal permanent resident status.

- Form I-485, Application for Adjustment of Status
- The filing fee of \$1,140 (\$750 if under 14 years of age),²⁸⁵ or fee waiver request for form I-485 (a sample fee waiver request is included as an appendix to this chapter);
- Copy of birth certificate, along with an English translation (translations of foreign documents must be certified by a competent translator);²⁸⁶
- Form G325A, biographic information;
- A copy of the Form I-797, Notice of Action (showing that the VAWA self-petition, Form I-360 was approved);
- Form I-693, Medical Examination of Aliens Seeking Adjustment of Status (plus supplemental vaccination form);
- 2 color photos taken within the last 30 days (see form I-485 instructions for more details);
- Form I-765 Application for Employment Authorization, if the self petitioner doesn't already have a work permit;
- Proof of entry into the U.S., if applicable (i.e. I-94 card and copy of passport); and
- VAWA self-petitioners are exempt from the biometrics fees.

Supplementary forms to include (depending on the circumstances) are:

- Form G-28, Notice of Entry as Appearance as Attorney or Accredited Representative, if the victim is represented.
- Form I-601, Application for Waiver of Grounds of Excludability with filing fee of \$930,²⁸⁷ if the applicant is inadmissible for one of the reasons described below.
- Form I-131, Application for Travel Document, along with the filing fee of \$575,²⁸⁸ if the petitioner needs to travel outside the United States while the application is processed but note that applicants who have been out of immigration status should generally not travel because they will be barred from returning to the United States and adjusting their status.²⁸⁹

Each form has its own filing fee.²⁹⁰ The applicant will need to add up the total cost of the fees for each form and submit that total cost with their application package. If the applicant is unable to pay the filing fees, they can submit a fee waiver request along with their residency application. All fees can be waived and VAWA self-petitioners are exempt from the fingerprinting fee.

²⁸⁵ Always check the current fee schedule available from USCIS for G-1055 Fee Schedule <https://www.uscis.gov/g-1055>

²⁸⁶ 8 CFR 204.1(f)(3) (2007).

²⁸⁷ Always check the current fee schedule available from USCIS for G-1055 Fee Schedule <https://www.uscis.gov/g-1055>

²⁸⁸ Always check the current fee schedule available from USCIS for G-1055 Fee Schedule <https://www.uscis.gov/g-1055>

²⁸⁹ Before any applicant travels outside the United States, she must consult with an immigration attorney regarding the potential consequences. An applicant who has been out of status for more than six months can be barred from receiving any immigration benefits, including lawful permanent residence, for three years. If an applicant has been out of status for over one year, she will be barred from receiving any immigration benefits for ten years. INA § 212(a)(9)(B)(i), 8 U.S.C. 1182 (a)(9)(B)(i) (2000).

²⁹⁰ Always check the current fee schedule available from USCIS for G-1055 Fee Schedule <https://www.uscis.gov/g-1055>

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After the I-485 Application for Adjustment of Status and supporting documents are filed, DHS will alert the applicant of the date, time and location of a personal interview with a DHS examiner. Battered immigrants should be fully prepared for their adjustment of status interviews by having all the necessary documents available in order to avoid further delaying the adjustment process.²⁹¹ Items to bring to the interview:

- Original birth certificate of each applicant;²⁹²
- Original marriage certificate;
Certified copy of Final Dissolution of Marriage (i.e. divorce decree) for all previous marriages, prior to marriage with the batterer, as well as the divorce decree if they are now divorced from the batterer within two years;²⁹³
- Original passport, if available;
Original I-94 card, if available;
- Certified copies of arrest report and final court disposition (if applicable);
- Copy of the approved self-petition – I-360;
- Copy of DHS memorandum stating procedures that the local DHS office must follow if they have any questions about the self-petition;²⁹⁴
- Evidence of the applicant’s income and financial resources – including tax returns, pay stubs, letter from employer, proof of receipt of child or spousal support, court orders for child support, etc.

The objective of the adjustment interview is for the DHS examiner to decide if the applicant is admissible as a lawful permanent resident. The immigrant victim should consult with an immigration attorney before the adjustment interview to identify potential problems or grounds for inadmissibility. To determine admissibility, the immigration official will assess the application and ask the applicant questions relating to the required medical exam, any criminal history, or any grounds of inadmissibility that may apply, such as fraud or violations of the immigration laws. It should be noted that VAWA self-petitioners are exempt from the “Public Charge” exception to admissibility.²⁹⁵ In addition, the interview serves as an opportunity for the applicant to update information on the application and correct any minor errors on the forms.

If the application for adjustment of status is approved, meaning the applicant is now a legal permanent resident, the Department of Homeland Security will mail a green card to the self-petitioner.

²⁹¹ The battered immigrant may be able to attend the interview without an attorney or other representative if there are no inadmissibility problems or other foreseeable complications. It is preferable, however, to have an attorney or accredited representative attend and help the battered immigrant prepare for the interview.

²⁹² 3 USCIS-PM D.4(B) (Self-petitioners must file Form I-360 and submit documentation in accordance with the Form IO-360 instructions to establish, by a *preponderance of the evidence*, that they meet the eligibility requirements). See also INA 204(A). 8 CFR 204.2(c)(1). See 8 CFR 204.2(e)(1). Although 8 CFR 204.2(c)(1) and 8 CFR 204.2(e)(1) require self-petitioners to demonstrate extreme hardship to themselves or their children if deported; that they reside in the United States at the time of filing; and that their shared residence with the abuser take place in the United States, the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000) removed these as eligibility requirements and supersedes this part of the regulation.

²⁹³ 3 USCIS-PM D.4(B) (Evidence of a qualifying relationship that demonstrates a familial, legal relationship to the abuser, such as birth certificates, marriage certificates, and divorce decrees).

²⁹⁴ A copy of this memo is included in the Appendix to this manual.

²⁹⁵ See 8 U.S.C. § 1182(a)(4)(E) INA § 212(a)(4) and Section 804 of VAWA which exempt VAWA self-petitioners and T/U visa petitioners from the “public charge exception” to admissibility (in which a petitioner is deemed inadmissible to the United States because s/he might become a public charge, a person who is primarily dependent on the US government for subsistence).

If the application to become a legal permanent resident is denied, the applicant may be placed in removal (deportation) proceedings before an Immigration Judge. The applicant may still be eligible to apply for adjustment of status again before an Immigration Judge.

GROUND OF INADMISSIBILITY

Grounds of inadmissibility are a list of reasons that render an applicant ineligible for permanent residence or admission to the United States (meaning the DHS or an Immigration Judge must generally deny the application for lawful permanent residence).²⁹⁶ NIWAP has developed comparison charts that help attorneys and victim advocates identify grounds of inadmissibility that any VAWA self-petitioner client or their children may need to address. The charts also provide a comparison among each of the immigration options a battered immigrant eligible as a VAWA self-petitioner may have.²⁹⁷ Most VAWA self-petitioners for example will also qualify for U visas²⁹⁸ and their children may qualify for Special Immigrant Juvenile Status.²⁹⁹

Examples of the grounds are listed in Section 212(a) of the Immigration and Nationality Act and include the following:

- Health-related grounds (including HIV and tuberculosis);
- Criminal and related grounds;
- Security and related grounds;
- Fraud/misrepresentation;
- Aliens previously removed (deported) from the United States
- Other immigration law violations;
- Communist/ totalitarian party membership;
- Terrorist activity.

WHEN IS INADMISSIBILITY DETERMINED?

Identify and assess possible grounds for inadmissibility as early as possible in the VAWA case. Battered immigrants may have committed disqualifying criminal acts or have used unlawful means to obtain immigration benefits in the past, such as entering the country with fraudulent documents or misrepresenting facts in a benefit application. Immigration attorneys working with battered immigrants should determine any questions of inadmissibility prior to

²⁹⁶ Inadmissibility and excludability are synonymous. See INA § 212(a), 8 U.S.C. § 1182(a) (2000) (classes of aliens ineligible for visas or admission) for a complete listing of grounds for inadmissibility.

²⁹⁷ *Comparing Inadmissibility Waivers Available to Immigrant victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, (Last Updated Dec. 26, 2022)

<https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-ava-t-u-sijs>; *Comparing VAWA Suspension of Deportation, VAWA Cancellation of removal, VAWA Nicaraguan and Central American Relief Act (NACARA), and VAWA Self-Petitioning Chart*, (Last Updated Jan 28, 2021) <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>; *Special Immigrant Juveniles (SIJS): Inadmissibility Factors That Do and Do Not Apply to SIJS Cases*, (Last Updated Dec. 26, 2022) <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-factors-sijs>.

²⁹⁸ *Chapter 03.6: U-Visas: Victims of Criminal Activity*, in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Last Updated Aug. 8, 2023) <https://niwaplibrary.wcl.american.edu/pubs/ch3-6-uvisa-victims-criminal-activity>.

²⁹⁹ *Special Immigrant Juvenile Status (SIJS) Bench Book Table of Contents*, (Last Visited May 17, 2023) <https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>.

filing the self-petition or adjustment of status application.³⁰⁰ A trained immigration attorney or advocate should represent any self-petitioner in this situation. The attorney or advocate should also have experience assisting victims of domestic violence. With proper case development, battered immigrants may be able to obtain waivers for many inadmissibility grounds.

SPECIFIC GROUNDS OF INADMISSIBILITY

Immigrants may be inadmissible for a variety of reasons. This section will outline the more typical grounds identify the relevance to cases of battered immigrants and discuss in more detail the grounds most likely to affect battered immigrants when they apply for lawful permanent resident status: misrepresentation and health-related. **Immigrants with criminal histories are also potentially subject to different criminal grounds of inadmissibility.** There are waivers available for many types of crimes, and VAWA self-petitioners can qualify for special waivers if there is a connection between the crime and the domestic violence. The criminal grounds of inadmissibility and available waivers are discussed separately in detail in Chapter 19 of this manual.³⁰¹

VIOLATIONS OF IMMIGRATION LAWS

Immigrants who have previously been removed or deported from the United States also face inadmissibility problems and should be referred to an immigration attorney before applying for relief. An applicant who has been deported and then re-entered the United States illegally or who has been unlawfully present in the country for more than 180 days (and has left or now leaves the United States) will be inadmissible and ineligible for lawful permanent residence.³⁰² There are waivers available and exceptions if there is a connection between the immigration violation and the abuse, but a battered immigrant in this situation **should not apply for adjustment of status to lawful permanent residence without first consulting with an attorney.**³⁰³ For example, waivers are available for victims of sexual assault, domestic abuse, and trafficking from sanctions for failing to voluntarily depart.³⁰⁴ Also, DHS can waive prior removal determinations for immigrant victims to help prevent the summary reinstatement of a prior removal order.³⁰⁵

³⁰⁰ If that is not possible, such as in instances where the self-petition must be filed before the abuser divorces the self-petitioner, or the abused immigrant fails to mention details that may make them inadmissible, the immigration attorney should use the time waiting for approval of the self-petition to assess admissibility issues.

³⁰¹ *Chapter 19: The Criminal Justice System and Immigrant Victims*, in *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault* (Last Updated Jul. 1, 2014) <https://niwaplibrary.wcl.american.edu/pubs/ch19-criminal-justice-system-immigrant-victims>.

³⁰² An applicant who has been out of status for more than six months and subsequently left the United States can be barred from reentering the United States and receiving any immigration benefits (including lawful permanent resident status), for three years. If an applicant has been out of status for over one year and leaves, she will be barred from receiving any immigration benefits for ten years. INA § 212(a)(9)(B)(i), 8 U.S.C. 1182 (a)(9)(B)(i) (2008).

³⁰³ See INA §§ 212(a)(9)(B)(iii)(IV) and (v), 8 U.S.C. § 1182(a)(9)(B)(iii)(IV) and (v) (2000); INA § 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii) (2000).

³⁰⁴ INA § 240A(b)(2), 8 U.S.C. 1229b

³⁰⁵ INA §§ 240A(b)(4) and (5), 8 U.S.C. 1229b

MISREPRESENTATION³⁰⁶

When an individual is seeking to obtain an immigration benefit such as permanent residence, any false statements made to an immigration official will have an impact on their immigration status.³⁰⁷ Otherwise eligible VAWA self-petitioners can be barred from becoming lawful permanent residents due to misrepresentation and can even be removed (deported) from the United States.

Battered immigrants, who have, through fraud or willful misrepresentation made to an immigration official, sought to obtain admission into the United States, a visa, or any benefit under immigration laws, are inadmissible unless they acquire a waiver – referred to as a “212(i) waiver.”³⁰⁸ Battered immigrants who falsely represent themselves as U.S. citizens **to any government official** are also inadmissible. There was no waiver for this form of misrepresentation and, in certain circumstances, may be subject to criminal prosecution.³⁰⁹ There is a waiver to inadmissibility for misrepresentation by a VAWA self-petitioner based on hardship to US citizen children.³¹⁰

Applications for lawful permanent residency through adjustment of status and immigrant visa applications both contain questions that the DHS examiner will ask and review at the interview. The questions asked can relate to how the petitioner entered the U.S. and where they live and works. It is important for immigration attorneys and advocates to discuss any prior misrepresentation of facts with their battered immigrant clients to ensure that prior information has been consistently represented and does not lead to misrepresentations being made at the adjustment or visa interview.

The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996³¹¹ (IIRAIRA) created a new ground for inadmissibility, preventing battered immigrants from adjustment of their status if they misrepresented themselves as U.S. citizens. The most common form of misrepresentation is when an immigrant signs an I-9 form for employment and checks a box indicating that he/they are a U.S. citizen. Those immigrants that falsely signed the form before September 30, 1996, are not inadmissible; however, those that signed after September 30, 1996, may be found to be inadmissible.³¹² Advocates and attorneys should warn their clients do not sign any forms or make statements that falsely identify themselves as U.S. citizens.

³⁰⁶ Adapted from American Bar Ass’n Comm’n on Domestic Violence, CHAPTER SEVEN: OBTAINING LAWFUL PERMANENT RESIDENCY, *in* DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000).

³⁰⁷ INA § 212(a)(6)(C) covers two separate but related grounds of inadmissibility for immigrants who make or have made false claims in the past. These are separate from the criminal grounds for removal under INA § 237(a)(3) or the civil penalties for document fraud under INA § 274C. Carefully review all three sections.

³⁰⁸ INA § 212(a)(6)(C)(i); 8 U.S.C. § 1182(a)(6)(C)(i) (2000).

³⁰⁹ INA § 212(a)(6)(C)(ii); 8 U.S.C. § 1182(a)(6)(C)(ii) (2000).

³¹⁰ 212(a)(6)(C)(iii) authorizes a waiver to this under INA 212(i)(1), which says:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States Citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the aliens' United States citizen, lawful permanent resident, or qualified alien parent or child.

³¹¹ Pub. L. No. 104-208 Div. C, 110 Stat. 3009-546 (1996) [hereinafter IIRIRA].

³¹² This provision was added by IIRIRA § 344(a) and only applies to misrepresentations made on or after September 20, 1996.

What Qualifies as A Misrepresentation?

Immigration attorneys can best advise battered immigrant clients on whether an action constitutes “misrepresentation” or “fraud” as it has been defined in immigration law. In the context of immigration law, three issues need to be analyzed to determine whether a battered immigrant has committed fraud:

- Was there misrepresentation?
- If so, was it “willful?”
- Did the misrepresentation involve a fact or issue “material” to the application or benefit being sought?

It is important to understand the context of the statements made, including at what time in the immigration proceeding was the statement made; to whom it was made; under what conditions was the statement made; and was the misrepresentation made under oath. Advocates should work closely with battered immigrants to develop a trusting relationship so that advocates can learn whether battered immigrants have had any prior contact with DHS agents, and, if so, what information was provided at that time.

If a battered immigrant has made prior false statements to DHS officials, their VAWA case could be complicated and may require an additional waiver application to be filed at the time of adjustment. Victims in this situation should be referred to an immigration attorney who can work with the advocate in preparing the victim’s self-petition and subsequent adjustment application.

It is important to understand that battered immigrants may not remember making false claims or may not consider their actions to be a misrepresentation. It is, therefore, important for attorneys to ask comprehensive questions about any interactions their client might have had with immigration authorities and any forms they may have signed, or false documents they may have used. If the attorney has any doubts, the attorney should do a fingerprint check³¹³ or Freedom of Information Act (FOIA) Request.³¹⁴

Misrepresentation Waivers

For battered immigrants, a 212(I) waiver of inadmissibility is available for some misrepresentations of material fact.³¹⁵ In order to qualify for this waiver in non-VAWA cases, the applicant must be married to – or be the son or daughter of – a United States citizen or lawful permanent resident. The DHS or State Department official must determine that the decision to refuse admission to the immigrant would cause “extreme hardship” to the U.S. citizen or lawful permanent resident spouse or parent involved.³¹⁶

³¹³ Fingerprints can be taken at police stations or other accredited locations and sent to FBI CJIS Division, Attn: Special Correspondence Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306.

³¹⁴ To file a FOIA request, the battered immigrant’s attorney should send DHS form G-639 to the local Department of Homeland Security (DHS) office. There is no fee. Go to the DHS website at www.dhs.gov for more information.

³¹⁵ See INA § 212(i), 8 U.S.C. § 1182(i) (2000). A false claim to United States citizenship makes an immigrant excludable. There is no waiver for this exclusion. See *id.*

³¹⁶ See INA § 212(i), 8 U.S.C. § 1182(i) (2000).

In a VAWA self-petitioning case, however, the petitioner must show that denying the waiver will cause extreme hardship to either the victim or U.S. citizen or lawful permanent resident parent or child. This standard, however, can be extremely difficult to meet.

HEALTH-RELATED GROUNDS

If an immigrant has a communicable disease that is significant to public health, including HIV and tuberculosis, they will not be eligible for admittance to the United States.³¹⁷ They will also be inadmissible if they do not prove that they received vaccinations for certain diseases.³¹⁸ Those immigrants with certain physical or mental disorders,³¹⁹ and substance abuse problems, can also be inadmissible.³²⁰ Any immigrants in such a situation should be referred to an immigration attorney before they file any papers with immigration authorities. There is a waiver available for communicable diseases such as HIV and tuberculosis, and VAWA self-petitioners can apply for the waiver and do not need to have a U.S. citizen or permanent resident spouse, child, or parent “qualifying relative” (normally a requirement for waiver applicants).³²¹

“PUBLIC CHARGE”³²² AS GROUNDS FOR INADMISSIBILITY NO LONGER APPLIES TO VAWA, T-VISA, AND U-VISA CASES

Historically, immigrants, including immigrant crime victims, were ineligible to become lawful permanent residents of the United States if they were likely to become “public charges.”³²³ The Department of Homeland Security defines public charge as one who is likely to become “primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.”³²⁴

VAWA 2013 exempted all VAWA self-petitioners as defined by INA Section 101(a)(51), all U visa applicants and all qualified immigrants³²⁵ from the public charge grounds of inadmissibility.³²⁶ The effect that this has on immigrant crime victims’ cases is as follows:

- VAWA self-petitioners: When an approved VAWA self-petitioner applies for lawful permanent residency no income requirement or level above the poverty line can be imposed and the receipt of public benefits does not impact the ability of the self-petitioner or the self-petitioner’s children to be granted lawful permanent residency. This applies to all VAWA self-petitioners listed in 101(a)(51) including:

³¹⁷ These diseases include chancroid, granuloma inguinale, gonorrhea, syphilis, human immunodeficiency virus (HIV) infection, leprosy (infectious), lymphogranuloma venereum, and tuberculosis (active). 42 C.F.R. § 34.2-3 (2007).

³¹⁸ These include mumps, measles, rubella, polio, tetanus, diphtheria toxoid, pertussis, influenza type B, and hepatitis B. See INA § 212(a)(1)(ii), 8 U.S.C. § 1182(a)(1)(ii) (2000).

³¹⁹ See INA § 212(a)(1)(iii), 8 U.S.C. § 1182(a)(1)(iii) (2000).

³²⁰ See INA § 212(a)(1)(iv), 8 U.S.C. § 1182(a)(1)(iv) (2000).

³²¹ See INA § 212(g)(1), 8 U.S.C. § 1182(g)(1) (2000).

³²⁴ See “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689 (Mar. 26, 1999) available at <https://niwaplibrary.wcl.american.edu/pubs/doj-field-guidance-public-charge-03-26-99>,

³²⁴ See “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689 (Mar. 26, 1999) available at <https://niwaplibrary.wcl.american.edu/pubs/doj-field-guidance-public-charge-03-26-99>,

³²⁴ See “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689 (Mar. 26, 1999) available at <https://niwaplibrary.wcl.american.edu/pubs/doj-field-guidance-public-charge-03-26-99>,

³²⁵ See INA 8 U.S.C. § 1641(c)

³²⁶ See Pub. L. 113-4 (PDF), 127 Stat. 54, 110 (Mar. 7, 2013).

Battered Immigrants and Immigration Relief

- VAWA Self-Petitioner – Abused by Citizen: When a U.S. citizen is the perpetrator of battering or extreme cruelty against an immigrant spouse, former spouse, child or step-child under 21 years old, or if the citizen abuser is over the age of 21 against their parent;³²⁷
- VAWA Self-Petitioner – Abused by Lawful Permanent Resident: When a lawful permanent resident is the perpetrator of battering or extreme cruelty against an immigrant spouse, former spouse, or a child or stepchild under 21 years old;³²⁸
- Battered Spouse Waiver: When a citizen spouse or an intended spouse who was a U.S. citizen bigamist filed a family-based visa petition for an immigrant spouse or intended spouse who was battered or subjected to extreme cruelty;³²⁹
- VAWA Cuban Adjustment self-petition applicants;³³⁰
- VAWA Haitian Refugee Immigration Fairness Act (HRIFA) self-petitioners;
- VAWA Nicaraguan Adjustment and Central American Relief Act self-petitioners;³³¹
- Qualified immigrants who are battered immigrants or human trafficking victims are exempt from public charge. This includes:
 - VAWA cancellation of removal applicants;³³²
 - VAWA suspension of deportation applicants;³³³
- Family Based Visa Applicants and Recipients Who Are Battered or Subjected to Extreme Cruelty: In 1996 the Illegal Immigration Reform and Immigrant Responsibility Act extended public benefits access to immigrant spouses and children with pending or approved family-based visa petitions filed by their U.S. citizen or lawful permanent resident spouse or parent. If the immigrant spouse or child was battered or subjected to extreme cruelty either by their sponsoring spouse or parent family member or by a member of the spouse or parent's family residing in the same household the abused immigrant is a qualified immigrant for public benefits purposes. VAWA 2013 exempts these battered immigrants from public charge.³³⁴

³²⁷ The self-petitioning former spouse must have filed the self-petition within two years of termination of the marriage and an abused stepchild must self-petition before the marriage with their abusive citizen parent is terminated.

³²⁸ The self-petitioning former spouse must have filed the self-petition within two years of termination of the marriage and an abused stepchild must self-petition before the marriage with their abusive lawful permanent resident parent is terminated.

³²⁹ INA § 216(c)(4)(C) and (D).

³³⁰ VAWA Cuban applicants for lawful permanent residency must file within 2 years of termination of the marriage or death.

³³¹ This includes protections under Section 202 and 203 of the Nicaraguan Adjustment and Central American Relief Act.

³³² See INA § 240A(b)(2).

³³³ See INA § 244(a)(3) (as in effect prior to March 31, 1997).

³³⁴ For a full discussion of qualified immigrants see Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang, Public Benefits Access for Battered Immigrant Women and Children (Ch. 4.2).

- U Visa Recipients: VAWA 2013 exempts U Visa recipients from public charge considerations in their applications for lawful permanent residency.³³⁵
- T Visa Recipients: VAWA 2013 makes T visa recipients exempt from public charge in their applications for lawful permanent residency because they are qualified immigrants.³³⁶

Some immigrant crime victims may be filing for forms of immigration relief that do not fall under the exemptions from public charge. In those cases, deciding whether an immigrant is likely to become a public charge relies, not on the prior receipt of public benefits, but rather the prospect of future reliance on public benefits if the victim were allowed to remain in the United States.³³⁷ Immigrants can access the following benefits, among others, without concern about the public charge bar:

- Medicaid or other health insurance and health services,
- Children's Health Insurance Program (CHIP),
- Nutrition programs, such as the Supplemental Nutrition Assistance Program (SNAP),
- Housing benefits,
- Childcare services,
- Energy assistance, such as the Low-Income Home Energy Assistance Program (LIHEAP),
- Emergency disaster relief,
- Foster care and adoption assistance,
- Education assistance,
- Job training programs,
- Community-based programs, services, or assistance, such as soup kitchens,
- Unemployment compensation; and
- Short-term institutionalization for rehabilitation purposes.³³⁸

An immigrant who is applying for lawful permanent residency under a family-based visa petition is required to file an affidavit of support from the immigrant's sponsor.³³⁹ Sponsors must financially support the petitioner by maintaining him/her at an annual income of not less than 125 percent of the federal poverty guides. VAWA-approved self-petitioners, on the other hand, are not subject to the requirement of obtaining an affidavit of support. Other exceptions to public charge may be available in limited circumstances³⁴⁰.

³³⁵ See Leslye Orloff et al, Chapter 03.6: *U-Visas: Victims of Criminal Activity*, in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (2013, last updated Aug. 8, 2023), available at <https://niwaplibrary.wcl.american.edu/pubs/ch3-6-uvisa-victims-criminal-activity>. For U Visa applicants and their children, the VAWA 2013 public charge amendments create an exemption from public charge inadmissibility that eliminates the need for U visa applicants and applicants for lawful permanent residency based on a U visa to file for a waiver of inadmissibility for public charge.

³³⁶ See, Chapter 11: Human Trafficking and the T-Visa in *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault* (2013) <https://niwaplibrary.wcl.american.edu/pubs/ch11-human-trafficking-and-t-visa>

³³⁸ USCIS, *Public Charge Fact Sheet*, (Apr. 24, 2011), available at: <http://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>.

³⁴¹ See INA § 101(a)(13)(C), 8 U.S.C. § 1101(a)(13)(C) (2000).

³⁴¹ See INA § 101(a)(13)(C), 8 U.S.C. § 1101(a)(13)(C) (2000).

IIRAIRA granted access to public benefits to VAWA approved self-petitioners (See Chapter 5 regarding benefits and services available to battered immigrants). With the VAWA 2013 exemption to public charge battered immigrants should take advantage of the public benefits safety net services made available to them as qualified immigrants under federal and state benefits laws.

After Becoming a Lawful Permanent Resident

Once the battered immigrant has obtained their green card, or lawful permanent residence card, they have the right to live and work in the United States. A lawful permanent resident is still subject to immigration laws. She should not, for example, stay out of the United States for more than six months, because they may be found to have “abandoned” their permanent resident status and be denied re-entry to the United States.³⁴¹ Certain criminal acts can also render a lawful permanent resident deportable. *See Chapter 19 of this manual for a discussion of these crimes.*³⁴²

It should be noted, however, that a lawful permanent resident has substantial due process rights associated with their ability to remain in the United States. For instance, the only person who can take away an individual’s lawful permanent resident status is an Immigration Judge after a full and fair hearing. Threats from abusers to have the battered immigrant deported may continue once they have obtained their green card, but the battered immigrant should be informed that the threats carry no weight so long as they do not violate criminal or immigration laws.

Children in the United States who have been listed as dependents on the battered immigrant’s I-360 can apply for adjustment to lawful permanent resident status along with their parent. A VAWA-approved lawful permanent resident’s children living outside of the United States may file for an immigrant visa through a process referred to as “following to join.” This will allow children (under the age of 21) to obtain an immigrant visa (lawful permanent residence) and join the VAWA self-petitioner in the United States.³⁴³

The lawful permanent resident needs to file an I-824 petition with the DHS office that initially adjudicated their adjustment application. The immigration authorities will then contact the U.S. consulate where the children are living and provide the consulate with verification that the battered immigrant self-petitioner’s status was adjusted. The lawful permanent resident should contact that consulate and inform them that they will be receiving verification of the adjustment from DHS and that the children will be applying for immigrant visas as “following to join” dependents. The consular officials will most likely grant “following to join” visas based upon proof of the parent-child relationship and should not question, questioner-open or otherwise disturb the underlying VAWA case in any way. The consulate will inform the lawful permanent resident as to what procedures must be followed for the children to receive their visas.

³⁴¹ See INA § 101(a)(13)(C), 8 U.S.C. § 1101(a)(13)(C) (2000).

³⁴² Leslye Orloff et al., Chapter 19: *The Criminal Justice System and Immigrant Victims*, in Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault (July 1, 2014), available at <https://niwaplibrary.wcl.american.edu/pubs/ch19-criminal-justice-system-immigrant-victims>.

³⁴³ See 8 C.F.R. § 40.1(a)(1) (2007).

Key Points Regarding Lawful Permanent Residency for VAWA Self-Petitioners

- Once DHS approves the VAWA self-petition, the self-petitioner can apply for lawful permanent resident status through adjustment of status and continue living in the United States.³⁴⁴
- A self-petitioner abused by a U.S. citizen can file immediately for adjustment to lawful permanent resident status.
- Victims abused by lawful permanent resident spouses or parents will have to wait (often up to 5 years depending on the survivor's country of origin) to attain lawful permanent residency through adjustment of status.
- During their wait to apply for and be granted lawful permanent residence, battered immigrants with approved self-petitions receive “deferred action status,” meaning that ICE agrees not to deport them, and DHS provides them with work authorization.
- Those waiting for a status adjustment cannot travel abroad.
- It is extremely important to advise immigrants to follow all U.S. laws, including immigration, tax, and criminal laws while waiting for lawful permanent residence.
- It is important for battered immigrants to disclose information to advocates and attorneys about previous encounters with ICE/DHS, any arrests or criminal convictions, and any false representations or claims of U.S. citizenship. If any of these issues exist, refer the battered immigrant to an immigration lawyer trained in VAWA immigration cases.
- Collaboration between advocates and attorneys and involvement of experienced immigration lawyers is particularly urgently needed in cases of VAWA self-petitioning eligible victims when inadmissibility waivers are needed, to ensure that immigrant victims successfully obtain permanent resident status. Advocates have long-term trusting relationships with victims that can be very helpful to attorneys in identifying and supporting victims who need inadmissibility waivers in their VAWA self-petition cases.

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³⁴⁴ See INA §§ 245(a) and (c), 8 U.S.C. §§ 1255(a) and (c) (2000). Unlike other out-of-status immigrants, battered immigrants should not have to rely on INA § 245(i) or pay a \$1000 penalty. *See id.*