



# Immigration Provisions of the Violence Against Women Act (VAWA)

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## Summary

The Immigration and Nationality Act (INA) includes provisions to assist foreign nationals who have been victims of domestic abuse. These provisions, initially enacted by Congress with the Immigration Act of 1990 and the Violence Against Women Act (VAWA) of 1994, afford benefits to abused foreign nationals and allow them to self-petition for lawful permanent resident (LPR) status independently of the U.S. citizen or LPR relatives who originally sponsored them. Congress reauthorized VAWA with the Battered Immigrant Women Protection Act of 2000, which also created the U visa for foreign national victims of a range of crimes—including domestic abuse—who assisted law enforcement. A second reauthorization in 2005 added protections and expanded eligibility for abused foreign nationals.

Authorization for appropriations for the programs under VAWA expired in 2011. The 112<sup>th</sup> Congress passed two bills, S. 1925 and H.R. 4970, reauthorizing most VAWA programs, among other provisions. Despite containing some related immigration provisions, H.R. 4970 differed in substantive ways from S. 1925. It did not extend protections to new groups to the same extent as S. 1925 and included more restrictions with the purpose of curtailing immigration fraud. Most notably, it maintained the annual number of U visas at its current limit of 10,000, in contrast with S. 1925 which would have increased the number to 15,000. To fund the increase in U visas, S. 1925 included a revenue provision that created a “blue slip” procedural complication. Negotiations stalled between the chambers, and neither bill was enacted into law.

In the 113<sup>th</sup> Congress, S. 47 and H.R. 11 have been introduced. On February 12, 2013, the Senate passed S. 47, as amended. H.R. 11 was referred to committee. The VAWA-related immigration provisions, similar in both bills, are comparable to those found in S. 1925 from the previous Congress. However, in contrast to that bill, S. 47 and H.R. 11 would maintain the annual number of U visas at 10,000, thereby eliminating the associated “blue slip” procedural complication.

Two potential concerns for Congress have been emphasized regarding the immigration provisions of VAWA. The first is whether the proposed VAWA reauthorization provides sufficient relief to foreign nationals abused by their U.S. citizen or LPR sponsoring relatives. Advocates for battered foreign nationals suggest that additional provisions are needed to assist this population in obtaining legal and economic footing independently of their original sponsors for legal immigrant status. Critics of expanding immigration, however, question the extent to which these provisions may increase the number of legal immigrants, thereby incurring costs to U.S. taxpayers.

The second related concern is the degree to which VAWA provisions unintentionally facilitate immigration fraud. This may occur through what some perceive as relatively lenient standards of evidence to demonstrate abuse; as the unintended result of processing procedures between the District Offices of the U.S. Citizenship and Immigration Services (USCIS), which adjudicate most immigration applications, and the USCIS Vermont Service Center, which adjudicates VAWA petitions; or as an unintended consequence of the structure of current law. While some suggest that VAWA provides opportunities for dishonest and enterprising foreign nationals to circumvent U.S. immigration laws, empirical evidence offers minimal support for these assertions.

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## Legislative Developments

Two bills have been introduced into the 113<sup>th</sup> Congress. On January 22, 2013, Representative Gwen Moore introduced H.R. 11, the Violence Against Women Reauthorization Act of 2013. The bill, which has similar immigration provisions to H.R. 4271 that Representative Moore introduced in the 112<sup>th</sup> Congress, was referred to committee. On the same day, Senator Patrick Leahy introduced S. 47, the Violence Against Women Reauthorization Act of 2013. On February 12, 2013, the Senate passed S. 47, as amended. The immigration provisions of VAWA are similar in both bills. They are also similar in many respects to those found in S. 1925 that was passed in the 112<sup>th</sup> Congress.

## Introduction

The Violence Against Women Act (VAWA) of 1994<sup>1</sup> and its subsequent reauthorizations in 2000 and 2005 authorized funding related to domestic violence for enforcement efforts, research and data collection, prevention programs, and services for victims. VAWA also increased penalties for certain domestic violence-related crimes and expanded the Federal Criminal Code to include new categories of crimes. With respect to noncitizens,<sup>2</sup> VAWA gave abused noncitizen spouses the opportunity to “self-petition” for themselves and/or their abused children for lawful permanent resident (LPR)<sup>3</sup> status independently of their sponsoring spouses.<sup>4</sup> In addition, the VAWA reauthorization in 2000 created the U visa, which protects and assists victims who assist law enforcement agencies in investigating and prosecuting an array of crimes that includes domestic violence. It is available to any foreign national who suffered physical or mental abuse as a victim of a qualifying crime that violated U.S. laws; has information about the crime; and was, is, or is likely to be helpful in the investigation or prosecution of the crime. (For more information on U visas, see **Appendix C**. For a detailed legislative history of the immigration provisions in VAWA, see **Appendix B**.)

As Congress considers reauthorizing appropriations for the programs under VAWA, several immigration-related VAWA issues have surfaced. For instance, those advocating on behalf of battered foreign nationals seek to expand eligibility to excluded groups and to refine portions of existing law that may unintentionally prevent foreign nationals from realizing benefits that the

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<sup>1</sup> The VAWA immigration-related provisions reside in the Immigration and Nationality Act (INA) which is Title 8 of the United States Code. VAWA was passed as Title IV, sections 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, and signed as P.L. 103-322 by President William Clinton on September 13, 1994.

<sup>2</sup> This report uses the terms “noncitizen” and “foreign national” interchangeably.

<sup>3</sup> An LPR is a foreign national who is authorized to live and work in the United States on a permanent basis.

<sup>4</sup> Noncitizen victims of domestic violence who seek to permanently reside in the United States face a precarious situation because their legal immigration status often depends upon remaining married. In addition, research on domestic violence indicates that foreign nationals married to U.S. citizens or lawful permanent residents (LPR) possess factors that increase their risk of spousal abuse compared to U.S. citizens. See, for example, Giselle Aguilar Hass, Nawal Ammar, and Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses*, Legal Momentum, West Bethesda, MD, April 24, 2006; Michelle J. Anderson, “A License to Abuse: The Impact of Conditional Status on Female Immigrants,” *Yale Law Journal*, v. 102, April 1993, p. 1401-1404 (hereafter cited as Anderson, “A License to Abuse”); N. Ammar and L.E. Orloff, “Battered immigrant women’s domestic violence dynamics and legal protections,” in *It’s a Crime: Women and Justice*, ed. R. Muraskin (NJ: Prentice Hall, 2006); D.W. Valdez, “Deportation that keeps many battered women silent,” *Borderland News*, 2005; and A. Raj, J. G. Silverman, and J McCleary-Sills, et al., “Immigration Policies Increase South Asian Immigrant Women’s Vulnerability to Intimate Partner Violence,” *Journal of the American Medical Women’s Association*, vol. 60, no. 1 (2005), pp. 26-32.

law was intended to provide. Some have focused on provisions to improve the economic well-being of victims, such as work authorization and unemployment insurance.

As laws have been enacted to protect foreign nationals from domestic violence, some observers have expressed concerns about the potential for immigration fraud using the same VAWA provisions that were intended to protect abused foreign nationals. False claims of domestic abuse fall within the broader category of marriage fraud by foreign nationals who, intent on obtaining legal status in the United States, misrepresent sham marriages as legitimate or report abuse when none exists. These schemes are perpetrated either unilaterally or cooperatively with their U.S. citizen or LPR partners.<sup>5</sup> The extent of these types of fraud, however, remains unclear.<sup>6</sup>

The Immigration and Naturalization Act (INA) includes provisions to prevent marriage fraud such as the requirement for face-to-face interviews with trained adjudicators.<sup>7</sup> It also includes some measure of information sharing between the Vermont Service Center of the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), which processes domestic abuse petitions, and USCIS District Offices that adjudicate petitions for most other immigration benefits.<sup>8</sup> Yet, concerns have been raised about the degree to which the VAWA provisions themselves and the manner in which VAWA petitions are processed by USCIS might facilitate marriage fraud, either through relatively lower standards of evidence or as the unintended result of procedural differences between local USCIS District Offices and the Vermont Service Center.<sup>9</sup>

This report describes how the VAWA provisions work in practice. It discusses improvements suggested by immigration attorneys and law enforcement observers to increase the utilization of VAWA provisions by abused foreign nationals as well as ways to reduce immigration fraud. The report closes with possible immigration-related issues that Congress may choose to consider should it reauthorize VAWA.

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<sup>5</sup> For instance, see David Seminara, *Hello, I Love You, Won't You Tell Me Your Name: Inside the Green Card Marriage Phenomenon*, Center for Immigration Studies, Washington, DC, November 2008.

<sup>6</sup> For more information, see U.S. Government Accountability Office, *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud*, GAO-06-259, March 2006; and CRS Report RL34007, *Immigration Fraud: Policies, Investigations, and Issues*, by Ruth Ellen Wasem.

<sup>7</sup> A face-to-face interview between a foreign national, a U.S. citizen or LPR spouse, and a USCIS adjudicator is required for applicants who seek LPR status. It is a critical mechanism by which USCIS confirms information in the application and evaluates the legitimacy of the marriage for the purpose of granting LPR status.

<sup>8</sup> USCIS District Offices enforce immigration laws and provide immigration services and benefits to residents in their geographic service areas/jurisdictions.

<sup>9</sup> Practitioners have noted, for instance, a lack of understanding of particular exemptions and rules applicable to VAWA petitions among District Office adjudicators. See Julie E. Dinnerstein, "Violence Against Women Act(VAWA) Self-Petitions," updated from an article appearing at *Immigration & Nationality Law Handbook 331*, 2006 (hereafter referred to as "Dinnerstein, *Violence Against Women Act*"), pp. 16-17. At a broader level, a recent DHS Office of the Inspector General report highlighted USCIS' vulnerability to fraud based on current policies and procedures. See, Department of Homeland Security, Office of the Inspector General, *The Effects of USCIS Adjudication Procedures and Policies on Fraud Detection by Immigration Services Officers*, OIG-12-24, Washington, DC, January 2012 (Hereafter referred to as "2011 DHS OIG Report.").

## How VAWA Provisions Work

Foreign national spouses of U.S. citizens and LPRs can acquire legal status through family-based provisions of the INA. To do so, they must be sponsored by their citizen/LPR spouses and meet the requirements for admissibility to LPR status.<sup>10</sup> This path to lawful permanent residence status through marriage includes a two-year evaluation period for marriages of short duration (under two years at the time of sponsorship)<sup>11</sup> and is entitled *conditional permanent residence status*, a provision of the INA that helps USCIS determine if such marriages are bona fide. Conditional residence status grants the same rights and responsibilities as that of LPR status<sup>12</sup> but requires filing a joint petition by both the foreign spouse and the sponsoring U.S. citizen or LPR within 90 days before the two-year conditional status period ends to remove the conditionality. Failure to file the joint petition within this 90-day period terminates lawful status and initiates removal proceedings.<sup>13</sup>

Conditional permanent resident status provides USCIS with two opportunities—separated by at least two years—to review the characteristics of a relatively new marriage between a foreign national and a U.S. citizen or LPR for possible fraud. If conditions in the law have been met and an interview with a USCIS officer uncovers no indication of marriage fraud, conditional permanent resident status converts to LPR status.<sup>14</sup>

VAWA modified the INA to permit certain abused spouses, children,<sup>15</sup> and parents of U.S. citizens and LPRs to petition for legal status independently of their abusive sponsors.<sup>16</sup> Conceptually, the VAWA self-petition (USCIS Form I-360) serves to replace the initial petition filed by the U.S. citizen or LPR to sponsor the foreign national for legal status (USCIS Form I-130).<sup>17</sup> In general, the following individuals may self-petition through VAWA: abused noncitizen spouses married to U.S. citizens or LPRs; noncitizen parents in such a marriage whose children were abused by U.S. citizens or LPRs; unmarried noncitizen children under age 21 abused by a U.S. citizen or LPR parent; and noncitizen parents abused by U.S. citizen adult children.<sup>18</sup>

VAWA petitions must meet certain conditions. For spouses, these include evidence that the foreign national entered into the marriage in good faith and not solely for immigration benefits, resided with their U.S. citizen or LPR spouse, and is a person of good moral character.<sup>19</sup> For

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<sup>10</sup> INA §204.

<sup>11</sup> This also applies if the parent-child relationship is less than two years old; or the foreign national spouse entered the United States on a fiancé(e) visa. INA §216.

<sup>12</sup> These rights include legal status to live and work in the United States.

<sup>13</sup> Removal proceedings refer to administrative proceedings to determine an individual's removability under the INA. They are conducted by an immigration judge in the U.S. Department of Justice' Executive Office for Immigration Review (EOIR).

<sup>14</sup> 8 CFR §216.4.

<sup>15</sup> "Child," as defined in §101(b)(1) of the INA and used in this report, refers to an unmarried child under age 21.

<sup>16</sup> §§40701-40703 of P.L. 103-322 (8 U.S.C. §204(a)(1), 8 U.S.C. §216(c)(4), and 8 U.S.C. §244(a)).

<sup>17</sup> See Dinnerstein, *Violence Against Women Act*, Appendix C, for a detailed comparison between the requirements for the I-360 form filed for a VAWA petition and those for a I-130 form filed for conventional relative sponsorship.

<sup>18</sup> Also eligible are unmarried children between ages 21 and 24 who can demonstrate that abuse was the primary reason for not filing prior to age 21. 8 U.S.C. §204(a)(1).

<sup>19</sup> Good moral character is not specifically defined in the INA, but a determination of good moral character indicates that the petitioner for an immigration benefit must not have engaged in a range of crimes, offenses, and related (continued...)

children, evidence must show proof of the relationship to the U.S. citizen or LPR parent, residence with the abusive parent, and good moral character for children over age 14.<sup>20</sup> For parents, evidence must demonstrate abuse by a U.S. citizen son or daughter, residence with the abusive son or daughter, and good moral character.

VAWA applicants submit a Form I-360, “Petition for Amerasian, Widow(er), or Special Immigrant,” with supporting documentation to the USCIS’s Vermont Service Center.<sup>21</sup> If just the filing requirements are met, a *Prima Facie Determination Notice*—which is neither a benefit nor an immigration status—notifies the petitioner that the materials submitted appear to present a legitimate case. Issuance of the notice does not serve as a factor in the adjudication of the petition nor as a binding determination of the credibility of the submitted evidence.<sup>22</sup> If the I-360 petition is ultimately approved, the foreign national is granted *deferred action status*, a “quasi” status and administrative act that halts actions to remove the individual from the United States for a renewable period of time.<sup>23</sup> Foreign nationals with an approved I-360 and any children listed in the petition may apply for work authorization until they are eligible to apply for lawful permanent residence (see **Appendix A**).

## Trends in VAWA Petition Volume

From 1997 to 2011, there was a considerable increase in VAWA petition volume. Figures in **Table 1** indicate that between 1997 and 2011, the number of petitions increased almost fourfold, from 2,491 to 9,209. On average, about a quarter to a third of all petitions adjudicated each year were denied.<sup>24</sup> During this 15-year period, approval rates fluctuated, with a peak of 85% in 2002 and a trough of 67% in 1998, but no consistent trend emerges. In the context of all USCIS petitions and applications for which data are available, I-360 petition approval rates are relatively low. Of 73

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(...continued)

activities. However, the absence of such determination does not preclude a finding that the individual was not of good moral character for other reasons, such as providing false information in a legal petition. 8 U.S.C. §101(f).

<sup>20</sup> Children, as defined in 8 U.S.C. §101(b) are automatically included in the VAWA petitions of their parents and may apply for immigration status on the same basis and at the same time as their parents. 8 U.S.C. §204(a)(1)(A)(iii)(I) and §204(a)(1)(B)(ii).

<sup>21</sup> Supporting documentation includes evidence of the following: (1) existence of the qualifying relationship; (2) citizenship or immigration status of the abuser; (3) self-petitioner’s eligibility for immigrant classification; (4) residence in the United States; (5) evidence that, during the qualifying relationship, the petitioner and abuser resided together in the United States for some unspecified period of time; (6) battery or extreme cruelty; (7) good moral character; (8) extreme hardship; and (9) in the case of a self-petitioning spouse, good faith marriage. 8 U.S.C. §204.2(c)(1) and (e)(1).

<sup>22</sup> The INA stipulates that the attorney general (i.e., USCIS, which adjudicates VAWA petitions) shall consider “any credible evidence relevant to the petition in making determinations of abuse. INA §204(a)(1)(J).

<sup>23</sup> Deferred action does not confer any immigration status nor does it prevent DHS from initiating removal proceedings against abused noncitizens if other factors make the individual inadmissible according to the INA.

<sup>24</sup> Previous agency reports suggest that denials often resulted because self-petitioners failed to meet statutory eligibility requirements. Examples included self-petitioning by battered spouses who were no longer married to citizens or LPRs and by battered children who were age 21 and older. For more information, see Gail Pendleton, “VAWA Self-Petitioning: Some Practice Pointers,” in *Immigration Practice Pointers*, ed. Gregory Adams et al, 2011-12 ed. (Washington, DC: American Immigration Lawyers Association, 2011), pp. 571-574 (hereafter referred to as Pendleton, “VAWA Self-Petitioning”).

petitions and applications, approval rates for I-360 VAWA petitions ranked 58<sup>th</sup>, with an average approval rate of 74%, compared with 88% for all petition types.<sup>25</sup>

**Table I.VAWA Petition Processing Statistics, 1997-2011**

Fiscal Year	Petitions Received or Transferred from Prior Year	Proportion of Petitions Approved	Proportion of Requests for Information
1997	2,491	75%	N/A
1998	3,331	67%	N/A
1999	3,158	76%	N/A
2000	3,384	80%	N/A
2001	5,642	84%	N/A
2002	5,943	85%	N/A
2003	6,714	81%	63%
2004	7,052	76%	72%
2005	7,704	79%	52%
2006	9,131	76%	55%
2007	8,355	71%	67%
2008	9,184	67%	62%
2009	8,534	79%	74%
2010	8,360	71%	55%
2011	9,209	68%	114% <sup>a</sup>
<b>Total</b>	<b>98,192</b>	<b>75%</b>	<b>68%</b>

**Source:** For years 2000-2011: CRS presentation of data from USCIS, Office of Performance and Quality, Data Analysis and Reporting Branch; for years 1997-1999, CRS presentation of INS data from archived CRS Report RL30559, *Immigration: Noncitizen Victims of Domestic Violence*, by Andorra Bruno and Alison Siskin, May 3, 2001.

**Notes:** The total Proportion of Petitions Approved shown at the bottom of the table is an average for all petitions submitted over the entire 1997-2011 period. The total Proportion of Requests for Information is the average of each year's annual proportion because underlying figures for computing a summary average were not available. Differences between these two methodologies are not substantial.

- a. Because petitions not adjudicated by USCIS in one fiscal year are processed in the next, proportions of petitions approved or requests for information can exceed 100%. USCIS provided the Proportions of Requests for Information to CRS but it did not provide the underlying data from which to confirm computation of these proportions.

Petitions that raise concerns among Vermont Service Center (VSC) adjudicators because of incompleteness or inconsistent information are typically assessed with *requests for evidence* (RFE). A similar inconsistent trend characterizes requests for information from 2003 to 2011. Hence, during a period when petition volume increased roughly fourfold, rates at which petitions were reviewed or approved do not appear to have changed according to any distinct pattern.

<sup>25</sup> Data on approval and denial rates from 2003-2011 for 73 USCIS petitions and applications were provided by USCIS, Office of Performance and Quality, Data Analysis and Reporting Branch. Data for 2011 reflect only the first nine months of that year.



Nevertheless, in the context of all USCIS petitions and applications for which data are available, I-360 petitions trigger the highest proportion of such requests for additional information. I-360 VAWA petitions ranked first for RFEs with an average rate of 68% compared with 19% for all petition types.<sup>26</sup> Requests for evidence measure neither fraud nor fraud prevention. Rather, they reflect the degree to which USCIS demands additional evidence prior to adjudicating a petition.

## **Critiques of Immigration Provisions of VAWA**

Critiques of the immigration provisions of VAWA resemble those of other provisions of U.S. immigration policy. Such policies often involve balancing the granting of immigration benefits with adequate enforcement to reduce fraud and ensure intended eligibility. Immigration attorneys and advocates highlight changes to VAWA that would facilitate its intended objective of protecting abused foreign nationals from their abusers and independently providing them with a path to lawful permanent residence. Other observers highlight the vulnerability of U.S. immigration policy to fraud within VAWA and the U visa provisions of the INA that undermines the intent of Congress and the rule of law.<sup>27</sup>

### **Self-Petitioning Requirements**

As noted, VAWA operates within the context of family-based immigration policy whereby foreign nationals acquire legal status through sponsoring relatives, but it also permits certain abused noncitizen spouses, children, and parents of U.S. citizens and LPRs to petition for legal status independently of their abusive sponsors. Contingent upon meeting certain conditions and filing requirements, an approved VAWA petition grants *deferred action status* that halts removal procedures for a renewable period.<sup>28</sup> Approved petitioners may then apply for work authorization and ultimately lawful permanent residence.

Advocates for battered foreign nationals, however, maintain that the requirements under VAWA are so stringent that they sometimes deter qualified battered spouses and children from self-petitioning, and prevent those who apply with legitimate cases from having their petitions approved.<sup>29</sup> They argue, for example, that a battered spouse may not necessarily possess documentation necessary to prove that the marriage was entered into with good faith. Similar concerns have been expressed about what some view as unnecessarily burdensome requirements for demonstrating good moral character. This is particularly the case when self-petitioners' disqualifying actions in the past may have been directly related to being a victim of domestic violence or when abusive spouses file for custody of children or bring criminal countercharges against the victim.<sup>30</sup> Advocates argue that immediate relatives who apply for LPR status under

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<sup>26</sup> Data on requests for evidence from 2003-2011 for 35 USCIS petitions and applications were provided by USCIS, Office of Performance and Quality, Data Analysis and Reporting Branch.

<sup>27</sup> See for instance "2011 DHS OIG Report."

<sup>28</sup> Removal (deportation) proceedings can occur whenever a foreign national has no legal status for remaining in the United States. For foreign national spouses, this may occur because of lack of sponsorship by a U.S. citizen or LPR.

<sup>29</sup> For more information on the advocacy perspective, see testimony of Dr. Phillip C. McGraw, Michael Shaw, and Dr. Jane Van Buren, U.S. Congress, Senate Committee on the Judiciary, *The Violence Against Women Act: Building on Seventeen Years of Accomplishments*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., July 13, 2011.

<sup>30</sup> Julie E. Dinnerstein, "Violence Against Women Act (VAWA) Self-Petitions," *Immigration and Nationality Law Handbook*, vol. 331 (2006-07 ed.).

standard family-based immigration policy are not subject to this requirement, which is unnecessary to deter marriage fraud.

In addition, immigration attorneys have expressed concerns about the time lag between the passage of legislation and the implementation of guidance or regulations by USCIS.<sup>31</sup> Examples include the 2005 VAWA provisions making abused parents of U.S. citizens eligible to apply for protections under VAWA, preventing children who turn 21 from “aging out” of eligibility for VAWA protections after their petitions have been filed, and allowing abused spouses of certain nonimmigrant visa holders to apply for work authorization. The last of these provisions still has not been implemented as of this writing.<sup>32</sup>

## **Concerns About Immigration Benefit Fraud<sup>33</sup>**

Immigration benefit fraud is defined as the willful misrepresentation of material facts to qualify for a specific immigration status or benefit in the absence of lawful eligibility for that benefit.<sup>34</sup> Immigration marriage fraud, a type of immigration benefit fraud, is the entering into a sham marriage with a U.S. citizen or LPR in order to obtain legal immigration status.<sup>35</sup>

## **Marriage Fraud Generally**

How prevalent is immigration marriage fraud? Policy analysts cannot reliably quantify what proportion of the roughly 300,000 spouses<sup>36</sup> who gain LPR status annually receive such status through fraudulent means.<sup>37</sup> At the time Congress was considering the Immigration Marriage Fraud Amendments (IMFA) of 1986, the INS Commissioner, testifying at a hearing before the Senate Subcommittee on Immigration and Refugee Policy and using data from INS surveys, estimated that as many as 30% to 40% of all spousal petitions involved marital fraud. This initial estimate, also cited elsewhere,<sup>38</sup> was subsequently discredited.<sup>39</sup> At the same hearing, the American Immigration Lawyers Association (AILA) refuted that estimate and claimed that the

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<sup>31</sup> Discussions with Gail Pendleton, co-director of ASISTA, a national immigration law technical assistance project funded by the federal Office on Violence Against Women, February 22, 2012. See also Pendleton, “VAWA Self-Petitioning.”

<sup>32</sup> Ibid.

<sup>33</sup> See CRS Report RL34007, *Immigration Fraud: Policies, Investigations, and Issues*, by Ruth Ellen Wasem.

<sup>34</sup> INA §274C mandates civil penalties for persons who commit fraud to meet an INA requirement or acquire an immigration benefit. Additionally, a civil penalty under §274C is a separate ground for inadmissibility and deportation.

<sup>35</sup> For more information on how a marriage is judged fraudulent, see Leslie Tuttle DiTrani, “Was it Really a Sham Marriage?,” in *Immigration Practice Pointers*, ed. Gregory Adams et al, 2011-12 ed. (Washington, DC: American Immigration Lawyers Association, 2011), pp. 135-137.

<sup>36</sup> Between 2001 and 2010, spouses of U.S. citizens who were granted LPR status each year averaged about 273,000. Spouses of LPRs averaged 94,000, but this category also included children and unmarried adult sons and daughters. DHS Office of Immigration Statistics, 2010 Yearbook of Immigration Statistics, Legal Permanent Residents, Table 6.

<sup>37</sup> David Seminara, *Hello, I Love You, Won't You Tell Me Your Name: Inside the Green Card Marriage Phenomenon*, Center for Immigration Studies, Washington, DC, November 2008, p. 12, <http://www.cis.org/articles/2008/back1408.pdf>.

<sup>38</sup> John N. Sampson, *Immigration Marriage Fraud 101*, CSI Consulting & Investigations, LLC, 2009, <http://csiinvestigations.vpweb.com/>. (Hereafter referred to as “Sampson, *Immigration Marriage Fraud 101*”).

<sup>39</sup> In *Manwani v. INS*, (736 F. Supp. 1367 (W.D.N.C. 1990)), the INS acknowledged that its estimates were based on data collected in just three cities where investigators suspected but had not proven actual fraud.

proportion amounted to no more than 1%-2%, a contention subsequently supported by findings of a North Carolina federal district court.<sup>40</sup> Despite significant media attention on immigration marriage fraud and mail order brides, reliable estimates are difficult to obtain.<sup>41</sup>

Penalties for marriage fraud include five years imprisonment and/or a \$250,000 fine for “any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws.”<sup>42</sup> Marriage fraud can also be grounds for deportation.<sup>43</sup>

## **VAWA and the Potential for Marriage Fraud**

Anecdotal reports from USCIS personnel and others suggest that some foreign nationals who lack eligibility to remain in the United States or who face imminent deportation because USCIS denied their immigration benefit petitions may be using VAWA provisions to acquire lawful permanent resident status.<sup>44</sup> In addition to committing immigration marriage fraud, such reports allege that such foreign nationals sometimes perpetrate financial fraud on their former spouses.<sup>45</sup>

Foreign nationals in these circumstances generally were denied lawful permanent residence status for two reasons.<sup>46</sup> First, they could have entered the United States without inspection or overstayed their visas. Hence, despite being married to U.S. citizens or LPRs, they remained unauthorized aliens. Second, those applying for legal status as a spouse of a U.S. citizen or LPR under the family-based provisions of the INA may have had their petitions denied because USCIS found their marriages to be not credible or otherwise invalid. Such petitions based on spousal relationships also require face-to-face interviews between the petitioning couple and USCIS District Office adjudicators, at which point fraudulent marriages may be detected.

If USCIS denies a petition for LPR status because they determine that the marriage on which the petition is based is fraudulent, the petitioner could attempt to perpetrate immigration fraud, either with the cooperation of the U.S. citizen or LPR spouse, or without the spouse’s knowledge, by claiming abuse and seeking immigration benefits under the VAWA provisions of the INA.<sup>47</sup>

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<sup>40</sup> Ibid.

<sup>41</sup> Anne-Marie D'Aoust, “Love Stops at the Border”: Marriage, Citizenship, and the “Mail-Order Brides” Industry, Penn Program on Democracy, Constitutionalism and Citizenship Workshop, University of Pennsylvania, Philadelphia, PA, February 18, 2009, pp. 6-7.

<sup>42</sup> §1325(c) as added November 6, 1986, P.L. 99-639, 8 U.S.C. §1325

<sup>43</sup> INA §237(a)(1)(G), 8 U.S.C. §1227(a)(1)(G). For more information on immigration fraud see CRS Reports CRS Report RL34007, *Immigration Fraud: Policies, Investigations, and Issues*, by Ruth Ellen Wasem; and CRS Report RL32657, *Immigration-Related Document Fraud: Overview of Civil, Criminal, and Immigration Consequences*, by Michael John Garcia.

<sup>44</sup> Based on discussions with several USCIS adjudicators at an undisclosed District Office during a CRS site visit, January 2011 (hereinafter referred to as “Discussions with USCIS adjudicators”). These issues were highlighted by Julie Poner, a victim of immigration marriage fraud, and John Cutler, a retired Senior Special Agent with the former INS, who both testified before the Senate Committee on the Judiciary, U.S. Congress, Senate Committee on the Judiciary, *The Violence Against Women Act*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., July 13, 2011, S.Hrg.109-132 (Washington: GPO, 2011), hereafter referred to as “Testimony of Poner and Cutler.”

<sup>45</sup> Ibid. See also “Sampson, *Immigration Marriage Fraud 101*.”

<sup>46</sup> See “Discussions with USCIS adjudicators.”

<sup>47</sup> See “Testimony of Poner and Cutler.”

The potential for immigration marriage fraud may be related to administrative issues involving the Vermont Service Center (VSC), which is exclusively responsible for processing VAWA petitions and which relies on documentation supplied by applicants—without face-to-face interviews—to adjudicate their cases.<sup>48</sup> Some immigration attorneys contend that the VSC does in fact review earlier determinations by USCIS District Office adjudicators when it processes VAWA petitions.<sup>49</sup> However, conversations with USCIS personnel suggested that reported suspicions of marriage fraud by District Offices appeared to be given relatively little attention by the VSC.<sup>50</sup> USCIS personnel suggested that unless new incriminating information indicated that petitioners were engaged in illicit activity, approved VAWA petitions were not subject to review despite evidence from a previous petition indicating that USCIS was suspicious of immigration fraud.<sup>51</sup> USCIS prohibits approving VAWA petitions when the agency determines that a petitioner has committed marriage fraud. Yet, it is unclear the degree to which the USCIS’s Adjudicator’s Field Manual (AFM) and other regulations *require* an adjudicator to consult previous case files, although the AFM does *recommend* it.<sup>52</sup>

USCIS senior staff contend that USCIS standard operating procedures limit the degree to which immigration fraud can be perpetrated.<sup>53</sup> They assert that the VSC includes all prior interactions and submissions—such as other petitions and claims—in the final “A-file” that constitutes the complete petition to be adjudicated. Hence, adverse information from another immigration proceeding or filing involving the petitioner is reviewed and assessed as part of the adjudication of any VAWA self-petition. Nevertheless, USCIS is mandated by law to make an independent determination as to whether non-conclusive evidence of marriage fraud in another immigration petition should result in the denial of a VAWA petition based on the standard of “substantial and probative evidence.”<sup>54</sup>

Statutory limitations also influence what information USCIS may use when making an adverse determination on a VAWA self-petition. Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) prohibits any officer of the Department of Homeland Security from making an adverse determination on a VAWA self-petition if the adverse

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<sup>48</sup> Consolidation of VAWA petition adjudications in the VSC was intended, among other things, to prevent fraud by assigning adjudications to a unit of specialists in domestic violence cases who could efficiently discern fraudulent petitions, fairly adjudicate legitimate petitions, and protect victims from accidental violations of confidentiality. A single unit was intended to provide consistency and uniformity in the handling of VAWA petitions. U.S. Citizenship and Immigration Services, Department of Homeland Security, *Report on the Operations of the Violence Against Women Act Unit at the USCIS Vermont Service Center*, Report to Congress, p. 3 (October 22, 2010).

<sup>49</sup> Based on several discussions with Susan Bowyer, Directing Attorney, Immigration Center for Women and Children (ICWC), San Francisco Office, a non-profit legal organization providing immigration services to underrepresented women and children in California, January 25-February 1, 2012 (Hereinafter referred to as “Discussions with Directing Attorney, ICWC.”)

<sup>50</sup> See “Discussions with USCIS adjudicators.”

<sup>51</sup> See “Discussions with USCIS adjudicators.”

<sup>52</sup> 8 C.F.R. §103.2(b)(17)(ii); USCIS AFM §§11.5, 14.8, 21.2(b)(1)(B) and (b)(2)(A). An adjudicator apparently must ascertain, independently of information from the petitioner, the existence in the USCIS database of any previous case files on the petitioner. USCIS AFM §10.3(a). Recent case law suggests that there is inconsistency or a possible lack of clarity with regard to how this prohibition is interpreted and implemented by the USCIS regarding any administrative process for resolving conflicting conclusions of different offices in the same agency or what constitutes “substantial and probative evidence” of marriage fraud that requires denial of a petition, absent a related criminal conviction.

<sup>53</sup> Based on responses to written questions submitted by CRS to USCIS Department of Legislative Affairs, May 25, 2012 (Hereinafter referred to as “Responses from USCIS.”)

<sup>54</sup> See *Matter of Tawfik*, 20 I & N Dec. 166, 170 (BIA 1990).

information was solely provided by certain specified sources, including the alleged abuser.<sup>55</sup> A 1997 Immigration and Naturalization Service (INS)<sup>56</sup> memorandum specified that such adverse information must be independently corroborated.<sup>57</sup> Moreover, if an initial determination of marriage fraud by a USCIS District Office resulted from information provided solely by the alleged abuser, USCIS is statutorily prohibited from using that information or finding to make an adverse determination on a VAWA self-petition.

According to USCIS, the VSC weighs the alien's credibility based on all evidence submitted with the VAWA petition, all evidence in the alien's administrative file, and any other information available regarding the alien's interactions with USCIS, ICE, and CBP. USCIS posits that its team of specially trained officers who only work on victim-based adjudications allows them to effectively assess how much weight to give the evidence and determine what may not be used based on statutory restrictions. VSC also claims a close partnership with its own Fraud Detection and National Security (FDNS) Unit, which regularly interacts with similar units at USCIS offices across the country to identify fraud trends.<sup>58</sup>

Some argue that in practice, the VAWA requirements of evidence of abuse to accompany VAWA petitions may be sufficiently generous to encourage potential immigration fraud. The 1994 VAWA, as amended in 2000 and 2005, allows "any credible evidence" to establish spousal abuse.<sup>59</sup> For example, foreign nationals who are intent on committing immigration fraud through VAWA and familiar with U.S. law need only report alleged abuse to their local police. If a police report is generated, it apparently meets this standard required by VAWA. As noted above, such activity could occur with or without the cooperation of the spouse. Responsibility for prosecuting immigration fraud rests with ICE, which has prosecuted relatively few immigration fraud cases compared to other types of cases.<sup>60</sup>

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<sup>55</sup> IIRIRA §384, codified at 8 U.S.C. §1367.

<sup>56</sup> INS was the precursor to today's USCIS, and the immigration related activities of the Customs and Border Patrol (CBP), and Immigration and Customs Enforcement (ICE). As such, it was located within the U.S. Department of Justice, under the direction of the Attorney General of the United States. In 2003, with the creation of the Department of Homeland Security (DHS), the INS was dissolved and authority for most of the INS functions transferred from the Attorney General to the DHS Secretary.

<sup>57</sup> Virtue, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA §384," Mem. 96act.036 (May 5, 1997). This language is affirmed by two later memoranda, Williams/Schiltgen, INS Office of Field Operations, *Revocation of VAWA-Based Self-Petitions (I-360s)*, at 3 (August 5, 2002), and USCIS Office of the Director, Policy Memorandum, *Revocation of VAWA-Based Self-Petitions (Forms I-360) (AFM Update AD10-49)*, at 3 (December 15, 2010). The 2010 memorandum added this requirement to USCIS AFM §21.14(z)(3).

<sup>58</sup> According to USCIS, FDNS investigates petitions referred to it in accordance with statutes, regulations, and policies that affect eligibility for benefit sought. Statutory restrictions may limit the sources and types, as well as permitted uses and disclosure, of information that USCIS may consider during its investigations. FDNS does not adjudicate applications or petitions, but rather performs administrative investigations and reports its findings to VSC adjudicators. On confirming fraud, FDNS will refer certain cases to ICE for criminal investigation and possible prosecution. For those cases that do not meet criteria for referral to ICE, USCIS will deny the benefits sought and issue a Notice to Appear, seeking removal of the alien from the United States. See "Responses from USCIS."

<sup>59</sup> Amended INA §204(a)(1)(J), codified at 8 U.S.C. §1154(a)(1)(J) provides: "In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General."

<sup>60</sup> In 2010, for example, all fraudulent activities related to immigration comprised just 2.3% of the 168,532 criminal aliens removed. See Office of Immigration Statistics Policy Directorate, *Immigration Enforcement Actions: 2010*, Department of Homeland Security, Annual Report, Washington, DC, June 2011, p. 4. Moreover, it remains unclear the (continued...)

## **VAWA and Controls to Prevent Marriage Fraud**

Some immigration attorneys question the ease with which foreign nationals could perpetrate immigration fraud using VAWA.<sup>61</sup> According to these attorneys, documentary evidence of abuse required by the Vermont Service Center is relatively stringent, petitions are reviewed thoroughly, and even slight inconsistencies found among the evidence supporting petitions often trigger additional requests for information and raise the threshold for petitioners to establish legitimate abuse cases. The attorneys contend that information and decisions from USCIS District Offices usually influence final adjudications by the VSC.<sup>62</sup>

As discussed, VAWA provides a mechanism for an abused foreign national to self-petition for LPR status. This requires two separate USCIS petitions. The first, classifying a foreign national as a battered or abused spouse or child of a U.S. citizen or LPR, requires substantial evidence of physical or emotional abuse; a bona fide, good faith marriage; and good moral character.<sup>63</sup> Approved VAWA petitions provide only deferred action status, not LPR status.

The second petition, establishing the relationship between the foreign national spouse and the U.S. citizen or LPR, requires the self-petitioner to prove admissibility.<sup>64</sup> Immigration attorneys contend that adjudicators typically examine all grounds of inadmissibility, including previously denied petitions. A final determination for adjustment of status cannot occur without a face-to-face interview at some point between the USCIS adjudicator and the foreign national spouse, regardless of current marital circumstances.<sup>65</sup> Thus, while the Vermont Service Center does have the final determination on whether VAWA self-petitioners receive deferred action status through the I-360 petition, immigration attorneys believe it is unlikely that the VSC would not take into account the determination of fraudulent or other adverse information from a USCIS District Office.<sup>66</sup>

Despite VSC adjudication of VAWA petitions that occurs separately from USCIS District Office operations, immigration attorneys contend that both the law and current practices undermine Congress's intent to prevent abusers and other perpetrators from influencing the immigration

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(...continued)

degree to which USCIS follows up on foreign nationals receiving deferred action status to see if they subsequently applied for LPR status. Coordination issues between USCIS and ICE have been noted in earlier CRS reports. See CRS Report RL34007, *Immigration Fraud: Policies, Investigations, and Issues*, by Ruth Ellen Wasem.

<sup>61</sup> See "Discussions with Directing Attorney, ICWC."

<sup>62</sup> See also Pendleton, "VAWA Self-Petitioning." According to Pendleton and other immigration attorneys, even minor inconsistencies between supporting materials in a petition raises the possibility that USCIS will issue an adverse credibility determination, a major obstacle to successful petitions. Moreover, police officers are typically trained to discern the presence or lack of domestic violence. Attempts to mimic domestic violence often result in citations for a domestic disturbance, rather than arrests for domestic violence. These anecdotal reports suggest that obtaining police reports that serve as evidence of abuse may pose a formidable challenge to foreign nationals seeking to falsely petition for immigration benefits under VAWA.

<sup>63</sup> 8 U.S.C. §204(a)(1).

<sup>64</sup> INA §204. For more information on grounds for inadmissibility and a more complete definition of good moral character, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

<sup>65</sup> See "Discussions with Directing Attorney, ICWC."

<sup>66</sup> Ibid. In addition, USCIS asserts that where underlying fraud or other concerns are discovered by the field office, it may refer the approved VAWA case back to VSC for review and possible revocation of the approved VAWA petition. See "Responses from USCIS."

system's deliberative process. They take issue with the term "solely," noted above, which they view as a loophole allowing some VSC adjudicators to consider evidence provided by alleged abusers as credible despite the widely accepted view that it is inherently unreliable.<sup>67</sup> Moreover, they also allege that some Immigration and Customs Enforcement (ICE)<sup>68</sup> and USCIS officers may be skeptical of, or antagonistic to, VAWA and domestic violence claims that they "attempt to insert the abuser's voice into the process or allege marriage fraud on their own."<sup>69</sup>

Moreover, immigration attorneys question whether persons intending to commit immigration fraud through VAWA can actually do so.<sup>70</sup> They suggest that the evidentiary requirements for a successful false VAWA application would require foreign nationals to possess an unusually high level of skill in both legal procedure and deceptiveness. Also, contrary to assertions made by some USCIS adjudicators, immigration attorneys claim that while the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) prohibits the denial of a petition based solely on evidence furnished by the abusive spouse or family member, such evidence receives considerable weight at the VSC relative to other documentation in the application.<sup>71</sup>

Nonetheless, if a foreign national is determined to commit immigration fraud via the VAWA provisions and applying self-inflicted injuries, it may be possible to fabricate evidence of abuse. When accompanied by other required supporting evidence, and when not adequately contested with contrary evidence provided by the alleged abusive spouse, VAWA petitions could result in illegitimately obtained deferred action status. Immigration attorneys contend that successfully perpetrated VAWA fraud is likely to occur on a relatively small scale comparable to other types of fraud generally.<sup>72</sup> However, they acknowledge that the potential for immigration fraud places a burden on USCIS to follow up with persons granted deferred status. A critical protection against such fraud appears to be the face-to-face interview between a USCIS adjudicator and the VAWA self-petitioner required for LPR status.<sup>73</sup>

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<sup>67</sup> See Pendleton, "VAWA Self-Petitioning," p.572.

<sup>68</sup> ICE is the investigative agency in the Department of Homeland Security (DHS). Its Homeland Security Investigations directorate is tasked with detecting, deterring, and disrupting document and benefit fraud, including marriage fraud.

<sup>69</sup> See Pendleton, "VAWA Self-Petitioning," p.572.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> In September 2011, CRS conducted a search of press reports and legal proceedings related to immigration benefit fraud using the U visa and could locate only one press report of systematic immigration benefit fraud. According to the newspaper article, some defense attorneys believed that applicants were "defrauding the system by taking cases to court they otherwise wouldn't in the hopes of getting a visa." The article also reported that since U certification is entirely at the discretion of law enforcement, significant differences exist in the criteria used by jurisdictions to decide when to provide certification, with some jurisdictions certifying almost all victims and others certifying none. The article concluded that it was difficult to tell "whether U visa fraud is truly common, or whether defense attorneys are merely doing a good job of making it seem so." See Lauren Smiley, "The New U Visa: Illegal Immigrants Find That Being A Crime Victim Is Their Ticket To Citizenship," SF Weekly, March 16, 2011. Members of USCIS' Fraud Detection and National Security (FDNS) Directorate recently told CRS that they had not seen cases of benefit fraud using the U visa.

<sup>73</sup> See "Discussions with Directing Attorney, ICWC."

## Legislation in the 112<sup>th</sup> Congress

Authorization for appropriations for the programs under VAWA expired in 2011.<sup>74</sup> On November 30, 2011, Senator Patrick Leahy introduced S. 1925, the Violence Against Women Reauthorization Act of 2011. It was referred to the Committee on the Judiciary, where it was reported favorably on February 7, 2012. A manager’s amendment replaced the original S. 1925 and the new version was accepted by unanimous consent. On April 26, 2012, S. 1925 passed the Senate by a vote of 68 to 31.

Within the bill, Title VIII, entitled “Protection of Battered Immigrants,” contained several provisions that would have expanded protections under the VAWA and U visa provisions of the INA. The bill would have amended current law by including “stalking” in the definition of criminal activity covered under the U visa.<sup>75</sup> It would have required more extensive background checks on each U.S. citizen who petitions on behalf of an alien fiancé or fiancée using the National Crime Information Center’s Protection Order Database in order to provide the latter with greater information about potentially abusive relationships.<sup>76</sup> Inconsistencies regarding self-disclosures of past abuse would also have been disclosed to the foreign national.

The bill also would have prohibited international marriage brokers from marketing information about any foreign national under age 18. It would have allowed federal judges as well as DOJ to impose federal criminal penalties for specified marriage broker violations. It would have criminally penalized both misuse of information obtained by international marriage brokers, and any fraudulent or false representations made by U.S. clients to foreign nationals to foster a dating or matrimonial relationship.

S. 1925 would have extended VAWA coverage to derivative children whose self-petitioning parent died during the petition process, a benefit currently afforded to foreign nationals under the family-based provisions of the INA.<sup>77</sup> It would have protected U visa petitioners under age 21 and the derivative children of adult U visa petitioners from aging out of eligibility if they reach age 21 after initiating a U visa petition. It would have exempted VAWA self-petitioners, U visa petitioners, and battered foreign nationals from being classified as inadmissible for LPR status if their financial circumstances raised concerns over becoming potential public charges.<sup>78</sup> It would have allowed conditional LPRs who are married to U.S. citizens or LPRs and who qualify for U visas to obtain hardship waivers to remove their conditional status if they were also unknowing

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<sup>74</sup> The expiration of VAWA does not alter current laws addressing its immigration provisions. For a broader discussion of VAWA generally, see CRS Report R42499, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, by Lisa N. Sacco.

<sup>75</sup> The Leahy version introduced in committee also included “dating violence.”

<sup>76</sup> The provision would have required including information on both crimes specified in 8 U.S.C. 1184(d)(3)(B)(i) as well as on any protection or restraining orders issued that are related to such crimes.

<sup>77</sup> Currently, §204(1)(2) of the INA protects all foreign nationals—children and adults—from removal proceedings if they are in the process of applying for or have been approved for LPR status on the basis of family relationships and their sponsoring relatives die subsequent to petitioning for such status.

<sup>78</sup> Being a likely public charge (unable to take care of oneself without public assistance) is a ground for inadmissibility under §212(a)(4) of the INA. It is determined by USCIS using multiple criteria, with some factors supporting and others detracting from that determination. USCIS officers must at least consider the following: age, health, family status, assets, resources, current financial status, education, and skills. See CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem, p. 6.



victims of bigamous marriages.<sup>79</sup> Notably, it also would have increased the quota of persons granted U visas from 10,000 to 15,000.<sup>80</sup>

On March 27, 2012, Representative Gwen Moore introduced a related bill in the House, H.R. 4271, the Violence Against Women Reauthorization Act. The bill, which had immigration provisions similar to S. 1925, was referred to committee.<sup>81</sup>

On April 27, 2012, Representative Sandy Adams introduced H.R. 4970, To reauthorize the Violence Against Women Act of 1994. It was referred to the House Judiciary Committee where it was reported favorably, as amended, on May 8, 2012. A manager's amendment, which replaced the reported version of H.R. 4970, was passed by the House on May 16, 2012, by a vote of 222 to 205.

Similar to S. 1925, H.R. 4970, as amended, would have provided foreign national fiancées and fiancés with additional background information on protection or restraining orders issued against U.S. citizens and LPRs petitioning for legal status on their behalf; and it would have prohibited international marriage brokers from marketing information about foreign nationals under age 18. Like S. 1925, the House bill would have extended VAWA coverage to derivative children whose self-petitioning parent died during the petition process, a benefit currently afforded to foreign nationals under the family-based provisions of the INA. It would have protected U visa petitioners under age 21 and the derivative children of adult U visa petitioners from aging out of eligibility if they reached age 21 after initiating a U visa petition. It would have exempted VAWA self-petitioners, U visa petitioners, and battered foreign nationals from being classified as inadmissible for LPR status if their financial circumstances raised concerns over becoming potential "public charges." It also would have allowed conditional LPRs who are married to U.S. citizens or LPRs and who qualify for U visas to obtain hardship waivers to remove their conditional status if they were unknowing victims of bigamous marriages.

H.R. 4970, as amended, included provisions that would have permitted the Department of Homeland Security (DHS) to admit credible evidence from alleged abusers for purposes of adjudicating VAWA petitions. It would have required local USCIS District Officers to interview VAWA petitioners in person as part of the VAWA self-petition process. The House bill would have required USCIS to consider law enforcement investigations or prosecutions of alleged abusers, or

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<sup>79</sup> Additional provisions in S. 1925 would have required the Department of Homeland Security (DHS) to report to the Senate and House Judiciary Committees with detailed statistics on numbers and characteristics of foreign nationals filing petitions under the VAWA and extended the VAWA protections to foreign nationals living in the Commonwealth of the Northern Mariana Islands who were victims of domestic abuse.

<sup>80</sup> The additional visas, if required, would have been recaptured from the balance of unused U visas not issued to victims between 2006 and 2011. Because regulations to implement the U visa were not issued until late 2008, U visas were not issued between 2006 and 2008, creating an unused balance of 30,000 U visas for those years. Between 2009 and 2011, 25,986 U visas were issued, leaving an additional unused balance of 4,014 for those three years. The total unused balance of 34,014 (30,000 plus 4,014), divided by 5,000 additional visas per year mandated by S. 1925, suggested that the increased annual quota of U visas would have lasted for roughly seven years. S. 1925 would have mandated that the 5,000 visa increase each year would have sunset once this balance was used up. Objections were raised regarding this increase pertaining to its costs and impact on U.S. workers. See U.S. Congress, Senate Committee on the Judiciary, *Judiciary Committee Executive Business Meeting, Violence Against Women Act, Nominations*, Prepared Statement of Senator Chuck Grassley, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 2, 2012, (hereafter referred to as "Prepared Statement of Senator Grassley.")

<sup>81</sup> The Senate bill included a provision not related to domestic violence but related to immigrants that would have made three drunk driving convictions an aggravated felony and a deportable offense.

the lack thereof, as evidence when adjudicating VAWA petitions. Adjudication of VAWA petitions would have been stayed until any pending investigations or prosecutions of abusive conduct alleged by the petitioning alien were concluded. Likewise, the bill would have required USCIS to determine, and take into consideration, if VAWA petitioners had applied for immigration benefits previously as well as outcomes from such previous applications. Denial of VAWA petitions would have terminated any obligations from an underlying affidavit of support previously filed by the accused U.S. citizen or LPR.

Regarding U visas, H.R. 4970 would have limited LPR status eligibility for U visa recipients only to victims whose criminal perpetrators were aliens convicted of related crimes and deported to the same country of origin. The bill would have maintained the current annual allocation of U visas at 10,000, and mandated additional reporting requirements on U visa recipients from both DHS<sup>82</sup> and the Government Accountability Office (GAO).<sup>83</sup> It would have required that certification for U visas occur only in cases where the related criminal activity is under active investigation or prosecution and where U visa petitioners help law enforcement identify the perpetrator if that information is unknown.<sup>84</sup>

Following the passage of H.R. 4970, a procedural complication known as a “blue-slip problem” emerged that stalled negotiations between the two chambers’ versions of the bill. According to the Origination Clause of the U.S. Constitution, all revenue-raising legislation must originate in the House. However, the Senate bill S. 1925 included a provision that would have increased fees on USCIS Diversity Visas.<sup>85</sup>

## **Current Legislation (113<sup>th</sup> Congress)**

On January 22, 2013, Representative Gwen Moore introduced H.R. 11, the Violence Against Women Reauthorization Act of 2013, in the House where it was referred to committee. On the same day, Senator Patrick Leahy introduced a companion bill, S. 47, also titled the Violence Against Women Reauthorization Act of 2013, in the Senate, where it was read twice and placed on the Senate Legislative Calendar under General Orders. On February 12, 2013, the Senate passed S. 47, as amended. The immigration provisions of H.R. 11 and S. 47 are similar.

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<sup>82</sup> DHS reporting requirements were similar to those stipulated in S. 1925. They would have included the number of aliens who submitted VAWA, U visa, and T (human trafficking victim) visa petitions; the number of petitions approved and denied; mean and median times required to adjudicate each of the three petition categories; mean and median times between petition receipt and work authorization issuance for approved petitions; the number of aliens who qualify for T visas who are granted continued presence in the United States; and a description of actions taken to reduce adjudication and processing times for VAWA, U visa, and T visa petitions. The House bill also would have required that DHS include a description of activities to combat fraud and ensure program integrity. In addition, an amendment to H.R. 4970 introduced by Representative Adams and adopted by the committee would have required DHS to report on the types of criminal activity that lead to the issuance of U visas.

<sup>83</sup> A mandated report, issued within one year of legislation enactment, would have required GAO to assess the efficiency and reliability of the VAWA and U visa petition adjudication processes as well as their safeguards against fraud and abuse.

<sup>84</sup> In addition, H.R. 4970 would have allowed VAWA petition information to be shared with other government agencies for national security purposes, provided the confidentiality provisions of §384(b) of IIRIRA were maintained.

<sup>85</sup> Diversity visas are allocated to natives of countries from which immigrant admissions were lower than a grand total of 50,000 over the preceding five years. See CRS Report R41747, *Diversity Immigrant Visa Lottery Issues*, by Ruth Ellen Wasem.

Title VIII, entitled “Protection of Battered Immigrants” in both bills, contains several provisions that would expand protections under the VAWA and U visa provisions of the INA similar to S. 1925 passed in the 112<sup>th</sup> Congress. Like S. 1925, the two bills would amend current law by including “stalking” in the definition of criminal activity covered under the U visa. They would extend VAWA coverage to derivative children whose self-petitioning parent died during the petition process, a benefit currently afforded to foreign nationals under the family-based provisions of the INA. They would exempt VAWA self-petitioners, U visa petitioners, and battered foreign nationals from being classified as inadmissible for LPR status if their financial circumstances raised concerns over them becoming potential public charges.

Like S. 1925, the two bills would protect U visa petitioners under age 21 and the derivative children of adult U visa petitioners from aging out of eligibility if they reach age 21 after initiating a U visa petition. They would allow conditional LPRs who are married to U.S. citizens or LPRs and who qualify for U visas to obtain hardship waivers to remove their conditional status if they are unknowing victims of bigamous marriages. The bills would require more extensive background checks on each U.S. citizen who petitions on behalf of an alien fiancé or fiancée using the National Crime Information Center’s Protection Order Database in order to provide the latter with greater information about potentially abusive relationships.<sup>86</sup> Inconsistencies regarding self-disclosures of past abuse also would have to be disclosed to the foreign national.

Similar to S. 1925, the bills would prohibit international marriage brokers from marketing information about any foreign national under age 18. They would allow federal judges as well as DOJ to impose federal criminal penalties for specified marriage broker violations. They would criminally penalize both misuse of information obtained by international marriage brokers, and any fraudulent or false representations or lack of required disclosures made by U.S. clients to foreign nationals to foster a dating or matrimonial relationship.<sup>87</sup>

In two substantial respects, the bills resemble H.R. 4970 more than S. 1925 from the 112<sup>th</sup> Congress. First, the bills would allow VAWA petition information to be shared with other government agencies for national security purposes, provided the confidentiality provisions of §384(b) of IIRAIRA were maintained. Second, the bills do not increase the current annual number of U visas authorized under the INA from 10,000 to 15,000, similar to H.R. 4970 which maintained the current limit. As such, they also do not contain any associated revenue provisions that caused the “blue slip” procedural complication for S. 1925.

## **Selected Potential Issues for Congress**

Those advocating on behalf of battered foreign nationals seek to expand eligibility to excluded groups and to refine portions of existing law that may unintentionally prevent foreign nationals from realizing benefits that the law was intended to provide. Some advocates have emphasized eligibility by increasing the number of U visas available or by expanding the means by which

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<sup>86</sup> The provision would require including information on both crimes specified in 8 U.S.C. 1184(d)(3)(B)(i) as well as on any protection or restraining orders issued that are related to such crimes.

<sup>87</sup> As with S. 1925, additional provisions in the two bills would require the Department of Homeland Security (DHS) to report to the Senate and House Judiciary Committees with detailed statistics on numbers and characteristics of foreign nationals filing petitions under the VAWA and extend the VAWA protections to foreign nationals living in the Commonwealth of the Northern Mariana Islands who are victims of domestic abuse.

foreign national crime victims can obtain law enforcement certifications.<sup>88</sup> Others have advocated for an amendment to the U visa provisions to prevent both U visa applicants and children included in U visa applicants' petitions from aging out of eligibility for protection if they reach age 21 after the petition has been filed but while it is pending, similar to what is currently in place for children under VAWA.<sup>89</sup> H.R. 11 and S. 47 include such aging-out provisions.

Advocates have also emphasized economic assistance for abused noncitizens. For instance, given that work authorization cannot be provided without an approved U visa or VAWA petition, some have proposed either an accelerated processing for VAWA and U visa applications or an established waiting time for receiving work authorization to assist petitioners in planning their lives and financial affairs.<sup>90</sup> Others have advocated expanding the availability of unemployment insurance to those who must leave their jobs because of violence.<sup>91</sup> In recognition of the challenging economic circumstances facing foreign nationals upon leaving abusive relationships, H.R. 11 and S. 47 include provisions sought by advocates that would eliminate the public charge grounds for inadmissibility for U visa and VAWA petitioners who apply for LPR status.

In addition to concerns over both the range of protections available under VAWA and eligibility to receive them, there are also concerns over potential fraud. Congress may be interested in having USCIS clarify its policies and procedures for adjudicating VAWA and U visa petitions. Included in such clarifications could be a description of USCIS procedures and policies to prevent immigration fraud, including its treatment of information provided by an alleged defrauded U.S. citizen or LPR spouse. Specific concerns include the possibility that USCIS could approve a VAWA self-petition to a person whom the USCIS previously denied because of suspected marriage fraud; the vulnerability of USCIS to potential fraud given the absence of face-to-face interviews between VAWA petitioners and adjudicators in USCIS's Vermont Service Center; and options for mandating such interviews prior to issuing deferred action status<sup>92</sup> through VAWA or a U visa.<sup>93</sup>

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<sup>88</sup> U visa applications must contain a certification from a U.S. law enforcement agency or relevant investigative or prosecutorial authority to demonstrate that the foreign national victim has been, is currently being, or is likely to be helpful in the investigation or prosecution of the related crime. Based on discussions with Leslye E. Orloff, President, National Immigrant Women's Advocacy Project, February 29, 2012 (hereafter referred to as "Discussions with Orloff"). See also letter from David R. Thomas, Assistant Director, Domestic Violence Education Program, Johns Hopkins University, to Senator Patrick Leahy and Senator Charles Grassley, chair and ranking Member, Senate Committee on the Judiciary, January 27, 2012. Foreign nationals who apply for U visas must have their petitions claiming victimization certified by a law enforcement agency or supervisor. Foreign national advocates have asserted that the certification process represents an onerous obstacle to obtaining a U visa for persons living in areas with few foreign nationals or sparsely populated areas.

<sup>89</sup> Based on "Discussions with Orloff." Under VAWA, children of self-petitioners who are included in the petition, and who turn 21 between the time the petition is filed and approved by USCIS, remain on the petition as children and receive protections under VAWA. They do not "age out" because they turned 21. INA §204(a)(1)(D)(i)(III).

<sup>90</sup> Based on "Discussions with Orloff." Research by Orloff suggests that the majority of U visa and VAWA petitions require considerably more than six months for approval. See also letter from Mony Ruiz-Velasco, Director of Legal Services, National Immigrant Justice Center, to Sen. Patrick Leahy and all Committee Members, Senate Judiciary Committee, and Secretary Napolitano, January 31, 2012.

<sup>91</sup> See letter from Asian & Pacific Islander Institute on Domestic Violence et al (20 organizations), to Sen. Patrick Leahy and Senator Michael Crapo, Senate Judiciary Committee, February 1, 2012.

<sup>92</sup> As previously discussed, *deferred action status* is a "quasi" status and administrative act that halts actions to remove the individual from the country for a renewable period of time. It does not confer any immigration status nor does it prevent DHS from initiating removal proceedings against abused noncitizens if it determines that other factors make the individual inadmissible according to the INA.

<sup>93</sup> Provisions mandating face-to-face interviews between VAWA self-petitioners and USCIS adjudicators were (continued...)

Questions have also been raised about whether the current provisions of the U visa undermine its law enforcement utility. Some have characterized as generous the eligibility requirements for obtaining a U visa<sup>94</sup> and questioned the lack of a mandated inquiry on whether, how, and within what time frame such information provided by foreign nationals led to the apprehension or prosecution of persons committing criminal acts.<sup>95</sup>

Congress may be interested in how other federal agencies complement the enforcement functions of USCIS. For instance, there may be interest in knowing what the Office of Audits in the DHS Office of Inspector General has done to further its FY2011 performance objective of “determining whether I-130 marriage-based petitions are being adjudicated uniformly, according to established policies and procedures, and in a manner that fully addresses all fraud and national security risks.”<sup>96</sup> It may benefit Congress to be informed in greater detail about the extent to which the Immigration Control and Enforcement (ICE) investigates and prosecutes alleged immigration fraud. Congress may also benefit from similar information on the benefits fraud referral process of USCIS’s Office of Fraud Detection and National Security (FDNA) regarding adjudication of VAWA petitions.<sup>97</sup>

Those favoring more restrictive approaches to VAWA eligibility for noncitizens argue that the INA should not serve as what they view as a form of asylum<sup>98</sup> for foreign nationals in abusive relationships who would otherwise not qualify for immigration benefits.<sup>99</sup> In addition, they contend that USCIS officials should have the option of extending conditional permanent residence status beyond its current two-year period, if necessary, to clarify the validity of a marriage, rather than be forced to make a definitive determination after two years. Similarly, they argue that USCIS should have options for withdrawing approval of VAWA petitions and U visas should unfavorable information come to light that makes the recipient of these immigration benefits removable.<sup>100</sup>

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(...continued)

included in H.R. 4970 from the 112<sup>th</sup> Congress but are not in H.R. 11 and S. 47.

<sup>94</sup> Of the three primary requirements for receiving a U visa (the first two being victimization and possessing information about the crime), it is the third requirement that some have characterized as generous. According to the INA, a U visa may be given to a foreign national who “has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service [referring to the Immigration and Naturalization Service, predecessor agency to USCIS], or to other Federal State, or local authorities investigating or prosecuting criminal activity.” INA §101(a)(15)(U)(i).

<sup>95</sup> See S.Rept. 112-153, VII. *Minority Views, Immigration Issues*. In the 112<sup>th</sup> Congress, H.R. 4970 would have mandated that U visa certification be granted only with active investigations or prosecutions. Some contend that such a provision would have restricted the ability of law enforcement agencies to pursue investigations according to their own schedules and strategies. Another provision of H.R. 4970 would have eliminated eligibility for LPR status except in circumstances where the criminal perpetrator was an alien, was convicted of a crime, and was deported to the same home country as the victim. Neither provision is in H.R. 11 or S. 47.

<sup>96</sup> DHS Office of Inspector General, *Fiscal Year 2011 Annual Performance Plan*, at 48.

<sup>97</sup> In the 112<sup>th</sup> Congress, H.R. 4970 included a provision that would have required GAO to evaluate the degree to which USCIS procedures for processing U visa and VAWA petitions are efficient, reliable, and resistant to fraud. This provision is not in H.R. 11 and S. 47.

<sup>98</sup> Asylum refers to legal protection afforded by the United States to persons who demonstrate a “well-founded fear of persecution” based on race, religion, nationality, membership in a particular social group, or political opinion. Unlike refugees, asylees have already entered the United States legally or illegally and seek protection from deportation.

<sup>99</sup> Discussion with Jessica Vaughn, Center for Immigration Studies, March 1, 2012.

<sup>100</sup> Based on discussions with Jessica Vaughan, Policy Studies Director, Center for Immigration Studies, March 1, 2012. In the 112<sup>th</sup> Congress, H.R. 4970 would have required that USCIS take into account current law enforcement (continued...)

## Conclusion

In the last several decades, Congress has enacted provisions to provide relief to abused noncitizen relatives of U.S. citizens and LPRs. The Violence Against Women Act of 1994 represents a milestone in this legislative history by providing for the first time the opportunity for abused foreign nationals to self-petition for lawful permanent resident status independently of their abusers. With the reauthorization of VAWA in 2000, this benefit was extended to victims of a broad array of crimes, including domestic violence, who assisted law enforcement. The VAWA reauthorization of 2005 added protections for abused children and parents, allowed abuse victims to apply for work authorization, and increased requirements to provide information about U.S. nationals to prospective foreign national marriage partners.

Although current discussions of noncitizen victims of domestic violence have emphasized expanding existing protections, providing relief to vulnerable populations is not the only goal of immigration policy. Other goals include preventing immigration-related fraud and deterring illegal immigration. Although reliable estimates remain elusive of the extent of marriage fraud generally, and VAWA fraud specifically, anecdotal evidence based on CRS's discussions with USCIS personnel suggests that attempted fraud through VAWA remains an ongoing concern.

Between 1997 and 2011, the number of VAWA petitions filed increased almost fourfold, from 2,491 to 9,209. On average, about one-quarter to one-third of all petitions adjudicated each year were denied, a relatively high denial rate compared with other USCIS petitions and applications. While various factors might have contributed to the increase in petition volume, including the VAWA reauthorizations of 2000 and 2005, average annual rates at which petitions were reviewed or approved between 1997 and 2011 did not appear to have changed according to any distinct pattern. Moreover, the rate at which USCIS issued *Requests for Evidence* for VAWA petitions exceeded that of all other USCIS petitions and applications for which data were available.

Making and implementing immigration policy with respect to noncitizen victims of domestic violence requires striking a balance among different goals. It also requires finding ways of providing adequate relief to abused foreign nationals while simultaneously guarding against potential abuses of the immigration system.

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(...continued)

investigations or prosecutions of the alleged abuser, or the lack thereof, as evidence to be considered when adjudicating VAWA petitions. This provision is not in H.R. 11 and S. 47.

## Appendix A. Family Sponsorship and Lawful Permanent Residence

Family reunification, a central principle of U.S. immigration policy, is reflected in legal provisions that grant lawful permanent residence to foreign national spouses of U.S. citizens without numerical limitation, and to foreign national spouses of lawful permanent residents (LPR) according to a numerically limited system of family preferences.<sup>101</sup> These INA provisions highlight the importance of being related to a U.S. citizen or LPR for foreign nationals seeking to become lawful permanent residents of the United States.<sup>102</sup>

The first step in this process is to obtain immigration preference status, petitions for which have to be filed with USCIS by the beneficiary's U.S. citizen or LPR relative.<sup>103</sup> In addition to an approved petition for LPR status, prospective immigrants sponsored by LPRs must have a visa number<sup>104</sup> immediately available to them. Spouses and children of LPRs are treated differently than spouses and children of U.S. citizens. Spouses or children of LPRs are subject to the visa allocation system, which sets limits on the number of individuals in the various preference categories who can be granted lawful permanent resident status each year. Thus, after their petitions for immigration preference are approved, relatives of lawful permanent residents must wait for the State Department to assign them an immigrant visa number. Spouses and children of U.S. citizens, on the other hand, are not subject to numerical immigration limits. They do not have to wait for an immigrant visa number to become available and receive a visa number as soon as their petitions are processed and approved.

Once a visa number is available, a foreign national already in the United States may be eligible to apply to adjust to LPR status without leaving the country. Those not eligible to adjust status must apply for an immigrant visa at a U.S. consulate abroad, usually in their home country. Upon admission to the United States, the visa holder acquires LPR status. All applicants for LPR status must be found "admissible" to the United States by USCIS. Under the INA, foreign nationals may be inadmissible for health, security, criminal, financial, or other reasons.<sup>105</sup>

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<sup>101</sup> See CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>102</sup> Foreign nationals who have no U.S. citizen or LPR immediate relatives (adult children, spouses, parents) who can sponsor them for LPR status must apply for such through other provisions of U.S. immigration law. These include employment-based provisions, the Diversity Visa Lottery, refugee and asylee provisions, and other special immigrant provisions. For more information, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>103</sup> *Ibid.*

<sup>104</sup> Visa numbers are issued by the U.S. Department of State (DOS). An approved petition to receive an immigrant visa is not the same as a visa number, because the U.S. receives and approves more visa petitions than are available in any given year. DOS issues immigrant visa numbers, indicating the availability of a visa, based on annual numerical limits for each family-sponsored immigration category, per-country limits, and other criteria governing visa issuance. CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>105</sup> For more information, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

## Appendix B. Legislative Background of VAWA<sup>106</sup>

Domestic violence<sup>107</sup> affects a broad segment of society,<sup>108</sup> yet experts believe that several factors may put noncitizen women married to U.S. citizens or LPRs at increased risk of spousal abuse. These factors include poor English language skills, unemployment, poverty, crowded living conditions, and most notably, economic dependence on the sponsoring citizen or LPR spouse.<sup>109</sup> Moreover, as described in **Appendix A**, remaining married is essential for foreign national spouses of U.S. citizens or LPRs who wish to adjust their immigration status to lawful permanent residence. This requirement, which maintains the family relationship between the foreign national and the U.S. citizen or LPR, tends to discourage foreign national spouses from leaving abusive marriages.<sup>110</sup>

Over more than two decades, Congress has sought to balance the protection of foreign nationals abused by their U.S. citizen and LPR relatives with the prevention of fraudulent marriages initiated solely to obtain immigration benefits. This legislative history often reflects Congress's attempts to expand protections, mitigate unintended consequences, and reduce immigration fraud.

### The Immigration Fraud Amendments (1986)

The original INA passed in 1952 granted immediate LPR status to foreign nationals who married U.S. citizens and LPRs. In response to growing concerns about immigration-related marriage fraud, Congress, in 1986, passed the Immigration Marriage Fraud Amendments (IMFA; P.L. 99-639), which established a two-year conditional permanent residence status for foreign national spouses and children who obtained permanent residence through a new marriage (under two years duration) with a U.S. citizen or LPR.<sup>111</sup> The new provision was intended to provide sufficient

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<sup>106</sup> This section relies partially on an archived CRS Report RL30559, *Immigration: Noncitizen Victims of Family Violence*, by Andorra Bruno and Alison Siskin, May 3, 2001.

<sup>107</sup> The term “domestic violence” in this report is synonymous with the terms “battery” and “abuse.” The term abuse is used in more recent legislation because it refers to abuse more broadly, not only corporal battery but also to other forms of abuse gradually recognized by ongoing legislation, such as verbal and psychological abuse.

<sup>108</sup> The most recent data available from the Centers for Disease Control and Prevention indicate that “nearly 3 in 10 women and 1 in 10 men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner.” See Black, M.C., Basile, K.C., Breiding, M.J., et al, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*, Atlanta, GA, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, November 2011.

<sup>109</sup> See for example, Giselle Aguilar Hass, Nawal Ammar, and Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses*, Legal Momentum, West Bethesda, MD, April 24, 2006; Michelle J. Anderson, “A License to Abuse: The Impact of Conditional Status on Female Immigrants,” *Yale Law Journal*, v. 102, April 1993, p. 1401-1404 (hereafter cited as Anderson, “A License to Abuse”); N. Ammar and L.E. Orloff, “Battered immigrant women’s domestic violence dynamics and legal protections,” in *It’s a Crime: Women and Justice*, ed. R. Muraskin (NJ: Prentice Hall, 2006); D.W. Valdez, “Deportation that keeps many battered women silent,” *Borderland News*, retrieved: <http://www.borderlandnews.com/stories/borderland/20050221-26609.shtml>, 2005; and A. Raj, J. G. Silverman, and J. McCleary-Sills, et al., “Immigration Policies Increase South Asian Immigrant Women’s Vulnerability to Intimate Partner Violence,” *Journal of the American Medical Women’s Association*, vol. 60, no. 1 (2005), pp. 26-32.

<sup>110</sup> *Ibid.*

<sup>111</sup> According to the USCIS Adjudicator’s Field Manual, Chapter 25.1, “Congress was particularly moved by the testimony of numerous citizens whose foreign national spouses had left them shortly after obtaining residence, as well as the testimony of Service representatives concerned with “marriage for hire” schemes. Congress also acknowledged the inherent difficulties faced by the INS in determining whether the marriage is fraudulent and whether the alien intended to leave the marital union once lawful permanent residence was granted.”



time for the former Immigration and Naturalization Service (INS) to determine whether such a marriage was bona fide. During the two-year conditional period, INS (now DHS) could terminate the alien's conditional permanent resident status if it determined that the marriage was entered into to evade U.S. immigration laws or that the marriage had been terminated other than through the death of the spouse. In most cases, the foreign national and his or her spouse were required to submit a joint petition at the end of the two-year period to have the condition removed.<sup>112</sup>

For noncitizen victims of domestic violence, however, IMFA created unintended consequences. By establishing a two-year conditional residence requirement, advocates argued that the statute served to increase the power of abusers over foreign national spouses. By requiring the filing of a joint petition, the law made battered women reluctant to leave their abusive U.S. citizen or LPR spouses, whose sponsorship they depended on for permanent residency and whose abandonment would result in their deportation.<sup>113</sup> Many separated, divorced, and battered women were left legally stranded by their husbands, often resulting in a loss of legal status at the conclusion of their conditional status period.<sup>114</sup>

Although IMFA provided for waivers of the joint petition requirement for spouses in such situations, they were difficult to obtain. Evidence of battery by itself was not sufficient to qualify for a waiver. A 1990 House Judiciary Committee report questioned whether the statute sufficiently clarified that abused spouses in bona fide marriages would receive a waiver either on the basis of "extreme hardship" or termination of the marriage for "good cause."<sup>115</sup>

## **The Immigration Act of 1990**

In 1990, Congress attempted to remedy the problems the joint petition requirement had created for noncitizen victims of domestic violence in the Immigration Act of 1990 (P.L. 101-649), which established a new *battered* spouse or child waiver.<sup>116</sup> To obtain this waiver, the foreign national spouse had to demonstrate that he or she had entered the marriage in good faith and that "during the marriage the foreign national spouse or child was battered by or was the subject of extreme cruelty perpetrated by" the U.S. citizen or LPR spouse or parent. The foreign national spouse also had to show that he or she was not at fault for failing to meet the joint petition requirement. A House Judiciary Committee report articulated congressional intent for the battered spouse or child waiver:

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<sup>112</sup> Under IMFA as originally enacted, the joint petition requirement could be waived on two grounds if the foreign national demonstrated that (1) extreme hardship would result if he or she were deported; or (2) he or she had entered into the marriage in good faith but had terminated it for good cause and was not at fault for failing to meet the joint petition requirement. Denial of a joint petition or waiver application terminated the alien's LPR status.

<sup>113</sup> See for example, Linda Kelly, "Stories From the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act" *Northwestern University Law Review*, v. 92, winter 1998, p. 670. (Hereafter cited as Kelly, "Stories From the Front")

<sup>114</sup> Felicia E. Franco, "Unconditional Safety for Conditional Immigrant Women," *Berkeley Women's Law Journal*, vol. 11 (1996), pp. 99-141. (Hereafter referred to as "Franco, Unconditional Safety").

<sup>115</sup> U.S. Congress. House Committee on the Judiciary. Family Unity and Employment Opportunity Immigration Act of 1990, report to accompany H.R. 4300, 101<sup>st</sup> Cong., 2<sup>nd</sup> Sess., H. Rept. 101-723, Part 1, p. 51. (Hereinafter cited as H. Rept. 101-723(I)). Also see Kerry Abrams, "Immigration Law and the Regulation of Marriage," *Minnesota Law Review*, v. 91, Summer 2007, pp. 1625-1709.

<sup>116</sup> 8 U.S.C. §216(c)(4)(C).

The purpose of this provision is to ensure that when the U.S. citizen or permanent resident spouse or parent engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status.<sup>117</sup>

The report specified that evidence to support a waiver “can include, but is not limited to, reports and affidavits from police, medical personnel, psychologists, school officials, and social service agencies.” It further stated that legitimate requests for battered spouse waivers should be denied only in “rare and exceptional circumstances such as when the foreign national poses a clear and significant detriment to the national interest.”<sup>118</sup>

The 1990 act further assisted battered foreign nationals by making other changes to the INA joint petition waiver provisions. It added language to the INA instructing the Attorney General to establish by regulation “measures to protect the confidentiality of information concerning any abused foreign national spouse or child.”<sup>119</sup> It also broadened the existing waiver based on termination of a good faith marriage by eliminating the requirement for battered foreign nationals to have been the ones terminating the marriage and for good cause.<sup>120</sup> Thus, foreign nationals who had entered into good faith marriages that subsequently terminated could apply for the waiver regardless of who had terminated the marriage and for whatever reason. The House Judiciary Committee report justified these changes as follows:

In many cases there are obstacles that prevent a battered alien spouse from initiating a divorce, such as lack of resources to pay for a lawyer; ethnic or cultural prohibitions against divorce.... Often, aliens are denied the waiver because they cannot satisfy the “good cause” requirement under no-fault [divorce] laws.<sup>121</sup>

## **Implementing the Battered Spouse Waiver**

In May 1991, the former INS issued an interim rule to implement the battered spouse or child waiver provisions of the 1990 Immigration Act.<sup>122</sup> Supplementary information accompanying the rule stated INS concerns:

The Service has balanced the need to make compliance with the evidentiary requirements for the waiver as simple as possible against the need to ensure that unscrupulous aliens do not take advantage of the waiver to obtain immigration benefits.... This rule allows battered conditional residents to establish eligibility, yet is stringent enough to prevent misuse of the benefit.<sup>123</sup>

As noted above, the 1990 act required that the foreign national spouse demonstrate that he or she or a child “was battered” or “was the subject of extreme cruelty” to qualify for the waiver. The

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<sup>117</sup> H. Rept. 101-723(I), p. 78.

<sup>118</sup> *Ibid.*, p. 78-79.

<sup>119</sup> P.L. 101-649, §701(a)(5); 104 Stat. 5085; 8 U.S.C. 1186a(c)(4).

<sup>120</sup> P.L. 101-649, §701(a)(2); 104 Stat. 5085.

<sup>121</sup> H. Rept. 101-723(I), p. 51.

<sup>122</sup> U.S. Department of Justice, Immigration and Naturalization Service, “Conditional Basis of Lawful Permanent Residence for Certain Alien Spouses and Sons and Daughters; Battered and Abused Conditional Residents,” *Federal Register*, v. 56, no. 95, May 16, 1991, p. 22635-22638. The regulations are codified at 8 C.F.R. 216.5.

<sup>123</sup> *Federal Register*, v. 56, no. 95, May 16, 1991, p. 22636.

INS rule defined these terms together as including, but not being limited to, “being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury.” It specified that “psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution” were to be considered acts of violence.<sup>124</sup>

The rule distinguished between the types of evidence needed to support waiver applications based on claims of “physical abuse” and “extreme mental cruelty.” In the case of physical abuse claims, the rule echoed the language of the House Judiciary Committee report. It stated that acceptable evidence “may include, but is not limited to, expert testimony in the form of reports and affidavits from police, judges, medical personnel, school officials and social service agency personnel.”<sup>125</sup> In contrast, waiver applications based on claims of extreme mental cruelty had to be supported by the evaluation of a licensed clinical social worker, psychologist, or psychiatrist.<sup>126</sup> INS justified such *professional* evaluations because “the effects of mental and emotional abuse are difficult to observe and identify” and “most Service officers ... are not qualified to make reliable evaluations of an abused applicant’s mental or emotional state.”<sup>127</sup>

At the time, advocates for battered foreign nationals criticized as overly stringent the INS evidentiary requirement for extreme cruelty, maintaining that “very few women fleeing an abusive relationship will be able to first locate, and then pay for a mental evaluation by a psychologist or other professional.”<sup>128</sup> They cited social and cultural norms and experiences to explain the reluctance of many foreign nationals to report their abuse and seek assistance from formal institutions that would produce the type of paper trail stipulated by law.<sup>129</sup> They further argued that the requirement reflected a clear misunderstanding of abuse by “focusing exclusively on the applicant’s mental state rather than the abuser’s activity.”<sup>130</sup> In their view, the high standard of proof was contrary to congressional intent in establishing the battered spouse or child waiver.<sup>131</sup>

## **Violence Against Women Act (1994)**

To address immigration-related problems faced by battered aliens, the 103<sup>rd</sup> Congress included in the Violence Against Women Act (VAWA) of 1994<sup>132</sup> three provisions related to abused aliens: self-petitioning by abused foreign national spouses and their children (§40701), evidentiary evidence for demonstrating abuse (§40702), and suspension of deportation<sup>133</sup> and cancellation of removal (§40703). These petitions allowed battered foreign national spouses and their children to

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<sup>124</sup> 8 C.F.R. 216.5(e)(3)(i).

<sup>125</sup> 8 C.F.R. 216.5(e)(3)(iii).

<sup>126</sup> 8 C.F.R. 216.5(e)(3)(iv) and (vii).

<sup>127</sup> *Federal Register*, v. 56, no. 95, May 16, 1991, p. 22636.

<sup>128</sup> Martha F. Davis and Janet M. Calvo, “INS Interim Rule Diminishes Protection for Abused Spouses and Children,” *Interpreter Releases*, v. 68, June 3, 1991, p. 668.

<sup>129</sup> See “Franco, Unconditional Safety,” pp. 114-115.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*, p. 669. For a discussion of congressional intent, see Anderson, “A License to Abuse,” p. 1419-1420.

<sup>132</sup> VAWA is Title IV of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322.

<sup>133</sup> Suspension of deportation and cancellation of removal are forms of discretionary relief that allow an individual subject to deportation or removal to remain in the United States as a lawful permanent resident alien.

essentially substitute a self-petition for lawful status in place of a petition for lawful status that was based on sponsorship by the abusive spouse; they clarified the evidence required for joint petition waivers; and they established requirements for battered foreign national spouses and children to stay deportation.

## **Self-Petitioning for Battered Aliens**

Advocates had long urged policymakers to end battered aliens' reliance on their abusers to obtain legal residency. Prior to 1994, most family-based petitions for immigration preference status for battered noncitizens, like those for noncitizens generally, had to be filed by the alien's U.S. citizen or lawful permanent resident relative. However, abusers are less likely than others to petition for their noncitizen spouses and children because, according to the former INS, "they find it easier to control relatives who do not have lawful immigration status."<sup>134</sup> Battered relatives also tend to avoid either seeking help or leaving their abusers because they fear deportation or lack knowledge about available services.<sup>135</sup> As a result, some noncitizen victims of domestic violence were not eligible to seek relief by applying for a battered spouse or child waiver of the joint petition requirement for conditional residents because they had never been granted conditional permanent residence status in the first place.

VAWA Section 40701 provided relief for this situation by allowing some battered foreign national spouses (and their children) married to U.S. citizens or LPRs to self-petition for lawful permanent resident status independently of their original sponsoring petitioner.<sup>136</sup> The House Judiciary Committee explained that "the purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse."<sup>137</sup> Self-petitioners were required to

- be married to a U.S. citizen or lawful permanent resident;
- be a person of "good moral character";
- have resided in the United States with the citizen or permanent resident spouse;
- be currently residing in the United States;
- have entered into the marriage in good faith;
- have been battered or subjected to extreme cruelty by the citizen or permanent resident spouse during the marriage, or be the parent of a child who was so battered; and
- demonstrate that removal from the United States would result in extreme hardship to the foreign national or his or her child.<sup>138</sup>

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<sup>134</sup> U.S. Department of Justice, Immigration and Naturalization Service, "Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children," *Federal Register*, v. 61, no. 59, March 26, 1996, p. 13062.

<sup>135</sup> *Ibid.*

<sup>136</sup> 8 C.F.R. §204(a)(1).

<sup>137</sup> U.S. Congress. House Committee on the Judiciary. Violence Against Women Act of 1993, report to accompany H.R. 1133, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess., H. Rept. 103-395, p. 37.

<sup>138</sup> 108 Stat. 1953, 1954; 8 U.S.C. 1154(a)(1)(A)(iii) and (B)(ii).

Self-petitioning foreign national children had to meet similar requirements.<sup>139</sup> In language identical to that for joint petition waiver applications, Section 40701 also directed the Attorney General to consider any credible evidence relevant to battered foreign national petitions and granted the Attorney General sole discretion to determine credibility and weigh the evidence.<sup>140</sup> In March 1996, INS published an interim rule to implement Section 40701 that detailed eligibility requirements for self-petitioning battered spouses and children.<sup>141</sup>

## **Easing Evidentiary Requirements**

VAWA Section 40702 amended the joint petition waiver provisions by directing the Attorney General to consider “*any credible evidence*” relevant to the application.<sup>142</sup> Some read this provision as an implicit repudiation of the INS’s licensed mental health professional requirement.<sup>143</sup> However, the statute also granted the Attorney General sole discretion to determine credibility and weigh the evidence.<sup>144</sup> The credible evidence language applied to all applications for joint petition waivers, and not specifically to those for battered foreign national waivers.<sup>145</sup>

## **Suspension of Deportation/Cancellation of Removal**

The third battered foreign national provision of VAWA, Section 40703, established provisions for battered foreign national spouses and children to suspend deportation and obtain lawful permanent residence.<sup>146</sup> Prior to VAWA, applicants for suspension of deportation were required to have lived in the United States continuously for at least seven years. VAWA reduced this requirement to three years.

However, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (Division C of P.L. 104-208), Congress replaced “suspension of deportation” with “cancellation of removal.” In doing so, it reformulated the VAWA suspension of deportation provisions as a special cancellation of removal rule for battered spouses or children.<sup>147</sup> Prior to the enactment of the Battered Immigrant Women Protection Act of 2000 (see below), an applicant for cancellation of removal under the special battered foreign national rule had to demonstrate that he or she

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<sup>139</sup> 108 Stat. 1953, 1954; 8 U.S.C. 1154(a)(1)(A)(iv) and (B)(iii).

<sup>140</sup> 108 Stat. 1954; 8 U.S.C. 1154(a)(1)(H).

<sup>141</sup> U.S. Department of Justice, Immigration and Naturalization Service, “Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children,” *Federal Register*, v. 61, no. 59, March 26, 1996, p. 13061-13079. The regulations amended 8 C.F.R. 103.1, 103.2, 204.1, 204.2, 205.1, 205.2, and 216.1.

<sup>142</sup> 8 C.F.R. §216(C)(4).

<sup>143</sup> See “Franco, Unconditional Safety,” p. 120.

<sup>144</sup> 108 Stat. 1955; 8 U.S.C. 1186a(c)(4).

<sup>145</sup> The legislative history of the credible evidence provision, however, suggests that it was originally intended to loosen INS’s evidentiary requirements for extreme mental cruelty waivers. For additional legislative background on this provision, see archived CRS Report RL30559, *Immigration: Noncitizen victims of Family Violence*, by Andorra Bruno and Alison Siskin, May 3, 2001, p. 6.

<sup>146</sup> 108 Stat. 1955.

<sup>147</sup> The rule was added to INA as §240A(b)(2). For more information, see archived CRS Report 97-606, *Suspension of Deportation: Tighter Standards for Canceling Removal*, by Larry M. Eig, 1997.

- had been battered or subjected to extreme cruelty in the United States by a citizen or LPR spouse or parent, or was the parent of a child who had been subjected to such abuse by a citizen or LPR parent;
- had been continuously physically present in the United States for at least three years prior to petitioning for cancellation of removal;
- had been a person of “good moral character” during the period of continuous physical presence in the United States;
- was not inadmissible to the United States on criminal or security grounds;
- was not deportable based on marriage fraud, criminal offenses, document fraud, or security-related activities;
- had not been convicted of an aggravated felony; and
- if removed, would have themselves experienced, their child would have experienced, or, if the foreign national was a child, the alien’s parent would have experienced, extreme hardship.<sup>148</sup>

If an alien’s petition for cancellation of removal was approved, he or she was eligible to adjust to LPR status immediately. In any fiscal year, however, the Attorney General could only cancel the removal and adjust the status under INA Section 240A, or suspend the deportation and adjust the status under the pre-IIRIRA suspension section, of no more than 4,000 aliens.<sup>149</sup>

Despite similarities between the requirements for cancellation of removal and self-petitioning for battered foreign national spouses and children, the two procedures differed considerably. While foreign national spouses could self-petition at any time, they could only apply for cancellation of removal during removal proceedings before an immigration judge. Battered foreign nationals applying for cancellation of removal could not include their children in their petitions. Moreover, since the two procedures had different eligibility requirements, a battered foreign national might not have been eligible for both. As such, the 1996 IIRIRA created greater barriers for abused spouses who were petitioning to remain in the United States.

## **The Violence Against Women Act of 2000**

The Violence Against Women Act of 2000 (VAWA 2000), which reauthorized the 1994 VAWA, was contained within The Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386). Within VAWA 2000, Title V, the Battered Immigrant Women Protection Act of 2000 (BIWPA), addressed provisions related to foreign nationals. It established special rules for noncitizen victims of domestic violence with respect to cancellation of removal and suspension of deportation; eliminated time limitations on motions filed by such victims to reopen removal and deportation proceedings; and made victims eligible for adjustment of status. BIWPA included measures to prevent violence and provide economic security and safety for battered foreign national women. Finally, BIWPA established the U visa for foreign national crime victims who

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<sup>148</sup> P.L. 104-208, §304(a); 110 Stat. 3009-587, 3009-594. The battered alien rule can be found at 8 U.S.C. 1229b(b)(2).

<sup>149</sup> INA §240A(e)(1); 8 U.S.C. 1229b(e)(1). This cap does not apply to certain aliens, including VAWA suspension of deportation petitioners, as set forth in INA §240A(e)(3), 8 U.S.C. 1229b(e)(3).

assisted law enforcement, a provision that included battered foreign national spouses. Provisions of the BIWPA are discussed below.

## **The U Visa**

A newly created U visa benefit was made available to any foreign national who (1) suffered physical or mental abuse as a victim of a qualifying crime that violated U.S. laws;<sup>150</sup> (2) had information about the crime; and (3) was, or was likely to be, helpful in the investigation or prosecution of the crime.<sup>151</sup> Foreign national victims were able to petition from outside the United States.<sup>152</sup> The quota of U visas was capped at 10,000 per fiscal year.<sup>153</sup> Successful petitioners who received a U visa were classified as temporary nonimmigrants for up to four years.<sup>154</sup> After living continuously in the United States for three years, U visa holders were eligible to adjust to LPR status if they had not refused to provide assistance to law enforcement and could justify their continued presence in the United States on the basis of family cohesion or the national or public interest.<sup>155</sup> Immediate family members of a U visa holder could also adjust to LPR status, although their requirements differed.<sup>156</sup>

## **Cancellation of Removal**

BIWPA created certain exemptions for battered foreign nationals who faced removal proceedings, including the annual numerical limitation on cancellation of removal.<sup>157</sup> It established for battered foreign nationals a more expansive method for calculating continuous physical presence in the United States. In addition, BIWPA waived the continuous physical presence requirements for cancellation of removal for battered applicants who could demonstrate a connection between their absences and the battery or extreme cruelty. The act also allowed the Attorney General to determine that battered foreign nationals satisfied the good moral character requirement even if they had been convicted of certain domestic violence-related crimes, if the act or conviction was connected to the alien having been battered.<sup>158</sup>

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<sup>150</sup> Qualifying crimes include abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, genital female mutilation, felonious assault, being held hostage, incest, involuntary servitude, kidnapping manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trading, torture, trafficking, witness tampering, unlawful criminal restraint, and other related crimes.

<sup>151</sup> 8 U.S.C. §101(a)(15)(U).

<sup>152</sup> If inadmissible, a U visa applicant must obtain a waiver of inadmissibility adjudicated by USCIS on a discretionary basis that allows the petitioner to continue with the U nonimmigrant visa petition.

<sup>153</sup> 8 U.S.C. §214(p)(2)(A). Exceptions to the 10,000 quota include derivative family members such as spouses, children or other qualifying family members who are accompanying or following to join the principal foreign national victim. To accommodate petitions exceeding the annual cap in any given fiscal year, USCIS will place the petitions on a waiting list and gives petitioners deferred action or parole, making them eligible to apply for employment authorization or travel until their petitions are adjudicated after the start of the following fiscal year.

<sup>154</sup> Extensions are only available if a certifying agency can attest that the foreign national's presence in the United States is required to assist in the investigation or prosecution of the qualifying crime.

<sup>155</sup> 8 U.S.C. §245(l).

<sup>156</sup> For more information on U visas, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Sun Wyler, pp. 26-28.

<sup>157</sup> P.L. 106-386, §1504, §1512.

<sup>158</sup> P.L. 106-386, §1504(a)(2)(C).

BIWPA included other related provisions. It granted parole<sup>159</sup> to children of foreign nationals or parents of foreign national children when the alien's removal was cancelled under the battered spouse or child rule.<sup>160</sup> BIWPA also allowed these foreign nationals to file to adjust their legal status.<sup>161</sup> In another important change, BIWPA extended the battered spouse or child cancellation of removal rule to battered "intended spouses" of U.S. citizens and LPRs (see section on VAWA self-petitioning below).<sup>162</sup> It also permitted battered spouses to include their children in their cancellation of removal applications and battered children to do the same for their parents.

## **Adjustment of Status**

BIWPA amended INA Section 245 to make battered aliens who successfully self-petition for immigration preference status and meet requirements for immigrant visa issuance eligible to adjust to LPR status.<sup>163</sup> As noted in the next section, BIWPA expanded eligibility for VAWA self-petitioning beyond battered spouses and children to cover "intended spouses," former spouses, adult sons and daughters, and parents, and it made these newly authorized self-petitioners eligible for status adjustment. The legislation also addressed the aging out of abused children who reach age 21 after applying for status adjustment.

## **VAWA Self-Petitioning**

BIWPA extended VAWA self-petition eligibility to "intended spouses" or foreign nationals who believed that they had married U.S. citizens or LPRs but whose marriages were "not legitimate solely because of the bigamy" of those citizens or LPRs. It also extended coverage to foreign national spouses and children of U.S. citizens and LPRs who had either died or lost their citizenship status because of domestic violence within the past two years.<sup>164</sup> For divorce cases, foreign nationals had to demonstrate a connection between legal termination of their marriages and battery or extreme cruelty.

BIWPA also introduced protections for battered self-petitioners whose former abusers' citizenship or immigration status changed after petitions were filed.<sup>165</sup> INS regulations had previously required that abusive spouses or parents be U.S. citizens or LPRs at the time of self-petition filing as well as at the time of approval.<sup>166</sup> BIWPA eliminated that requirement. In addition, BIWPA removed the requirement for self-petitioning foreign nationals to show that their removal would result in extreme hardship to themselves or their children. BIWPA also no longer required that self-petitioners had to reside in the United States.

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<sup>159</sup> "Parole" refers to temporary permission granted to an foreign national to enter and be present in the United States. Such parole is given to someone who is otherwise inadmissible based on urgent humanitarian reasons or if there is a significant public benefit. Parole does not constitute formal admission to the United States. Parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status. P.L. 107-206, §402.

<sup>160</sup> 8 U.S.C. 1229b(b)

<sup>161</sup> Adjusting legal status refers to the process by which foreign nationals residing in the United States without status or as legal nonimmigrants petition to become lawful permanent residents.

<sup>162</sup> P.L. 106-386, §1503(b) and (c).

<sup>163</sup> 8 U.S.C. 1255.

<sup>164</sup> 8 U.S.C. 1154(a)(1).

<sup>165</sup> 8 U.S.C. 1154(a)(1).

<sup>166</sup> 8 C.F.R. 204.2(c)(1)(iii) and (e)(1)(iii).



BIWPA permitted that self-petitioning children of U.S. citizens or LPRs (or children of petitioning foreign nationals who turned 21) be considered petitioners for preference status, respectively, as unmarried or married sons or daughters of U.S. citizens or LPRs, with the same priority date as the self-petitioner. In addition, BIWPA allowed self-petitioning battered children to include their own children in their petitions.

### **Inadmissibility Grounds**

BIWPA amended the INA to provide various inadmissibility waivers and exceptions for battered aliens.<sup>167</sup> While BIWPA did not establish any waivers of the public charge grounds for inadmissibility, it changed how they were determined for battered foreign nationals with approved self-petitions by excluding any benefits received as the result of the 1996 IIRIRA. BIWPA also allowed the Attorney General, “for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest,” to waive all but a few specified inadmissibility grounds for battered foreign nationals who qualified for immigration preference or cancellation of removal.<sup>168</sup>

BIWPA also amended the 1996 IIRIRA provision related to unauthorized presence.<sup>169</sup> Current law at the time included exceptions to these inadmissibility provisions for certain battered foreign nationals and children who could show that they qualified for immigration preference and had been battered or subjected to extreme cruelty. However, those battered foreign nationals had been required to demonstrate a substantial connection between the battery or cruelty and either the alien’s unlawful entry into the United States or the alien’s visa overstay. BIWPA eliminated this requirement.

### **Domestic Violence Grounds for Removal**

BIWPA also addressed an unintended consequence of IIRIRA that made deportable any foreign national convicted of domestic violence, stalking, child abuse, neglect, or abandonment, or who violated a protection order.<sup>170</sup> Advocates expressed concerns that victims of domestic violence, who might have committed violent acts in the course of defending themselves, could be subject to removal on these grounds. BIWPA provided for discretionary relief in such circumstances by allowing the Attorney General to waive application of these grounds for removal under certain circumstances, such as acting in self-defense.

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<sup>167</sup> 8 U.S.C. 1182(a). The INA establishes a set of criteria that foreign nationals must meet if they wish to reside permanently in the United States. Bureau of Consular Affairs officers (when the foreign national is coming from abroad) and USCIS adjudicators (when the foreign national is adjusting status in the United States) must confirm that the foreign national is qualified for the visa under the category he or she is applying, and is not ineligible for a visa under the grounds for inadmissibility of the INA, which include criminal, terrorist, and public health grounds for exclusion. For more information, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

<sup>168</sup> 8 U.S.C. 1182(d).

<sup>169</sup> The 1996 IIRIRA amended INA §212(a)(6)(A) to add unauthorized presence in the United States as grounds for inadmissibility if an unauthorized foreign national subsequently sought legal admission to the United States. The IIRIRA established three-year and 10-year bars on admissibility based on periods of illegal presence—between 6-12 months versus more than 12 months, respectively. Unauthorized foreign nationals who reside in the United States less than 6 months are exempt from the admissibility bars.

<sup>170</sup> 8 U.S.C. 1227(a).

## **The Violence Against Women and Department of Justice Reauthorization Act of 2005**

### **Expanded Protections for Children**

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005; P.L. 109-162) added protections to VAWA 2000 and expanded eligibility. Most notably, it extended the aging out protections in the Child Status Protection Act (CSPA)<sup>171</sup> for abused children and children of abused foreign national spouses;<sup>172</sup> removed the two-year custody and residence requirements for abused adopted children;<sup>173</sup> expanded eligibility for self-petitioning to foreign nationals abused by their U.S. citizen sons and daughters;<sup>174</sup> and allowed abused spouses of certain nonimmigrants to apply for work authorization.<sup>175</sup> In addition, it exempted VAWA self-petitioners from sanctions imposed for overstaying grants of voluntary departure<sup>176</sup> if the cause of the overstay was abuse and from deadlines and numerical limitations imposed on motions to reopen for cancellation of removal or suspension of deportation.<sup>177</sup>

### **Reducing Marriage Fraud and Increasing Marriage Broker Regulations**

VAWA 2005 also included provisions to reduce immigration fraud by prohibiting a VAWA self-petitioner or a U visa foreign national from petitioning for immigrant status or nonimmigrant admission on behalf of their abuser.<sup>178</sup>

Finally, the legislation included a number of provisions directed toward international marriage brokers (marriage brokers).<sup>179</sup> It required a U.S. citizen petitioning on behalf of his or her

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<sup>171</sup> The Child Status Protection Act (CSPA), signed into law by President George W. Bush in 2002, allows a child to retain his/her classification as a child even though he/she has reached 21 in certain conditions. If a U.S. citizen petitions for a child before the child reaches 21, USCIS will continue to classify the child as such until issued permanent resident status. Hence, classification as a child depends on when the citizen petitions for legal status, not when the petition is approved.

<sup>172</sup> P.L. 109-162, §805.

<sup>173</sup> *Ibid.*

<sup>174</sup> P.L. 109-162, §816.

<sup>175</sup> P.L. 109-162, §814(c).

<sup>176</sup> In these cases, grants of voluntary departure are periods of up to six months that are often used by judges and USCIS trial attorneys to persuade a foreign national with a weak case for asylum or suspension of deportation to withdraw their application and agree to leave the U.S. voluntarily. Generally, such grants or opportunities to depart voluntarily are given to most foreign nationals who are being removed from the United States, and most accept it. Foreign nationals who do not and are not under expedited removal face formal removal proceedings in front of a Department of Justice immigration judge. Foreign nationals who were previously allowed to depart voluntarily and criminal aliens are ineligible for voluntary departure. Foreign nationals who fail to depart within the time period specified face monetary penalties and are ineligible for voluntary departure or other relief from removal for 10 years. Voluntary departure costs less than formal removal since, in most cases, the government does not have to pay for the alien's repatriation. Moreover, the resources required to formally remove all foreign nationals apprehended along the borders would be prohibitive.

<sup>177</sup> P.L. 109-162, §825

<sup>178</sup> P.L. 109-162, §814(e)

<sup>179</sup> The law incorporated the International Marriage Broker Regulation Act of 2005 which became Subtitle D of Title VIII (§831-834) of VAWA 2005 (P.L. 109-162).

fiancé(e) to disclose whether the relationship resulted from the services of a marriage broker,<sup>180</sup> and it prohibited a marriage broker from disclosing personal contact information of any individual under age 18. It required a marriage broker to search the National Sex Offender Public Registry or state sex offender public registry and collect specified criminal, marital, and residency background information about the U.S. client prior to providing the U.S. client with personal contact information about any foreign national client; provide such background information to the foreign national client in his or her primary language; and receive from the foreign national client in his or her primary language a signed, written consent to release such personal contact information to the specific U.S. client.<sup>181</sup>

The Violence Against Women and Department of Justice Reauthorization Act of 2005 represents the last substantial revision to the VAWA.

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<sup>180</sup> P.L. 109-162, §833

<sup>181</sup> *Ibid.*

## Appendix C. How U Visas Work

The U visa was created by Congress as a part of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), which reauthorized VAWA. It protects and assists victims who assist law enforcement agencies' efforts to investigate and prosecute domestic violence, sexual assault, alien trafficking, and other crimes. The U visa is available to any foreign national who suffered physical or mental abuse as a victim of a qualifying crime<sup>182</sup> that violated U.S. laws, has information about the crime, and was, is, or is likely to be helpful in the investigation or prosecution of the crime.<sup>183</sup> Foreign national victims may petition from outside the United States.<sup>184</sup> The INA caps the number of U visas at 10,000 per fiscal year.<sup>185</sup>

U visa applications must contain a certification from a U.S. law enforcement agency or relevant investigative or prosecutorial authority<sup>186</sup> to demonstrate that the foreign national victim has been, is currently being, or is likely to be helpful in the investigation or prosecution of the related crime.<sup>187</sup> Attestation by law enforcement of both abuse to the alien national and subsequent assistance by that individual serves to prevent immigration fraud.

Foreign national victims apply for a U visa using a Form I-918 "Petition for U Nonimmigrant Status" along with supporting documentation to USCIS's Vermont Service Center. USCIS conducts a *de novo* review of all evidence submitted. This is as if the VSC were considering the question for the first time. Hence, USCIS may evaluate evidence previously submitted for other immigration benefits but is not bound by its previous decisions. Petitioners subject to final orders of removal may still be removed during adjudication of their U visa petitions.<sup>188</sup>

Successful petitioners receive a U visa, classifying them as a temporary nonimmigrant, with a duration of stay of up to four years.<sup>189</sup> Denied petitioners are informed of the reasons for the denial in writing. Applicants may appeal the decision. Because U status is humanitarian in nature, USCIS does not initiate removal proceedings against those denied U status and illegally present

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<sup>182</sup> Qualifying crimes include abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, genital female mutilation, felonious assault, being held hostage, incest, involuntary servitude, kidnapping manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trading, torture, trafficking, witness tampering, unlawful criminal restraint, and other related crimes.

<sup>183</sup> 8 U.S.C. §101(a)(15)(U).

<sup>184</sup> If inadmissible, a U visa applicant must obtain a waiver of inadmissibility adjudicated by USCIS on a discretionary basis that allows the petitioner to continue with the U nonimmigrant visa petition.

<sup>185</sup> 8 U.S.C. §214(p)(2)(A). Exceptions include derivative family members such as spouses, children or other qualifying family members who are accompanying or following to join the principal foreign national victim. To accommodate petitions exceeding the annual cap, USCIS plans to provide means by which victims cooperating with law enforcement agencies can stabilize their immigration status. Such petitioners will be given deferred action or parole, making them eligible to apply for employment authorization or travel until their petitions are adjudicated.

<sup>186</sup> Agencies such as child protective services, the Equal Employment Opportunity Commission, and the Department of Labor qualify as certifying agencies because they have criminal investigative jurisdiction within their respective areas of expertise.

<sup>187</sup> 8 C.F.R. 214.14(a)(3)(i). This condition is intended to deter fraudulent petitions.

<sup>188</sup> 8 C.F.R. 214.14(c).

<sup>189</sup> Extensions are only available if a certifying agency can attest that the foreign national's presence in the United States is required to assist in the investigation or prosecution of the qualifying crime.

unless applicants represent national security or criminal threats, have serious immigration violations, or otherwise warrant removal proceedings.<sup>190</sup>

Holders of U visas can ultimately adjust to LPR status if they have lived continuously in the United States for at least three years since receiving their U visa, have not refused to provide assistance to law enforcement, and can demonstrate that their continued presence in the United States is justified on the basis of family cohesion or the national or public interest.<sup>191</sup> Immediate family members of a U visa holder may also adjust to LPR status, although requirements differ.

**Table C-1** presents the number of U visas received, approved, and denied in FY2009-FY2011. On average, roughly four-fifths of victims' petitions adjudicated each year were approved. As is the case with VAWA petitions, the number of U visas processed during the period in which the U visas were made available has increased substantially, from a total of 9,509 total petitions to 22,264, a 134% increase.

**Table C-1. U Visa Processing Statistics, FY2009-FY2011**

	<b>Fiscal Year</b>	<b>Petitions Processed</b>	<b>Petitions Approved</b>	<b>Proportion of Petitions Approved</b>
<b>Victims</b>	2009	6,513	5,825	89%
	2010	14,420	10,073	70%
	2011	13,017	10,088	77%
	<b>Total</b>	<b>33,950</b>	<b>25,986</b>	<b>77%</b>
<b>Family Members of Victims</b>	2009	2,996	2,838	95%
	2010	11,891	9,315	78%
	2011	9,247	7,602	82%
	<b>Total</b>	<b>24,134</b>	<b>19,755</b>	<b>82%</b>
<b>Total U Visas:</b>	2009	9,509	8,663	91%
	2010	26,311	19,388	74%
	2011	22,264	17,690	79%
	<b>Total</b>	<b>58,084</b>	<b>45,741</b>	<b>79%</b>

**Source:** CRS Presentation of data from USCIS, Office of Performance and Quality, Data Analysis and Reporting Branch.

<sup>190</sup> Email from USCIS Congressional Relations, August 29, 2011. For example, USCIS may institute removal for conduct committed after the alien is granted U status, for conduct or a condition that was not disclosed to USCIS prior to the granting of U status, for misrepresentations of material facts in the U application. (8 C.F.R. 214.14(i)).

<sup>191</sup> 8 U.S.C. §245(l).

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