



**NOW LEGAL DEFENSE
AND EDUCATION FUND**

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FINAL IMMIGRATION PROTECTIONS INCLUDED IN THE VIOLENCE AGAINST WOMEN ACT OF 2000¹

PLEASE CIRCULATE

Improved Access to VAWA Immigration Protections:

- 1) Extreme Hardship has been deleted from self-petitioning requirements making it easier for battered immigrants to win their self-petitioning cases, particularly if they are not represented by an attorney.
- 2) Abused spouses who did not know that they married a bigamist can file for VAWA self-petitions and VAWA cancellation cases. This change will require battered immigrants to provide evidence that they participated in a formal marriage ceremony with their abuser. However, battered immigrants will no longer have to provide INS with documentary evidence of all of their abuser's former divorces.
- 3) VAWA applicants' derivative children who are included in the VAWA applicants' self-petition will not age out of the self-petitioning case and will be able to receive their green cards even if they turn 21 before they actually receive their green card.
- 4) Allows children of battered immigrants granted VAWA cancellation or suspension to be granted parole until such time as their the family based visa petition filed by their battered immigrant parent on the child's behalf can be approved. Battered immigrant must not unreasonably delay in filing and pursuing the visa application.
- 5) No U.S. residency requirement for some battered immigrants. Battered immigrants living abroad abused by their U.S. citizen or lawful permanent resident spouses or parents who are U.S. government employees or who are members of the U.S. uniformed services (including military members) will be able to file self-petitions from abroad. In addition any battered immigrant abused by a U.S. citizen or lawful permanent resident spouse or parent who is living abroad may

¹This summary was developed by the Immigrant Women Program of NOW Legal Defense and Education Fund. For more detailed information on any of these provisions, please call Janice Kaguyutan or Leslye Orloff at (202) 326-0040.

file a self-petition so long as one or more of the incidents of battering or extreme cruelty occurred in the United States.

- 6) Abused spouses and children can file a self-petition within 2 years of divorce, loss of status or denaturalization (but not death unless the abusive spouse/parent is a citizen).
- 7) Divorce or the abuser's loss of status after filing will not undermine a filed self-petition. Death of a citizen spouse after filing will not affect the self-petition.
- 8) Battered immigrants with approved self-petitions can remarry.
- 9) Spouses who are married to abusers can file their own application for Cuban adjustment to obtain a green card without having to show that they are still living with their abusers.
- 10) NACARA - Abused spouses and children of Nicaraguans who qualify for adjustment to lawful permanent residency can file their own petition without their spouses cooperation if they were married to or the child of a person on the date that the spouse or parent either filed for or was granted adjustment under the Nicaraguan Adjustment and Central American Relief Act. (NACARA)
- 11) NACARA – Abused spouses and children of El Salvadorans or Guatemalans who were spouses or children on any of the following dates can file self-petitions for relief under NACARA without their abusive spouse or parent's cooperation – the date that the abuser won his cancellation or suspension of deportation case; the date that the abuser file an application for cancellation or suspension of deportation; the date that the abuser registered for benefits under the American Baptist Church case, the date the abuser filed for temporary protected status or the date the abuser applied for asylum
- 12) Abused spouses of Haitians who are granted adjustment under the Haitian Refugee Immigration Fairness Act of 1998 (HIRIFA) can file their own petitions for adjustment to lawful permanent residency if they were a spouse or child at the time their abuser file for relief under HIRIFA. They will no longer be required to be included in their abuser's HIRIFA application.

Improve Access to Public Benefits for Battered Immigrants

- 13) INS and consular officials are barred from considering when making public charge determinations public benefits that battered immigrants were authorized to receive because the need for the benefits was connected to the abuse -- The Illegal Immigration Reform and Immigrant Responsibility Act authorized benefits.
- 14) Qualified alien definition technical correction. The current law lists VAWA cancellation twice and fails to include VAWA suspension. This has been corrected.

Restore Protections Battered Immigrants Had Under VAWA in 1994

- 15) Battered immigrant self-petitioners may obtain their green cards in the United States under section 245(a) and 245(c) without having to pay a \$1,000 fee and without having to travel abroad.

- 16) Waiver for battered immigrants of domestic violence related crimes when they acted in self-defense, were convicted of violation of a protection order issued to protect them, or when they there was a connection between the crime and the domestic violence.
- 17) Return to the original VAWA rules for counting 3 years physical presence in VAWA cancellation cases including all cases filed between 1996 and today.
- 18) Waivers of physical presence 90/180 day time lines when absence connected to abuse.
- 19) Battered immigrants eligible for VAWA suspension of deportation can file a motion to reopen their old deportation cases (before 4/1/97) without any time restrictions provided they file a completed VAWA suspension of deportation application or self-petition along with their motion to reopen.
- 20) Battered immigrants eligible for VAWA cancellation of removal with removal cases filed after 4/1/97 will be eligible to file motions to re-open up to one year after the final adjudication of their removal case if their motion is accompanied by evidence of qualification for VAWA self-petition or cancellation. This one year time limitation can be waived by the INS or the Immigration Judge upon a showing of extraordinary circumstances or of extreme hardship to children.
- 21) Good Moral Character. Section 101(f) bars will not bar finding of good moral character if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.
- 22) Battered immigrants who have HIV or TB will still be able to get their green cards through VAWA.
- 23) Waiver of permanent bar to reentry 212(a)(9)(C) when connected to the abuse for battered immigrants.

Removes Perverse Immigration Law Based Incentives for Battered Immigrants to Remain With Their Abusers Rather Than File For VAWA Protections

- 24) Battered immigrants who are lawful permanent residents who divorce their U.S. citizen abusers can still file for Naturalization in three years as if they did not get divorced.
- 25) Changes to immigration status. If the batterer becomes a naturalized citizen the immigrant spouse or child's self-petition will be upgraded to be able to be processed more quickly in the same manner as spouses or children of United States citizens.
- 26) Misrepresentation waiver battered immigrants can obtain a waiver of misrepresentations they may have made if they can show extreme hardship to self, child, or in the case of a child their parent rather than their abusive spouse or parent (212i).

- 27) 212(h) waiver for VAWA eligible battered immigrants. Can waive crimes of moral turpitude, etc. for battered immigrant self-petitioners and VAWA cancellation and suspension in for purposes of adjustment. This 212(h) waiver for battered immigrant self-petitioners parallel to the one they could get if they could show hardship to their abusers.

Improve the Immigration and Naturalization Service's Processing of VAWA Cases

- 28) VAWA self-petitions filed abroad are decided in at INS in Vermont like all other self-petitions.
- 29) INS must report to Congress on procedures that they will have to implement for handling cases of battered immigrants who request to be placed in VAWA cancellation proceedings.

Enhance Access to Funding for Programs Serving Battered Immigrant Women

- 30) Guaranteeing equal access to all VAWA funding streams (Stop, Arrest, Rural, campus, Civil Legal Assistance) for programs serving battered immigrants including representation of battered immigrants in VAWA and other immigration cases and allowing use of VAWA funds for INS and immigration judge training. Alienage status was added to the definition for all grants administered by the Violence Against Women Office of the Department of Justice which will help programs serving battered immigrants get better access to funding.
- 31) Change in underserved populations definition to include alienage status.

New Immigrant Crime Victim Visa (U-visa).

- 32) PROTECTION FOR CERTAIN CRIME VICTIMS INCLUDING CRIMES AGAINST WOMEN

Establishment of Humanitarian/Material Witness Non-Immigrant Visa –

Adds new INA Section 101(a)(15)(T) which creates a non-immigrant visa for a limited group of immigrant crime victims who have suffered substantial physical or emotional injury as a result of being subjected to specific crimes committed against them in the United States including many gender based crimes. To obtain the visa law enforcement official must certify that the immigrant visa applicant has been helpful, is being helpful or is likely to be helpful to an the investigation or prosecution of criminal activity. If the Attorney General considers it necessary to avoid extreme hardship the child, spouse or in the case of an immigrant child a parent may also get a visa.

Crimes covered include: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact; prostitution; sexual exploitation, female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

Procedures –

The immigrant's self-petition must contain certification from a law enforcement official. The maximum number of U visa's in any one year is 10,000 for the primary applicants. There is no limit on the number of visas available for the applicants spouses or children.

Confidentiality –

T visa petitioners are provided the same confidentiality protections as afforded battered immigrants under the Violence Against Women Act immigration provisions.

Waiver of Inadmissibility Grounds –

Since these visas are only available to cooperating witnessing in investigations or prosecutions of criminal activity, most grounds of inadmissibility are waivable by the Attorney General, except for participants in genocide, if the Attorney General considers the waiver to be in the public or national interest. This approach is modeled after the current S-non-immigrant visa category.

Discretionary Adjustment to Permanent Resident Status –

In the Attorney General's discretion a U-visa holder who has been physically present in the United States for three years may adjust their status to that of a permanent resident when such adjustment is justified on humanitarian grounds, to ensure family unity or when it is otherwise in the public interest unless they have unreasonably refused to cooperate in an investigation or prosecution or criminal activity. The Attorney General also has the discretion to issue a visa to or adjust the status of the spouse, child or parent of a child if necessary to avoid extreme hardship.