

Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Immigrant Crime Victims¹

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Forms of Immigration Relief Available to Victims of Spouse, Child and Elder Abuse

Battered spouses and children have several forms of immigration relief available to them. Under the Violence Against Women Act (VAWA)³, spouses⁴ and children⁵ of U.S. citizens and lawful permanent residents who have been battered or subjected to extreme cruelty may be eligible for self-petitioning and for cancellation of a removal orders under VAWA. U-visas are available to spouses that are victims of domestic violence, sexual assault, human trafficking, stalking and/or other crimes under VAWA⁶. In addition, under the Immigration Act of 1990⁷, a battered spouse waiver allows an immigrant spouse who has been battered or suffered extreme cruelty to attain lawful permanent residency without having to meet the requirement of waiting two years and having to file a joint petition with an abusive spouse.⁸ Elder abuse victims who suffer battering or extreme cruelty perpetrated by: their over 21 year old U.S. citizen child son, or daughter in law; or their U.S. citizen; or lawful permanent resident spouse may also self-petition.⁹

VAWA Self-Petitioners

VAWA Self-Petitioning enables immigrant victims of battering or extreme cruelty, including sexual assault, to obtain lawful permanent resident status without the cooperation of their abusive spouse, parent, or adult son or daughter over 21 years of age.¹⁰

Applicant must prove the family relationship to the perpetrator, and his/her immigration status. The family relationships covered are:

- **Spouses:** Spouses, former spouses, and intended spouses¹¹ battered or subjected to extreme cruelty¹² during the marriage (same sex or heterosexual), or intended marriage by abusive U.S. citizens or

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³ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322. §§ 40001-702, 108 Stat. 1796, 1902-55 (1994).

⁴ Violence Against Women Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006) (self-petitioning for battered spouses or former spouses codified at INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii) (2000)).

⁵ *Id.* at INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000)

⁶ INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).

⁷ Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C.).

⁸ *Id.* at § 701(b) (codified as INA § 216(c)(4)(C)).

⁹ INA § 204(a)(1)(A)(vii); 8 U.S.C. §§ 1154 (a)(1)(A)(vii).

¹⁰ See Leslye E. Orloff, Rebecca Story, Joanne Lin, Carole Angel, and Deborah Birnbaum, Introduction to Immigration Relief for Immigrant Victims of Domestic Violence and Sexual Assault and Glossary of Terms 7, in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (2013), available at: <http://niwaplibrary.wcl.american.edu/vawa-confidentiality/tools/CH3.1%20BB%20IntroImmRelief%20DRAFT%202%20with%20disc%207.10.13.pdf/view>

¹¹ See INA § 101(a)(50); 8 U.S.C. § 1101(a)(50) for definition of "intended spouse." An immigrant victim can qualify for relief under VAWA even if the marriage is invalid due to the bigamy of the abusive spouse, provided the immigrant victim was unaware that her intended spouse was still married and a marriage ceremony was performed.

lawful permanent residents may file for themselves and may include their under 21 year old children in their application.

- **Children:** Children battered or subjected to extreme cruelty by a US citizen or lawful permanent resident parent (natural, adopted or step-parent) when the child was under 21 years old are eligible to self-petition and can include their own children in their application. Abused children who can demonstrate that the battering or extreme cruelty was at least one central reason for the delay in filing, have up to age 25 to file the self-petition.
- **Immigrant Parents of Child Abuse Victims:** An immigrant parent or step-parent of 21-year-old and under unmarried child who has been battered or subjected to extreme cruelty by the child's US citizen or lawful permanent resident parent is eligible to self-petition and to include in the application any of her/his children who are not already citizens or lawful permanent residents. The abused child may be a citizen or lawful or undocumented immigrant. The immigrant parent needs not also have been abused.
- **Elder Abuse:** Immigrant parent battered or subjected to extreme cruelty by their over 21 year old U.S. citizen child, son-in-law or daughter-in-law. Elder abuse victims subjected to abuse by step-child are eligible to self-petition if the step-child was under 18 that at the time of the parent and step-parent's marriage.

An Adult Self-Petitioner Must Also Prove:

- **Good moral character** or qualify for a waiver as a victim of domestic violence;¹³
- **Residence:** That they have resided at some point with the abusive spouse, former spouse, or intended spouse;
- **Good faith marriage** to the abusive spouse, former spouse or intended bigamist spouse, or a good faith marriage to the spouse or intended bigamist spouse who abused their child or step-child;
 - *Effect of Divorce:* The victim must file within 2 years of divorce and must show a connection between the battering or extreme cruelty and the divorce.
 - *Bigamy* is not a bar if a marriage ceremony was performed, and the victim did not know about the spouse's bigamy
 - *Death of Citizen Spouse:* Victim must self-petition within two years

¹² "Battering or Extreme Cruelty" is defined under immigration law as follows: "the phrase 'was battered by or was the subject of extreme cruelty' includes, but is not limited to, being a victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence... The acts mentioned in this definition – rape, molestation, incest if the victim is a minor, and forced prostitution – will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions, however, may also qualify as acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. It is not possible to cite all perpetrations that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase "was battered by or was the subject of extreme cruelty." 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, 61 Fed. Reg. 13061 (March 26, 1996).

¹³ DHS is not limited by the criminal court record in domestic violence and stalking cases when the battered immigrant was not the primary perpetrator of abuse in the relationship if DHS determines that the battered immigrant was acting in self-defense, when the crime the battered immigrant was arrested for, was convicted of or plead guilty to did not cause serious bodily injury and was connected to the battering or extreme cruelty or contrary to best practices the state court issued a ruling against the victim for violating a protection order issued to protect the battered immigrant. INA § 237(a)(7).

- *Abusive Spouse Lost or Renounced Citizenship or Residency* related to domestic violence and victim must self-petition within two years

A Child Victim Must Also Prove:

- **Residence:** Child must prove they resided at some point in time with the abusive parent or step parent (includes visitation).
- **Good faith marriage** (same sex or heterosexual) between child's immigrant parent and child's abusive citizen/lawful permanent resident step-parent.
 - *Divorce* ends abused step-child's ability to self-petition.
- **Good moral character** if the victim is over age 14 unless qualifies for waiver as a domestic violence victim.¹⁴
- **Abusive Parent or Step-Parent Lost or Renounced Citizenship or Residency:** related to domestic violence and child must self-petition within two years.

An Elder Abuse Victim Must Also Prove:

- **Residence:** Elder abuse victim must prove they resided at some point in time with the abusive child, step-child, or son/daughter in law (through a same sex or heterosexual marriage).
- **Good moral character** or qualify for domestic violence victim.¹⁵
- **Abusive Child, Step-Child, Son/Daughter-In-Law Lost or Renounced Citizenship or Residency:** related to domestic violence; abused parent must self-petition within two years.

Protections for VAWA Self-Petitioners:

- **Deportation:** Protection from deportation shortly after filing.
- **Immigration Benefits for Children:** Children receive immigration benefits along with their parents, if included in their parent's application.
- **Public Benefits:** Access to public benefits as qualified immigrants within approximately three months since the filing of VAWA self-petition, including children (but not elder abuse victims).
- **Employment authorization:** Citizen abuser (≈ 6 months); Lawful permanent resident abuser (when self-petition approved ≈ 18 months).
- **VAWA confidentiality:** protections against the release of information about the filing of the case, and its contents. DHS is precluded from relying upon information provided by an abuser or abuser's family members that may cause the denial of a victim's case, initiate immigration enforcement against a victim, or take an adverse action against the victim.

VAWA Cancellation of Removal or Suspension of Deportation

VAWA Cancellation of Removal or Suspension of Deportation: Battered Spouse or Child

¹⁴ Id.

¹⁵ DHS is not limited by the criminal court record in domestic violence and stalking cases when the battered immigrant was not the primary perpetrator of abuse in the relationship if DHS determines that the battered immigrant was acting in self-defense, when the crime the battered immigrant was arrested for, was convicted of or plead guilty to did not cause serious bodily injury and was connected to the battering or extreme cruelty or contrary to best practices the state court issued a ruling against the victim for violating a protection order issued to protect the battered immigrant. INA § 237(a)(7).

Under VAWA, two forms of relief are available to immigrant victims of child or spouse abuse who are placed in immigration court removal/deportation proceedings.¹⁶ These are: (1) VAWA cancellation of removal¹⁷ and (2) VAWA suspension of deportation.¹⁸ Only an immigration judge can grant a battered immigrant cancellation of removal or suspension of deportation. If granted, the immigrant applicant can become a lawful permanent resident.¹⁹ A VAWA²⁰ cancellation or suspension applicant must prove battering or extreme cruelty,²¹ the immigration status of and their relationship to the perpetrator.

The family relationships covered are:

- Spouse: An immigrant who has been battered or subjected to extreme cruelty by a spouse, former spouse (based upon a same sex or heterosexual marriage), or intended spouse (cancellation only) who is or was a U.S. citizen or lawful permanent resident.
- Child: An immigrant child or step-child²² (through a same sex or heterosexual marriage) who is or was battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident parent or step-parent.
- Parent of Abused Child: An immigrant who is the non-abusive parent of a child who is or was subjected to domestic violence or extreme cruelty by the child's other parent who is a U.S. citizen or lawful permanent resident parent. The immigrant does not need to have been neither abused nor married to the child's abusive citizen or lawful permanent resident abusive parent.²³

A VAWA Cancellation or Suspension Applicant Must Also Prove:

- Good faith marriage: to the abusive spouse, former spouse, intended bigamist spouse (cancellation only) who abused the immigrant spouse, their child or step-child; or good faith marriage between the abused child's immigrant parent and their abusive citizen/lawful permanent resident step-parent.
- Good moral character²⁴ for the 3 year period immediately preceding his or her application. The immigration judge may find good moral character if the battered immigrant's act or convictions were connected to having been battered or subjected to extreme cruelty.²⁵
- Continuous physical presence:²⁶ The applicant must have lived continuously in the United States for 3 years immediately preceding the filing of the application. A single absence from the U.S. for 90

¹⁶ Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C.).

¹⁷ INA § 240A(b)(4); 8 U.S.C. § 1229b(b)(4).

¹⁸ INA § 244 (a)(3) (as in effect on March 31, 1997). Suspension of deportation is only applicable to battered immigrants who had been placed in deportation proceedings prior to March 31, 1997.

¹⁹ See generally Rebecca Story, Cecilia Olavarria, and Moira Fisher Preda, VAWA Cancellation of Removal 2, in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (2013), available at: <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/articles/3.4-VAWA-Cancellation-2010-MANUAL-BB.pdf/view>

²⁰ Rebecca Story, Cecilia Olavarria, and Moira Fisher Preda, VAWA Cancellation of Removal 2, in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants*, 2-3 (2013), available at: <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/articles/3.4-VAWA-Cancellation-2010-MANUAL-BB.pdf/view>

²¹ INA § 240A(b)(2)(A)(i); 8 U.S.C. § 1229b(b)(2)(A)(i).

²² INA § 101(b)(1); 8 U.S.C. § 1101(b)(1) defines "child" as under age 21 and includes natural, adopted and step-children. A person who is now over the age of 21 yet who was abused before age 21 can also file.

²³ The abusive parent need not be the natural parent of the abused child and may be a step-parent. Further, the parent of an abused child may file for VAWA cancellation whether or not she was ever married to the child's abusive parent. See also 61 Fed. Reg. 13061 (March 26, 1996).

²⁴ See INA § 101(f); 8 U.S.C. § 1101(f).

²⁵ INA § 240A(b)(2)(C); 8 U.S.C. § 1229b(b)(2)(C).

²⁶ INA § 240A(b)(2)(B); 8 U.S.C. § 1229b(b)(2)(B).

days or aggregate absences over 180 days breaks continuity of physical presence unless the absences were connected to the abuse.

- **Extreme hardship:**²⁷ The applicant must show that the applicant, their child, or the parent of the abused child would suffer “extreme hardship” if deported or removed from the United States. Extreme hardship is determined based on the facts of each case taking into account the totality of the circumstances.²⁸ Extreme hardship can be proven using traditional or special VAWA extreme hardship factors, which include but are not limited to: The impact of the abuse on the victim and children; the services and justice system; the legal protections available to spouse and child abuse victims in the immigrant’s home country.

EXAMPLES: The following are examples of immigrants who do *not* qualify for VAWA self-petitioning, but may qualify for VAWA cancellation of removal:

- The parent of an abused child, regardless of the child’s U.S. citizenship, who was never married to the child’s abusive U.S. citizen or lawful permanent resident parent;
- The abused spouse of a U.S. citizen or lawful permanent resident spouse who has died or any abused children of a U.S. citizen or lawful permanent resident parent who died over 2 years ago;
- An abused spouse who was divorced for over 2 years from the U.S. citizen or lawful permanent resident abuser spouse;
- An abused stepchild whose immigrant parent has been divorced from the abusive parent for over 2 years;
- An abused spouse or child whose U.S. citizen or lawful permanent resident parent renounced citizenship or lost lawful permanent resident status over 2 years ago;
- Victims of child abuse or incest by a U.S. Citizen or lawful permanent resident parent while under 21 years of age, but who did not file their VAWA self-petition while they were under the age of 21 and who are now over 21 years of age; and
- Victims of child abuse who cannot establish that they have resided with the U.S. citizen or lawful permanent resident abuser parent.

Protections for VAWA Cancellation of Removal and Suspension of Deportation Applicants

- **Deportation:** Protection from deportation shortly after filing.
- **Employment authorization and access to benefits:** it takes between 6 months to 1 year or more.
- **VAWA confidentiality** protects against release of information about the fact that their case was filed, the contents of the case. DHS is also precluded from relying upon information provided by abuser or abuser’s family members to deny a victim’s case, initiate immigration enforcement against a victim or take an adverse action against the victim.

²⁷ INA § 240A(b)(2)(A)(v); 8 U.S.C. § 1229b(b)(2)(A)(v); 244(a)(3)(as in effect on March 31, 2013). For a detailed list of extreme hardship factors in VAWA cases see 8 C.F.R. §§ 1240.20(c) and 1240.58(c); and Leslye E. Orloff and Brittnay Roberts, *Extreme Hardship in VAWA Cancellation of Removal and VAWA suspension of Deportation Cases* (November 26, 2012) available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/reports-memos-social-science-research-and-related-data/Extreme%20Hardship%20in%20VAWA%20cases%2011.26.12.pdf/view>

²⁸ 8 C.F.R. § 1240.58; Matter of Ige, 20 I. & N. Dec. 880, 882 (BIA 1994); Matter of Chumpitazi, 16 I. & N. Dec. 629 (BIA 1978); Matter of Kim, 15 I. & N. Dec. 88 (BIA 1974); Matter of Sangster, 11 I. & N. Dec. 309 (BIA 1965).

- BUT, cannot include children in their application. Once the victim's case is granted, the victim must file a family based visa petition for his/her children and DHS must parole the children into the United States.

Battered Spouse Waiver

When a spouse (same sex or heterosexual) has filed a family-based visa petition for an immigrant spouse and the couple is married for less than two years, on the couple's interview date with the Department of Homeland Security the immigrant spouse will be granted 2-year conditional residence, rather than lawful permanent residency. The immigrant and the citizen or lawful permanent resident spouse are required to file a joint petition 90 days before the end of the two years asking DHS to grant the immigrant spouse full lawful permanent residency. If the joint application is not filed, conditional residency ends and the immigrant spouse loses legal immigration status. An immigrant spouse (and in certain circumstances, an immigrant child) who has been battered or subjected to extreme cruelty by a citizen or lawful permanent resident spouse can apply for a "battered spouse (or child) waiver" of the joint filing requirement. Battered immigrants can apply for this waiver before or after their conditional residency ends.²⁹ They are not required to wait two years, and can file confidentially, without the knowledge, consent, or assistance of the abusive spouse.³⁰

Proof Required for a Battered Spouse Waiver

- Battering or Extreme Cruelty: During the marriage, the immigrant spouse or child was battered or subjected to extreme cruelty by the citizen or lawful permanent resident spouse or step-parent.
- Good Faith Marriage: That the marriage that is the basis for conditional residence was a good faith marriage.
- Bigamy: It is not a bar if a marriage ceremony was performed, and victim did not know about intended spouse's bigamy.
- Conditional residence: has been granted by DHS to the abused immigrant spouse and abused immigrant spouse's child (step-child of the abusive spouse).

Protections for Battered Spouse Waiver Applicants

- Deportation: If the victim's conditional residency ended, upon filing of the battered spouse waiver she will not be deported.
- Immigration Benefits for Children: Children receive immigration benefits along with their parents, if included in their parent's application.
- Public Benefits Access: Upon receipt of conditional residency, subject to a 5 year bar on access to federal mean-tested public benefits. If conditional residency ends, upon filing of the battered spouse waiver.
- Employment authorization: is included in conditional residency. If the battered spouse waiver is filed while the victim is still a conditional resident, employment authorization continues. Within ~6 months of filing the battered spouse waiver.
- VAWA confidentiality protections: The release of information about the filing of the case, the contents of the case is confidential. DHS is precluded from relying upon information provided by the abuser or abuser's family members to deny a victim's case, initiate immigration enforcement against a victim, or take an adverse action against the victim.

²⁹ 8 C.F.R. § 216.5(e)(3)(ii).

³⁰ 8 U.S.C. 1367(a)(2); INA 101(a)(51)

U Visas for Immigrant Crime Victims

The U-visa is available to non-citizens who are victims of criminal activity. Domestic violence, sexual assault, child abuse and other family violence crimes make up over 75% of U visa applications annually. The U visa is a form of humanitarian relief designed to encourage non-citizen crime victims to report crime. Thus, eligibility for a U visa does not require that the perpetrator be a citizen or lawful permanent resident, and does not require any family relationship between the victim and the perpetrator.

U visa eligibility requirements

- **Victim of Criminal Activity:** The immigrant must be a victim of one of the following statutorily listed criminal activities:
 - rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking, 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; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes or any similar activity in violation of federal, state, or local criminal law.
 - Both direct victims and, in limited instances, indirect victims can apply.
- **Information:** The immigrant has information about the criminal activity;³¹
- **Helpfulness:** The immigrant has been, is being, or is likely to be helpful in detection, investigation, prosecution, conviction or sentencing related to the criminal activity.³²
- **Criminal Activity Occurred in the U.S. or violated U.S. law.**
- **Certification Requirement:**³³ The immigrant must obtain a certification from a state, local or federal, judge, prosecutor, law enforcement officer, child/adult protective services official, state or federal labor law agency, EEOC, FBI or other government agencies detecting, investigating, prosecuting, or sentencing individuals involved in criminal activities. Certifications attest to the criminal activity, that immigrant is the victim, helpfulness, and that the criminal activity occurred in the U.S.
- **The Immigrant Applicant for a U Visa Must Additionally Prove:**
 - **Substantial Harm:** The immigrant suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
 - **Admissibility to the U.S.:** The U visa application includes a full criminal and immigration history background check on each applicant. Victims with criminal histories or other grounds of inadmissibility applying for a U-Visa must obtain a waiver of inadmissibility from DHS.

Protections for U Visa Applicants

³¹ For children under 16 years old, that his/her parent, guardian, or “next friend” information about the criminal activity.

³² Or if the victim is under 16 years old, that the victim’s parent, guardian, or “next friend” has been helpful, is being helpful, or is likely to be helpful.

³³ Certifying officials include, but are not limited to, federal, state or local police, sheriffs, prosecutors, judges, magistrates, adult or child protective services; the U.S. Department of Labor, Equal Employment Opportunity Commission, the U.S. Department of Homeland Security, or state labor investigation boards.

- Upon Approval: Victim receives a U visa that lasts for four years.³⁴
- Deportation: Protection from deportation shortly after filing.
- Immigration Benefits for Children, Spouses, and Parents: Adult U visa applicants can include their spouses, and under 21 year old children in their applications. Child victims can include their spouses, children, parents and unmarried siblings under the age of 18 in their U visa applications. Family members generally receive their U visas at the same time as the applicant crime victim.
- Public Benefits: U visa victims and their children are not eligible for federal public benefits. For health care purposes U visa recipients are lawfully present and can access prenatal and child health care. Some states offer state funded benefits to U visa applicants.³⁵
- Employment authorization: is available upon approval of the victim's U visa application (≈ 1 year to 18 months) after the application has been filed.
- VAWA confidentiality protections against release of information about the filing of the case, and the contents of the case. Moreover, DHS is precluded from relying upon information provided by the abuser or abuser's family members to deny a victim's case, initiate immigration enforcement against a victim or take an adverse action against the victim.
- Access to Lawful Permanent Residency: U-Visa recipients can apply for lawful permanent residency after three years by proving –
 - That the victim either continued to provide assistance, or did not unreasonably refuse to provide assistance in the investigation or prosecution of the criminal activity; and
 - The victim's continued presence in the U.S. is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

T Visas/Continued Presence

The T visa process allows a victim of a severe form of trafficking, who is present in the United States on account of trafficking, and who complies with reasonable requests to assist in the investigation or prosecution of trafficking, to remain in the United States.³⁶ Continued presence is a temporary immigration status that law enforcement officials seek for immigrants identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. It allows a victim of human trafficking to continue to remain present in the United States as a potential witnesses in a human trafficking investigation.³⁷

► Continued Presence

A Continued Presence Applicant Must Prove

- Trafficking Victimization: The identified individual must be a victim of a severe form of human trafficking; and

³⁴ The U visa can be extended if the law enforcement agency that completes the certification confirms that the victim's presence in the U.S. is required to assist in the investigation or prosecution of the criminal activity. 8 USC 1184 (p)(6).

³⁵ For information on access to government funded assistance for U visa victims see, Jordan Tacher and Leslye E. Orloff, U-Visa Victim Benefits Eligibility Process (April 17, 2013) available at <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/U-Visa-Victim-Benefits-Eligibility-Process.pdf/view>

³⁶ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386 (2000). See also INA § 101(a)(15)(T)(i); 8 C.F.R. § 214.11(b).

³⁷ 8 USC (o)(7)(B)(i)

- Witness: Is willing to be a potential witness in the investigation or prosecution of the trafficker.
- Federal law enforcement officials will make the initial determination if the individual meets the federal definition of a victim of a severe form of trafficking.

Protections for Continued Presence Recipients

- Continued Presence authorization lasts for one year and can be renewed if the federal investigation or prosecution is ongoing, and the victim is cooperating with reasonable requests from law enforcement.
- Deportation: Protection from deportation upon approval.
- Parole upon Written Request for Certain Family Members: Adults receiving continued presence can include their spouse and under 21 year old children. Child continued presence victims can receive parole for their spouse, child, parent and unmarried sibling under the age of 18.
- Public Benefits: Continued presence is issued along with a certification from the Office of Refugee Resettlement from the U.S. Department of Health and Human Services, which includes access to federal and state public benefits and other services available to refugees.
- Employment authorization: Is provided as part of continued presence.

► T-Visa

A T Visa Applicant Must Prove ³⁸

- Severe Form of Human Trafficking: The immigrant is or has been the victim of a severe form of human trafficking.³⁹
 - Labor trafficking: In order to constitute a “severe form of trafficking” in persons, three elements must be present in cases involving labor or services.
 1. The Process through which the labor is attained was by recruiting, harboring, transporting, providing, or obtaining a person for labor;
 2. The Means: the means used to procure the labor included force, fraud, or coercion; and
 3. The End: the labor has to be procured for a certain purpose. Involuntary servitude, peonage, debt bondage, or slavery.
 - Sex trafficking: Victims of a “severe form of trafficking” must prove
 1. The End: A commercial sex act; and
 2. The Means: that was induced by force, fraud, or coercion.
 3. Under 18 year old sex trafficking victims are only required to prove the commercial sex and are not required to prove the means.
- Physically present on account of trafficking: Means being subjected to trafficking now, recently liberated from their traffickers, or the immigrant is here because of past trafficking and their current presence is directly related to the original trafficking.⁴⁰ Victims who escape traffickers without law enforcement assistance must prove that they did not have a clear chance to leave the U.S. between their escape and contacting law enforcement.⁴¹ If the trafficking did not recently occur, the victim must demonstrate that they did not have the opportunity to depart through proof of “trauma, injury, lack of resources, or travel documents that have been seized by the traffickers”⁴²

³⁸ 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a).

³⁹ Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”) § 103(8); 22 USC §7102(8) (2000).

⁴⁰ 8 CFR §214.11(g) (2002).

⁴¹ 8 CFR §214.11(g)(2) (2002)

⁴² 8 CFR §214.11(g)(2) (2002).

- Extreme hardship involving unusual and severe harm to the victim will occur if the victim is removed from the United States; and
- Cooperation: The victim is under 18 years of age and is not required to cooperate; or the victim meets one of the following conditions:
 - The victim has cooperated and is willing to cooperate with reasonable requests for assistance by federal, state, or local law enforcement in investigating or prosecuting crimes related to human trafficking; or
 - The victim is excused by the Attorney General from failing to cooperate with reasonable requests for assistance by federal, state, or local law enforcement in investigating or prosecuting crimes related to human trafficking because of physical or psychological trauma.

Protections for T Visa Applicants

- Upon Approval: Victim receives a T visa that lasts for four years⁴³
- Deportation: Protection from deportation shortly after filing.
- Immigration Benefits for Children, Spouses, and Parents: Adult T visa applicants can include their spouses, and under 21 year old children in their applications; Child victims can include their spouses, children, parents and unmarried siblings under the age of 18 in their T visa applications. Each of the adult or child family members who are included in the trafficking victim's application as family members can include their own children (of any age) in their T visa applications.⁴⁴ Family members generally receive their T visas at the same time as the applicant trafficking victim.
- Public Benefits: Receipt of public benefits by human trafficking victims requires that they obtain a certification from the Office of Refugee Resettlement (ORR), U.S. Department of Health and Human Services. Trafficking victims granted continued presence automatically receive certification. T visa applicants who have not previously been granted continued presence, must file the T visa application, wait for a bona fide determination (\approx 6 months) and ORR will issue the certification letter granting the trafficking victim the access to federal and state public benefits and other services available to refugees.
- Employment authorization: Is provided as part of continued presence. T-visa applicants who did not receive continued presence receive work authorizations with bona fide determinations (\approx 6 months).
- VAWA confidentiality protections against release of information about the filing, and contents of the case. DHS is precluded from relying on information provided by abuser or abuser's family members to deny a victim's case, initiate immigration enforcement against a victim or take an adverse action against the victim.
- Access to Lawful Permanent Residency: To be eligible to attain lawful permanent residency, an applicant must:
 - have been admitted to the United States;
 - have current T-visa status;

⁴³ The T visa can be extended if the law enforcement agency that completes the certification confirms that the victim's presence in the U.S. is required to assist in the investigation or prosecution of the criminal activity, or eligible for lawful permanent resident status, or the Secretary of Homeland Security determines an extension is necessary. INA §§ 214(o)(7)(B)(i)-(iii)

⁴⁴ Trafficking Victims Protection Reauthorization Act of 2013 section 1221(a)

- have maintained continuous physical presence for 3 years (may be less if an investigation or prosecution is complete) exempting any individual absence of 90 days or less or an aggregate of 180 days or less⁴⁵;
- be admissible at the time of application (this provision may be waived);⁴⁶
- have good moral character during his or her continuous physical presence;⁴⁷
- have complied with any reasonable request for assistance during continuous presence⁴⁸ or show extreme hardship upon removal;⁴⁹ and
- offer evidence to support a favorable grant of lawful permanent residency.⁵⁰

⁴⁵ 8 CFR § 235.23(a)(3) (2008).

⁴⁶ 8 CFR § 245(1)(4), (b)(4), (c)(2) and (3) (2008).

⁴⁷ 8 CFR § 245.23(g) (2008).

⁴⁸ 8 CFR § 245.23(d), § 245.23(f)(1) (2008).

⁴⁹ 8 CFR § 245.23(d), § 245.23(f)(2) (2008).

⁵⁰ 8 CFR § 245.23(e)(3) (2008).