

NOW Legal Defense and Education Fund

“Defining and Defending Women’s Rights for 30 Years”

Immigrant Women Program

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Conference Report on Victims of Trafficking and Violence Protection Act of 2000

Division B – Violence Against Women Act of 2000

Title V – Battered Immigrant Women

Section-By-Section Summary

Introduction

The Battered Immigrant Women Protection Act of 2000 continues the work that began with the passage of the first Violence Against Women Act (VAWA) in 1994. Prior to VAWA 1994, immigration laws ensured that abusive U.S. citizens and permanent residents had total control over their spouse’s immigration status. As a result, battered immigrant women and children were forced to remain in abusive relationships, unable to appeal to law enforcement officials and courts for protection because they feared deportation. VAWA 1994 immigration provisions remedied the situation by allowing battered immigrants abused by their U.S. citizen or lawful permanent resident spouses or parents to file their own applications for immigration relief without the cooperation of their abusive spouse or parent, enabling them to safely flee the violence.

VAWA 1994 provides two forms of immigration relief: VAWA self-petitions and VAWA cancellation of removal (formerly suspension of deportation). VAWA self-petitions allow battered immigrants to file an application for permanent residency based on the battery or extreme cruelty they suffered at the hands of the U.S. citizen or permanent resident spouse. The self-petition may be filed without the cooperation and participation of the abusive spouse. VAWA cancellation of removal/suspension of deportation is a defense to deportation that is raised when the battered immigrant is placed in deportation / removal proceedings. Both avenues of immigration relief lead to lawful permanent residency.

The Battered Immigrant Women Protection Act of 2000 seeks to restore and expand access to a variety of legal protections for battered immigrants so they may flee violent homes, obtain court protection, cooperate in the criminal prosecution of their abusers, and take control of their lives without fearing deportation.

The complete text of the bill can be found at www.thomas.loc.gov.

Sec. 1501. SHORT TITLE

Sec. 1502. FINDINGS AND PURPOSES

Sec. 1503. IMPROVED ACCESS TO IMMIGRATION PROTECTIONS OF THE VIOLENCE AGAINST WOMEN ACT OF 1994 FOR BATTERED IMMIGRANT WOMEN

Sec. 1503(a). Intended Spouse Defined – INA § 101(a)(50) NEW

Defines the term “intended spouse” as a person who went through a formal marriage ceremony either in the U.S. or abroad with either a citizen or a permanent resident but whose marriage is illegitimate solely because of the bigamy of such citizen or permanent resident.

See Sec. 1503(b) for a similar explanation of this provision.

Sec. 1503(b). Immediate Relative Status for Self-Petitioners Married to U.S. Citizens – INA § 204(a)(1)(A)(iii)

Amends the self-petitioning provisions by removing barriers barring access to VAWA.

Deletes the U.S. residency requirement: Provides battered immigrants living abroad access to VAWA self-petitions. The battered immigrant must be abused by their citizen or permanent resident spouses or parents:

- (1) who are U.S. government employees; or
- (2) who are members of the U.S. uniformed services (including military members); or
- (3) and one or more of the incidents of battering or extreme cruelty occurred in the U.S.

Deletes the extreme hardship requirement: Deletes the extreme hardship requirement in VAWA self-petitioning cases.

Extends VAWA self-petitions to spouses of bigamists: Allows battered immigrants who unknowingly marry bigamists to file VAWA self-petitions if the battered immigrant went through a formal marriage ceremony either in the U.S. or abroad and believed in good faith that she had married the U.S. citizen or permanent resident, and the marriage was not legitimate solely because of the bigamy of such citizen or permanent resident.

Effective Date: Enactment

Sec. 1503(b)(1) Victims who File within Two Years of Divorce from, Death of, or Loss of Citizenship of a U.S. Citizen – INA § 204(a)(1)(A)(iii)

Permits battered immigrants to file VAWA self-petitions within two years of the divorce, death (only in the case of a citizen abuser), loss of immigration status, or denaturalization of the abuser. Battered immigrants whose spouse lost or renounced their immigration status within the past two years must demonstrate that the loss of status is related to an incident of domestic violence. Within two years of divorce, battered immigrants must demonstrate a connection between the legal termination of the marriage and the battery or extreme cruelty.

Effective Date: Enactment

Sec. 1503(b)(2). Self-Petitioning Children – INA § 204(a)(1)(A)(iv)

Please see Secs. 1503(b) for similar explanations of these provisions.

Effective Date: Enactment

Sec. 1503(b)(3). Filing of Petitions: Allows Filing of VAWA Self-Petitions Abroad by Spouses and Children of Citizens – INA § 204(a)(1)(A)(v) NEW

Sets out the procedures that allow abuse victims living abroad to file self-petitions. The self-petitions may be filed either abroad at a U.S. consulate or directly with INS in Vermont and will be processed at the INS Service Center in Vermont by INS's team of expert VAWA adjudicators in the same manner that all self-petitions are processed when filed within the U.S.

Effective Date: Enactment

Sec. 1503(c)(1). Second-Preference Self-Petitioners – INA § 204(a)(1)(B)(ii)

Please see Sec.1503(b) for a similar explanation of this provision.

Effective Date: Enactment

Sec. 1503(c)(1). Victims who File within Two Years of Divorce from or Loss of Legal Immigration Status by a Lawful Permanent Resident Abusive Spouse or Parent – INA § 204(a)(1)(B)(ii)

Please see Sec.1503(b)(3) for a similar explanation of this provision.

Effective Date: Enactment

Sec. 1503(c)(2). Second-Preference Child Self-Petitioner – INA § 204(a)(1)(B)(iii)

Please see Sec.1503(b)(2) for an explanation of this provision.

Effective Date: Enactment

Sec. 1503(c)(3). Filing of Petitions: Allows Filing of VAWA Self-Petitions Abroad by Spouses and Children of Lawful Permanent Residents – INA § 204(a)(1)(A)(iv) NEW

Please see Sec.1503(b)(3) for an explanation of this provision.

Effective Date: Enactment

Sec. 1503(d)(2). Good Moral Character Determinations for Self-Petitioners – INA § 204(a)(1) NEW (C)

Provides the Attorney General with the discretion to waive the bar to issuing a finding of good moral character as long as the act or conviction was connected to the battery or extreme cruelty. This waiver will be limited to crimes for which waivers are already available for reasons of inadmissibility under Sec. 212(a), and deportability under Sec. 237(a). Including new waivers created for battered immigrants by secs. 1505(a), (b), (c), (d), and (e). The Attorney General will be required to accept any credible evidence.

Effective Date: Enactment

Sec. 1503(d)(2). Treatment of Child Self-Petitioners and Petitions Including Derivative Children Attaining 21 years of Age. – INA § 204(a)(1) NEW (D)

Allows derivative children who are under 21 when the self-petition is filed to maintain derivative status under their parent's self-petition, even when they are no longer under 21. Also allows child self-petitioners to include their own children in their self-petitions.

Effective Date: Enactment

Sec. 1503(e). Access to Naturalization for Divorced Victims of Abuse – INA § 310(a)

Expands the provision which permits naturalization after three years of permanent residence for the spouse of a citizen to include a divorced person and a person no longer living with her spouse in marital union, who became a permanent resident by reason of his or her status as the spouse or child of a citizen, and who was subjected to battery or extreme cruelty by that citizen abuser.

Effective Date: Enactment

Sec. 1504. IMPROVED ACCESS TO CANCELLATION OF REMOVAL AND SUSPENSION OF DEPORTATION UNDER THE VIOLENCE AGAINST WOMEN ACT OF 1994.

Sec. 1504(a). Extend VAWA Cancellation to Immigrant Victims Whose Citizen or Lawful Permanent Resident Spouses Are Bigamists – INA § 240A(b)(2)

Provides abused spouses of bigamists with access to VAWA cancellation of removal. See Sec. 1503(a) for an explanation of a parallel provision.

Effective Date: § 304 IIRAIRA (P.L. 104-208; 110 Stat. 587), AEDPA effective date: 4/24/96.

Sec. 1504(a). Three-Year Tolling Provisions under Cancellation of Removal – INA § 240A(b)(2)

Exempts battered immigrants who apply for VAWA cancellation of removal from the provision that terminates continuous physical presence when the noncitizen is served with a notice to appear or an order to show cause.

Effective Date: § 304 IIRAIRA (P.L. 104-208; 110 Stat. 587), AEDPA effective date: 4/24/96.

Sec. 1504(a). Waiver for 90/180 Days Continuous Presence in VAWA Cancellation and Suspension Cases – INA § 240A(b)(2) NEW (B)

Creates a waiver when there is a connection between the battered immigrant's absence from the U.S., or a portion thereof, and the abuse. The Attorney General will be allowed to waive certain breaks in continuous presence when there is a connection between the absence(s), or part of the absence(s), and the abuse. If the absence(s), or a portion of the absence(s), are deemed connected to the abuse, even if the total number of days absent 90 days for on absence or 180 days cumulatively, the battered immigrant will not be considered to have broken the continuous presence requirement. The extra days will simply be added on to the three-year presence requirement. For example, if the battered immigrant is absent for a total of 190 days, she will be allowed to file for VAWA cancellation after she has been in the country for three years and ten days.

Effective Date: § 309 IIRAIRA (P.L. 104-208, 110 Stat. 3009)., 4/1/97.

Sec. 1504(a). Discretionary Waiver for Good Moral Character Determination for VAWA Cancellation and Suspension Applicants – INA § 240A(b)(2) NEW (C)

Provides the Attorney General with the discretion to waive the bar to issuing a finding of good moral character as long as the act or conviction was connected to the battery or extreme cruelty. The Attorney General will be required to accept any credible evidence.

Effective Date: § 309 IIRAIRA (P.L. 104-208, 110 Stat. 3009)., 4/1/97.

Sec. 1504(b). Granting Parole to the Children and Parent (in the Case of an Abused Child) of Applicants Granted VAWA Cancellation or Suspension – INA § 240A(b) NEW (4)

Provides parole status to the children and parents (in the case of an abused child) of battered immigrants who have been granted VAWA suspension or cancellation from the time the abused parent or child is granted cancellation or suspension until they receive lawful permanent residence through a family-based relative petition. The abused immigrant granted cancellation or suspension must exercise due diligence in filing the family-based relative petition. This protection is available even if the parental rights of the citizen or permanent resident abusive parent have been terminated.

Effective Date: § 309 IIRAIRA (P.L. 104-208, 110 Stat. 3009)., 4/1/97. For Suspension, effective date of VAWA 9/13/94.

Sec. 1505. OFFERING EQUAL ACCESS TO IMMIGRATION PROTECTIONS OF THE VIOLENCE AGAINST WOMEN ACT OF 1994 FOR ALL QUALIFIED BATTERED IMMIGRANT SELF-PETITIONERS.

Sec. 1505(a). VAWA Waiver of Inadmissibility for Re-Entry after Unlawful Presence, Multiple Illegal Re-Entries and for Re-Entry after Removal/Deportation Order – INA § 212(a)(9)(C)(ii)

Creates a waiver for battered immigrants in Sec. 212(a)(9)(C) which provides for a mandatory ten-year bar to re-entry for immigrants who have re-entered, or attempted to re-enter, the U.S. after being unlawfully present for one year as a result of unlawful entry or after previously being ordered removed from the U.S. The applicant must show that there is a connection between the abuse and the battered immigrant's removal or departure from the U.S. and any re-entry(ies) or attempted re-entry(ies) into the U.S.

Effective Date: Enactment

Sec. 1505(b). Waiver of Deportation Grounds for VAWA Applicants

with Domestic Violence Arrests or Convictions that Stemmed from their Victimization or who Acted in Self-Defense – INA § 237(a)(7) New Section and Conforming Amendment to INA § 240A(b)(1)(C)

Allows the Attorney General to waive the domestic violence ground of deportation in appropriate cases where the applicant is otherwise qualified for VAWA. Battered immigrants who were subject to dual arrest when they acted in self-defense, were convicted of violating their own protection order, or committed other crimes connected to the domestic violence that did not result in serious bodily injury is eligible for this waiver. The waiver is only available to the person who is not the primary perpetrator of abuse in the relationship. In considering waiver requests under this section, the Attorney General shall accept any credible evidence.

Effective Date: Enactment

Sec. 1505(c). Misrepresentation Waivers for Battered Spouses of U.S. Citizens and Lawful Permanent Residents – INA § 212(i) and INA § 237(a)(1)(H)

Includes battered immigrants within the scope of a 212(i) waiver of inadmissibility based on a misrepresentation when the immigrant can show that the failure to grant the waiver would result in extreme hardship to the immigrant's citizen or permanent resident spouse. Self-petitioners can obtain this waiver 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. Also includes a misrepresentation waiver under 237(a)(1)(H).

Effective Date: Enactment

Sec. 1505(d). Battered Immigrant Waiver: HIV Waiver – INA §212(g)(1)

Allows battered immigrants who otherwise qualify under VAWA to file for waivers of inadmissibility based on a communicable disease of public health significance, including HIV or TB.

Effective Date: Enactment

Sec. 1505(e). Extension of Existing 212(h) Waiver for Limited Minor Criminal Offenses to VAWA Battered Immigrants – INA § 212(h)(1) NEW (C).

Extends discretionary waivers to VAWA-eligible battered immigrants who commit certain crimes including crimes of moral turpitude and multiple offenses, and offenses that are more than 15 years old. This provision is the counterpart to the good moral character waiver contained in Secs. 1503(d)(2) and 1504(a)(iii) of this legislation.

Battered immigrants need not show extreme hardship to their abusive citizen or permanent resident spouse in order to qualify for the waiver.

Effective Date: Enactment

Sec. 1505(f). Public Benefits and Public Charge Clarification – INA § 212(p) New Section

Bars the INS, consular officials, and immigration judges from considering public benefits authorized under IIRAIRA § 501 when making public charge determinations in VAWA cases.

Effective Date: Enactment

Sec. 1505(g). INS Report to Congress

Requires the INS to report to Congress on the manner in which they process requests by eligible VAWA cancellation and suspension applicants who seek to be placed in removal proceedings. The report will provide information on a district-by-district basis and will provide incentives for the INS to develop and implement, at the INS district level, a system that will allow battered immigrants to apply for VAWA cancellation. The report will also include information on the time it takes after a battered woman asks to be placed in proceedings before she appears before an immigration judge at a master calendar hearing where she can file her VAWA case and request a prima facie determination.

Effective Date: Enactment

Sec. 1506. RESTORING IMMIGRATION PROTECTIONS UNDER THE VIOLENCE AGAINST WOMEN ACT OF 1994.

Sec. 1506(a). Removing Barriers to Adjustment of Status for Victims of Domestic Violence (245(i) fix) – INA § 245(a) and (c)

Permits a person who has not been inspected and admitted or paroled into the U.S to adjust his or her status to that of a lawful permanent resident if he or she has an approved petition for a preference classification as a battered immigrant VAWA self-petitioner. Also exempts battered immigrants from being considered ineligible for adjustment because of engaging in unauthorized employment in the U.S. or because of any of the other bars listed in 245(c).

Effective Date: Enactment - Applies to applications for adjustment pending on or after 1/14/98.

Sec. 1506(b). Three-Year Tolling Provisions under Cancellation of Removal and Suspension of Deportation – INA §§ 240A(d)(1) and 309(c)(5)(C)

Exempts battered immigrants who apply for VAWA cancellation of removal and suspension of deportation from the provision that terminates continuous physical presence when the noncitizen is served with a notice to appear or an order to show cause. See sec. 1504(a) for a similar provision.

Effective Date: § 309 IIRAIRA (P.L. 104-208, 110 Stat. 3009)., 4/1/97. For Suspension, effective date of VAWA 9/13/94.

Sec. 1506(c). Eliminating Motion to Reopen Time Limits – INA § 40(c)(6)(C) NEW (iv)

Provides VAWA eligible women with ability 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 VAWA 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. Extraordinary circumstances may include, but are not limited to domestic violence related to or interferences with her participation in the removal case, or violence or cruelty of such a nature that not allowing the case to be reopened would thwart justice or be contrary to VAWA's humanitarian purpose. Battered immigrants with pre-IIRAIRA deportation cases are eligible to file a motion to reopen, if their motion is accompanied by evidence of qualification for VAWA self-petition or VAWA suspension. There is no deadline to file motions to reopen for these types of cases.

Effective Date: § 309 IIRAIRA (P.L. 104-208, 110 Stat. 3009)., 4/1/97.

Sec. 1507. REMEDYING PROBLEMS WITH IMPLEMENTATION OF THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT OF 1994.

Sec. 1507(a). Effect of Changes in Abuser's Immigration Status – INA § 204(a)(1)(A) NEW (vi)

Provides that changes to the abuser's immigration status after filing a self-petition under VAWA shall not adversely affect the approval of the petition. In the case of an approved petition, a change in the abuser's status shall not preclude the classification of the self-petitioning person as an immediate relative (e.g. natz of the abuser) or affect the person's ability to adjust status to that of a lawful permanent resident. If the abusive U.S. citizen spouse or parent loses immigration status, divorces the battered immigrant, dies (only in the case of an abusive citizen), renounces citizenship, or is deported after the battered immigrant has filed her self-petition, the self-petition remains valid.

Effective Date: Enactment

Sec. 1507(b). Allowing Remarriage of Battered Immigrants – INA §204(h)

Clarifies that a battered immigrant's remarriage is not a basis for revoking approval of an applicant's self-petition and explicitly allows remarriage before the victim receives her green card based on an approved VAWA self-petition.

Effective Date: Enactment

Sec. 1508. TECHNICAL CORRECTION TO QUALIFIED ALIEN DEFINITION FOR BATTERED IMMIGRANTS.

Sec. 1508. Technical Correction in IIRAIRA Regarding Qualified Alien Definition for Battered Immigrants

Corrects two technical errors contained in IIRAIRA regarding eligibility for certain welfare benefits for immigrants battered by citizen or permanent resident spouses or parents. First, the language granting welfare access to VAWA suspension of deportation applicants did not cite the proper code section for the VAWA suspension provisions. Second, VAWA suspension applicants were allowed access to public benefits, but the section omitted reference to VAWA cancellation of removal applicants.

Effective Date: Enactment

Sec. 1509. ACCESS TO CUBAN ADJUSTMENT ACT FOR BATTERED IMMIGRANT SPOUSES AND CHILDREN.

Sec. 1509(a). Access to Cuban Adjustment for Battered Immigrant Spouses – 8 U.S.C. 1255 note.

Allows battered immigrant spouses and children of Cuban Adjustment applicants to adjust their status without demonstrating that she is residing with the Cuban spouse or parent.

Effective Date: Enactment date of VAWA 9/13/94.

Sec. 1510. ACCESS TO THE NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT FOR BATTERED SPOUSES AND CHILDREN.

Sec. 1510. Access to Nicaraguan and Central American Relief Act (NACARA) for Battered Immigrant Spouses and Children – INA § 309(c)(5)(C).

Allows battered spouses and children of NACARA-eligible abusive spouses and parents to file for NACARA relief. Battered spouses and children must be related to the abuser at the time the abuser: was granted suspension or cancellation; filed for suspension or cancellation; registered for benefits under *ABC v. Thornburgh*; applied for TPS; or asylum. Current residence with the abusive spouse is not required.

Effective Date: Enactment of NACARA, 11/19/97.

Sec. 1511. ACCESS TO THE HAITIAN REFUGEE FAIRNESS ACT OF 1998 FOR BATTERED SPOUSES AND CHILDREN.

Sec. 1511. Access to Haitian Refugee Fairness Act of 1998

Allows battered immigrant spouses and children of Haitian Refugee Immigration Fairness Act applicants to adjust their status.

Effective Date: Enactment date of HRIFA, 10/21/98.

Sec. 1512. ACCESS TO SERVICES AND LEGAL REPRESENTATION FOR BATTERED IMMIGRANTS.

Sec. 1512. Access to Services and Legal Representation for Battered Immigrants – 42 U.S.C. §§ 3796gg(b), 3796hh(b)(5), 13971(a)(2), and 20 U.S.C. § 1152

Clarifies that funds from all VAWA grant programs administered by the Violence Against Women Office of the Department of Justice may be used to provide a broad range of legal and social services for battered immigrant women, including assistance in VAWA immigration matters. The grant programs addressed are: STOP, Grants to Encourage Arrest, Rural VAWA Grants, Civil Legal Assistance, and Campus Grants. Further, the prohibition against using civil legal assistance funds for representation in immigration cases including VAWA self-petitions was specifically eliminated. This section also allows programs serving battered immigrants, prosecutors, or police to apply for STOP grant funding for a project that would train INS officers and/or immigration judges on the dynamics of domestic violence in immigrant families and the legal rights of battered immigrants.

Effective Date: Enactment

Sec. 1513. PROTECTION FOR CERTAIN CRIME VICTIMS INCLUDING VICTIMS OF CRIMES AGAINST WOMEN.

Sec. 1513. Protection for Certain Crime Victims Including Victims of Crimes Against Women

- INA § 101 (a)(15)(U) New

Adds new INA Section 101(a)(15)(U) 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 rape, sexual assault, torture trafficking, domestic violence incest, female genital mutilation and being held hostage. 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.

Procedure

The immigrant's self-petition must contain certification from a law enforcement official. The maximum number of U visa's for primary visa applicants in any one-year is 10,000. There is no limit on derivative visas and the visas are not taken from any other visa category.

Confidentiality

U 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 witnesses 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.

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 the immigrant has unreasonably refused to cooperate in an investigation or prosecution of 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.

Effective Date: Enactment