

Questions & Answers: VAWA Self-Petitioning Webinar (April 22, 2020)¹

Faiza Chappell, Rocio Molina and Leslye E. Orloff

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VAWA Self-Petitioning General Questions

1. What is a self-petition and what do you have to prove for the VAWA self-petition to be granted?

A: The VAWA self-petition enables an immigrant victim of domestic violence, sexual assault, or child abuse to obtain lawful permanent resident status without the cooperation of his or her abusive spouse, parent, or adult son or daughter. In order to qualify for a VAWA self-petition, an immigrant victim must have suffered from battery or extreme cruelty, which includes sexual assault, incest, and child abuse, perpetrated by an abusive U.S. citizen or lawful permanent resident spouse, parent, stepparent, or adult son or daughter. A VAWA self-petition is available to spouses, former spouses, and intended spouses who were unknowingly victims of bigamy. In addition to proving abuse, a self-petitioner must also prove: (1) good faith marriage if the abuser is a spouse or step-parent; (2) the spousal, parental, or parent-child relationship; (3) the immigration status of the abusive citizen or lawful permanent resident spouse, parent, stepparent, son, or daughter; (4) good moral character; and (4) that they have resided with the abusive family member.²

2. Is VAWA self-petitioning open to both immigrants with legal documentation and those who are undocumented?

A: Yes. Any immigrant who is not a naturalized citizen or lawful permanent resident can self-petition. The abuse spouse, child or parent could be a legal immigrant who has, for example, a work visa or a student visa.

a) Can an undocumented battered spouse of a U.S. citizen file a VAWA self-petition?

A: Yes.³

b) What immigration or citizenship status must the abuser have in order for their abused spouse, child or stepchild to qualify to file a self-petition?

A: Perpetrator must be a citizen or lawful permanent resident for the victim to qualify for a self-petition. If the perpetrator is not a citizen or lawful permanent resident, then the applicant would not qualify to under the self-petition.⁴

¹ WEBPAGE: VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents (Webinar – April 22, 2020) <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>

² Kathleen Sullivan and Leslye Orloff, *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants, 3.1 Battered Immigrants and Immigrant Relief*, NIWAP, (July 2013), <https://niwaplibrary.wcl.american.edu/breaking-barriers-maunal>.

³ Kathleen Sullivan and Leslye Orloff, *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants, 3.1 Battered Immigrants and Immigrant Relief*, NIWAP, (July 2013), <https://niwaplibrary.wcl.american.edu/breaking-barriers-maunal>.

⁴ Kathleen Sullivan and Leslye Orloff, *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants, 3.1 Battered Immigrants and Immigrant Relief*, NIWAP, (July 2013), <https://niwaplibrary.wcl.american.edu/breaking-barriers-maunal>.

3. Is VAWA self-petitioning available to both men and women, adults and children?

A: Yes. The self-petition is a gender-neutral process and provides relief for all qualifying individuals regardless of sex and gender.

a) What obstacles do male survivors' face when applying for VAWA self-petitioning?

A: Domestic violence affects both men and women in similar ways and they may have the same experiences, however domestic violence can be expressed and labeled for men differently and it may be harder for abused men to overcome stigma that can hinder reporting. As a result, men face the obstacles of reporting the abuse and accessing services and resources due to the lack of services being tailored to men.⁵

4. What are the major immigration options for immigrant victims of domestic violence and child abuse?

A: Major immigration options for immigrant victims of domestic violence and child abuse include: VAWA self-petition, U visa, special immigrant juvenile status for immigrant child victims, continued presence and the T visa for trafficking victims, and asylum for victims abused in their home countries. The major benefits for VAWA self-petitioners include protection from removal, confidentiality, work authorization, and ability to apply for lawful permanent resident status without their abuser's knowledge or assistance.⁶

5. How does VAWA self-petitioning differ from a battered spouse waiver (BSW) that is available to battered spouses who have 2-year conditional permanent residency?

A: The VAWA Self-Petition and Battered Spouse Waiver (BSW) were both designed to offer a path to lawful permanent residency for spouses of U.S. citizens and lawful permanent residents who have been subjected to battering or extreme cruelty. The battered spouse waiver is a remedy in cases where the abusive spouse filed a family based immigration petition for the victim from which the victim received conditional permanent residency that lasts for two years at the end of which the victim and abusive spouse must together file a joint petition for the abused spouse to receive full lawful permanent residency. The battered spouse waiver allows abused victims to receive lawful permanent residency without waiting two year and without any joint petition. The VAWA self-petition can be filed by a victim whether or not their abusive spouse ever filed and immigration case on the victim's behalf. Also the filing and case adjudication process for these two case types differ. The specially trained VAWA Unit adjudicates VAWA self-petitions, while the BSW is adjudicated at regional service centers by staff that is not part of the specially trained VAWA Unit. As a result, BSW cases take longer, battered

⁵ Eric Stiles, Ivonne Ortiz, and Casey Keene, *Technical Assistance Guidance: Serving Male-Identified Survivors of Intimate Partner Violence*, NAT'L RES. CTR. ON DOMESTIC VIOLENCE, (July 2017)

https://vawnet.org/sites/default/files/assets/files/2017-07/NRC DV_TAG-ServingMaleSurvivors-July2017.pdf

⁶ *Interactive Infographic on Protection on Protections of Immigrant Victims*, DHS, (2018)

<https://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims>.

immigrant spouses commonly receive requests for further evidence, and are subjected to unnecessary in-person interviews at district offices by adjudicators.⁷

a) What are the timeframes from case processing of the battered spouse waiver?

A: From the time of filing, it would take anywhere from 10 months to over 2 years for the waiver to be processed.⁸

6. What is the VAWA self-petitioning process and how can it be effectively described to battered immigrant clients? Can you share a current timeline?

A: The process of submitting a VAWA self-petition consists of several steps and the timeline can differ based on whether the abusive spouse, parent or stepparent is a U.S. citizen or a lawful permanent resident. The main parts of the process include the submitting the application for the VAWA self-petition is: (1) establishing sufficient evidence to receive a prima facie determination; (2) fingerprinting and background check; (3) adjudication; and (4) approval of work authorization. After these steps are completed, the victim applicant will have to apply for lawful permanent residency. After three years as a lawful permanent resident the self-petitioner is eligible to apply for naturalization.⁹

7. How does a battered immigrant spouse or child stay safe while they are waiting for their VAWA self-petition to be adjudicated?

A: The VAWA self-petition was designed so that victims could confidentially apply while they continue to live with their abusers or after separation. Significant numbers of VAWA self-petitioners continue living with their abusers until they receive work authorization in the VAWA self-petition case. It can take up to 18 months for the victim's case to be adjudicated and for the victims to receive work authorization if the abuser is a lawful permanent resident. This leaves victims still living with the abuser in limbo. Some victims are able to leave their abusers prior to filing their petition. Others are able to leave their abuser after filing, while their case is still pending, or after approval.¹⁰ Safety planning is crucial to help victims stay safe as they await approval of their VAWA self-petitioning case. The safety plan for a victim still living with their abuser will be different than for a victim who has separated and will be different for a victim who is planning to or is in the process of separating.¹¹ Civil protection orders which can be issued in every state to

⁷ Kavell Joseph, Amanda Davis, Leslye Orloff, *Moving Battered Spouse Waiver Adjudications to the VAWA Units: A Call for Consistency and Safety National Survey Findings Highlights*, NIWAP, (Feb. 2017) <https://niwaplibrary.wcl.american.edu/pubs/battered-spouse-waiver-report-2-6-2017>.

⁸ Kavell Joseph, Amanda Davis, Leslye Orloff, *Moving Battered Spouse Waiver Adjudications to the VAWA Units: A Call for Consistency and Safety National Survey Findings Highlights*, NIWAP, (Feb. 2017) <https://niwaplibrary.wcl.american.edu/pubs/battered-spouse-waiver-report-2-6-2017>.

⁹ Katelyn Deibler and Leslye Orloff, *VAWA Self-Petition Timeline with Background Check*, NIWAP, (Mar. 2019) <https://niwaplibrary.wcl.american.edu/pubs/3f-vawa-timeline-3-29-19>.

¹⁰ Rafaela Rodrigues, Alina Hussein, Amanda Couture Carron, Leslye Orloff, Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, NIWAP, pg. 48, (May 3, 2018), <https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>; Krisztina E. Szabo, David Stauffer, Benish Anver, Leslye Orloff, *Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP, pg. 18-23, 31, (Feb. 12, 2014) https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12.

¹¹ Leslye Orloff, *Services and Assistance Legally Available to Help Immigrant Victims of Violence Against Women*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/sd-benefits-12-1-10-2>.

domestic violence victims who are living with their abusers can play a very important role in protecting victims still residing with their abusers.¹² Victim advocates and attorneys should inform immigrant survivors about protection orders and assist them through the process of applying both for victims who are separated and victims living with their abusers.¹³

8. Can an immigrant victim filing a self-petition continue to put the word “confidential” on the VAWA self-petition, the work authorization application and the application for adjustment of status to lawful permanent residency where the forms request the applicant’s physical address?

A: An applicant can use a safe address if the victim applicant does not want USCIS to send documents and notices to the home address. The safe address instructions are located on the I-360 form.¹⁴ It is very important for victims to include a safe address on the form and include this in addition to the address of any attorney assisting the victim with the application. In this way all USCIS communication must be sent to both addresses.

9. Does the application process for a VAWA self-petition include a hearing or interview? If so, at what stage and how can you prepare your clients for this?

A: The self-petition does not require adjudication or an in-person interview, only a paper filing.

a) Does the VAWA self-petition involve any court hearing?

A: No, the full adjudication of the VAWA self-petition application is processed by a specialized unit at USCIS. No court proceedings are involved. Once a victim’s self-petition is approved and the victim applies for lawful permanent residency, an in-person interview may be scheduled on that application at a USCIS district office.

10. Is the VAWA self-petition a pathway to citizenship? How long after the VAWA self-petitioner receives lawful permanent residency, are they eligible to apply to become a naturalized United States citizen?

A: Yes, the self-petition is a pathway to citizenship. For an applicant to become a citizen they must apply for lawful permanent residence first. The timeline for becoming a citizen depends on whether the abuser spouse is a citizen or lawful permanent resident. Once the VAWA self-petitioner is a lawful permanent resident they must wait a specified number of years before they are eligible to file for naturalization. The general difference for the process of an applicant to become a citizen is if they are married to a citizen, the waiting period to file is 3 years, and if they are married to a lawful permanent resident the waiting period to file is 5 years.¹⁵

¹² *Use and Outcomes of Protection Orders by Battered Immigrant Women*, COSMOS CORP., (Nov. 10, 2016), <https://niwaplibrary.wcl.american.edu/pubs/fam-gov-nijtechnicalreportprotectionorders11-10-06>

¹³ Nawal H. Ammar, Leslye Orloff, Mary Ann Dutton, *Presentation: Use and Outcome of Protection Orders by Battered Immigrant Women in the U.S.*, NIWAP, (Feb. 29, 2015), <https://niwaplibrary.wcl.american.edu/pubs/fam-ppwbnr-cposuseoutcome-2-19-15>.

¹⁴ I-360 Form, Petition for Amerasian, Widow(er), or Special Immigrant, DHS USCIS, pg. 2, <https://www.uscis.gov/i-360> (stating the instructions for the I-360 form).

¹⁵ Leslye Orloff and Kaitlyn Deibler, *VAWA Self-Petition Timeline with Background Checks*, NIWAP, March 29, 2019 <https://niwaplibrary.wcl.american.edu/pubs/3f-vawa-timeline-3-29-19>.

11. What is the immigration status of the VAWA self-petitioner before the application has been approved, during the time between the filing of a self-petition, and the issuance an approval (or denial) of the self-petition?

A: They don't have a legal immigration status. If they are sent a receipt notice and usually a notice of a Prima Facie determination from Vermont or Nebraska Service Center's VAWA unit. They can use the prima facie determination to obtain some limited public benefits, but it does not give them an actual immigration status.

12. How might the victim's country of origin affect VAWA self-petitioning case processing and access to lawful permanent residency?

A: The only time the victim's country of origin would affect the self-petition if the victim is married to a lawful permanent resident. For these LAWFUL PERMANENT RESIDENT approved VAWA self-petitioners the waiting time for a priority date (visa) to come available to be able to apply for LAWFUL PERMANENT RESIDENT status can be impacted by the victim's country of origin. The visa bulletin gives different (and often times longer) wait times for a visa for individuals from China, Mexico, India, and the Philippines – [Current and Upcoming Visa Bulletin](#) .

13. What are the case processing times at USCIS in 2020 for VAWA self-petitions?

A: That time could vary depending on the time that the adjudication takes, which could range from 18 to 24 months.¹⁶

14. Does the VAWA Unit continue to maintain an email address that attorneys and advocates can use to safely inquire about a VAWA self-petitioning case?

A: The special email address for victim advocates and attorneys to use is: HotlineFollowUpI360.vsc@dhs.gov.

Barriers to Filing and Help Available to Victims

15. What are the most common barriers for VAWA self-petitioning eligible applicants?

A: Many eligible victims assume they are not eligible to file a self-petition. Victims will often not file self-petitions if they are not assisted by a victim advocate or an attorney, and they are even more likely to not do so if they are limited English proficient (LEP) victims. In a national survey from 2017, advocates and attorneys surveyed that there was a 40% decline in one year in the cases that they assisted with. Advocates and attorneys play a huge role in helping victims not only receive a granted self-petition but also help with getting victims to file and start the process. It is crucial that victims have access to advocates and attorneys, and it is necessary for organizations, legal services, and attorneys to conduct

¹⁶ Katelyn Deibler and Leslye Orloff, VAWA Self-Petition Timeline with Background Check, NIWAP, (Mar. 2019) <https://niwaplibrary.wcl.american.edu/pubs/3f-vawa-timeline-3-29-19>.

screening and outreach to access eligible victims.¹⁷ The following are also common barriers:

- Language access
- Lack of access to immigration information/assistance/representation
- Economic concerns – how long after filing it takes to get work authorization and many battered immigrants do not know that public charge rules wouldn't apply to them
- Homelessness
- Fear for their own safety
- Fear for children's safety
- Fear that children will be taken away from them
- Fear of retaliation against family in home country
- Fear of deportation
- Fear of the police

16. Where can someone seeking the VAWA self-petition go to get more information about VAWA self-petitioning, who can help them, their legal options and services they can receive locally?

- A. NIWAP has a number of guides and brochures as resources. The resources include: Safe at Home, Know Your Rights, Rights and Options and, the DHS Infographic. All are available on the multi-lingual materials page of the NIWAP web-library.¹⁸ For

¹⁷ Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, NIWAP, (May 3, 2018) <https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>.

¹⁸ WEBPAGE: Multilingual Materials by Title <https://niwaplibrary.wcl.american.edu/multilingual-materials-by-title>; DHS Infographic: *Protections for Immigrant Victims*, NIWAP, (January 12, 2017), <http://niwap.wpengine.com/wp-content/uploads/DHS-Protections1.6-links-121516.pdf> (available in **Spanish**: <https://niwaplibrary.wcl.american.edu/pubs/dhs-protections-spanish-translation-2>; available in **Russian**: <http://niwap.wpengine.com/pubs/dhs-infographic-russian>; available in **Portuguese**: <http://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-Protections-Portuguese-Translation.pdf>; available in **Thai**: <http://niwap.wpengine.com/wp-content/uploads/DHS-Infographic-Thai.pdf>); DHS: *Immigration Options for Victims of Crimes*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes> (available in **Chinese**: <https://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516-chinese-final>; available in **Korean**: <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/CULT-Bro-DHSKoreanImmOptionsVictimsofCrime.pdf>; available in **Spanish**: <http://niwap.wpengine.com/pubs/cult-bro-dhsspanishimmoptionsvictimsofcrime>; available in **Russian**: <http://niwap.wpengine.com/wp-content/uploads/2015/CULT-Bro-DHSRussianImmOptionsVictimsofCrime.jpg>); *Brochure: Are You Safe at Home*, NIWAP, (2015) <https://niwaplibrary.wcl.american.edu/pubs/safe-at-home-brochure-english> (available in **Gujarati**: <http://niwap.wpengine.com/wp-content/uploads/2015/Safe-at-Home-Brochure-1210-Gujarti-r3.pdf>; available in **French**: <http://niwap.wpengine.com/wp-content/uploads/2015/Safe-at-Home-Brochure-French-Complete-9.2.15.pdf>; available in **Hindi**: <http://niwap.wpengine.com/wp-content/uploads/2015/Safe-at-Home-Brochure-Hindi-v1-FO-5-31-16.pdf>; available in **Korean**: http://niwap.wpengine.com/wp-content/uploads/Korean-Version-of-Are-You-Safe-at-Home-first-draft_JL-4-17.pdf; available in **Spanish**: <http://niwap.wpengine.com/wp-content/uploads/2015/Safe-at-Home-Brochure-Spanish-Complete-9.2.15.pdf>; available in **Tagalog**: <http://niwap.wpengine.com/wp-content/uploads/2015/Safe-at-Home-Brochure-TAGALOG-Complete-9.2.15.pdf>; available in **Russian**: <http://niwap.wpengine.com/wp-content/uploads/2015/Safe-at-Home-Brochure-Russian-Complete-9.2.15.pdf>; available in **Vietnamese**: <http://niwap.wpengine.com/wp-content/uploads/Safe-At-Home-Vietnamese-Incomplete-9.2.15.pdf>; available in **Japanese**: <http://niwaplibrary.wcl.american.edu/wp-content/uploads/Safe-at-Home-Brochure-Japanese-FO-5-31-16.pdf>; available in **Creole**: [**NIWAP** American University, Washington College of Law](http://niwaplibrary.wcl.american.edu/wp-</p></div><div data-bbox=)

local options, the NIWAP Directory of Programs with Experience Serving Immigrant Victims provides advocates and attorneys in each State.¹⁹

17. Can a person apply for a VAWA self-petition themselves, or is it better have help from an attorney and/or a victim advocate?

A: Most VAWA self-petitioners file their self-petitions with assistance from an attorney or accredited representative victim advocate.²⁰ At the time of filing, there is a required showing of a prima facie case. If the prima facie case is denied for insufficient evidence or any other reason, there could be a risk of removal for the applicant. Without the prima facie determination there are also risks of fee waivers being denied. It is recommended that a victim applicant has assistance with the filing of the VAWA self-petition by victim advocates and/or immigration attorneys with specialized experience with VAWA self-petition cases and cases involving immigrant crime victims. It is highly recommended for victim applicants to have assistance from advocates and attorneys when there is any issue of inadmissibility.²¹

18. Is the process (forms, etc.) user-friendly and available in various languages?

A: The USCIS forms are not as easily accessible or language accessible. It is highly recommended that a victim advocate or attorney assist with filling out the forms with a victim-applicant.

19. How do potential petitioners find attorneys or advocates who can help them?

[content/uploads/2015/Safe-at-Home-Brochure-1210-Creole-r2.pdf](http://niwaplibrary.wcl.american.edu/wp-content/uploads/Safe-at-Home-Brochure-1210-Creole-r2.pdf); available in **Chinese**: http://niwaplibrary.wcl.american.edu/wp-content/uploads/Safe-at-Home-Brochure_Chinese_Traditional-Incomplete-9.2.15-FO.pdf); *Brochure: Know Your Rights*, NIWAP, (Sept. 12, 2015) <http://niwap.wpengine.com/wp-content/uploads/2015/BROCHURE-Know-Your-Rights-English-9.2.15.pdf> (available in **Arabic**: http://niwap.wpengine.com/wp-content/uploads/Arabic-Version_Know-Your-Rights-FO-6-1-16.pdf; available in **French**: <http://niwap.wpengine.com/wp-content/uploads/2015/IWP-KnowYourRights-Booklet-French-v1r1.pdf>; available in **Spanish**: <http://niwap.wpengine.com/wp-content/uploads/2015/KnowYourRights-Spanish-FO-6-1-16.pdf>; available in **Russian**: http://niwap.wpengine.com/wpcontent/uploads/Know_Your_Rights_Russian_Complete-9.2.15.pdf); *Brochure: Rights and Options for Battered Immigrant, Migrant, and Refugee Women*, NIWAP, (Sept. 12, 2015) <https://niwaplibrary.wcl.american.edu/pubs/brochure-rights-and-options> (available in **Arabic**: <http://niwap.wpengine.com/wp-content/uploads/2015/CULT-Qref-ArabicRightsOptions.pdf>; available in **French**: <http://niwap.wpengine.com/wp-content/uploads/Rights-and-Option-Complete-French-9.2.15.pdf>; available in **Hindi**: <http://niwap.wpengine.com/wp-content/uploads/Rights-and-Option-Complete-Hindi-v1.pdf>; available in **Spanish**: <http://niwap.wpengine.com/wp-content/uploads/Rights-and-Option-Complete-Spanish-FO-6-1-16.pdf>; available in **Russian**: <http://niwap.wpengine.com/wp-content/uploads/2015/Rights-and-Option-Complete-Russian-9.2.15.pdf>); *Trauma Informed – Structured Interview Questionnaires for Immigration Cases (SIQI)*, NIWAP, (July 12, 2018) <https://niwaplibrary.wcl.american.edu/pubs/siqi-trauma-informed-tool> (available in **Chinese**: <http://niwap.wpengine.com/pubs/traum-tool-4-18-18-final-chinese>; available in **Russian**: http://niwaplibrary.wcl.american.edu/wp-content/uploads/SIQI_RUS_Complete-9.2.15-1.pdf).

¹⁹ *Directory of Programs with Experience Serving Immigrant Victims*, NIWAP, <http://niwap.wpengine.com/home/directory-programs-serving-immigrant-victims>.

²⁰ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 2, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

²¹ *VAWA Red Flags*, NIWAP, (July 16, 2015) <https://niwaplibrary.wcl.american.edu/pubs/vawa-red-flags>; I-360; Form, Petition for Amerasian, Widow(er), or Special Immigrant, DHS USCIS, pg. 2, <https://www.uscis.gov/sites/default/files/document/forms/i-360instr.pdf> (stating the instructions for the I-360 form).

A: Petitioners may find attorneys and advocates in NIWAP's national directory.²² It is extremely important to identify an attorney or accredited representative with specialized training and experience with VAWA self-petition cases. Many immigration attorneys do not have this expertise.

20. If a survivor files a VAWA self-petition and the abusive spouse is a lawful permanent resident will the self-petition impact the abuser's lawful permanent residency status or the abusive partner's ability to renew their green card when it expires?

A: No, it will not. Filing of the self-petition has no impact on the abuser's lawful permanent residency status. The only way a person's lawful permanent residency status can be taken from them is if there is some ground of removability or inadmissibility (if the person leaves and is seeking reentry to the US) is triggered or if USCIS is seeking recession of the status due to fraud.²³ Criminal convictions for domestic violence or findings that the perpetrator violated a civil protection order can cause deportation of a lawful permanent resident.²⁴

VAWA Confidentiality Protections, Safety Planning and Language Access

21. What are safety and lethality issues specific to immigrant/migrant survivors?

A: Research has found that immigration related abuse is a factor that co-occurs or predicts escalation of abuse to include physical abuse and sexual abuse.²⁵ Battered immigrant victims who are eligible to self-petition often do not have legal status because the abuser failed to file immigration papers for them. Abusers will use the immigration process as a way to maintain power and control over the victim. This tactic highlights the presence of abuse in the household and provides the court with additional evidence in favor of granting custody to the immigrant victim of domestic violence.²⁶

22. What are federal vs. state-specific services available for immigrant survivors?

A: Immigrant survivors have access to services and benefits. Both documented and undocumented immigrant survivors have access to legal services, family court, language access, police assistance, protection orders, child custody & support, have their abusers criminally prosecuted, public benefits for their children, assistance for crime victims, shelter, transitional housing, WIC/school lunch & breakfast, primary/secondary education, immunizations, emergency medical care, care from community & migrant health clinics, and VOCA funds. Once an immigrant victim files a VAWA self-petition and receives their

²²Directory of Programs with Experience Serving Immigrant Victims, NIWAP, <http://niwap.wpengine.com/home/directory-programs-serving-immigrant-victims>.

²³ INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb); 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb), (2000)(relating to loss of U.S. citizenship); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa); 8 U.S.C. § 1154§ 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa), (2000) (relating to loss of lawful permanent resident status).

²⁴ INA § 237(a)(7).

²⁵ Giselle Hass, Mary Ann Dutton, Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, 7 INTERNATIONAL JOURNAL OF VICTIMOLOGY (Summer 2000).

²⁶ Veronica T. Thronson, Leslye E. Orloff, Carole Angel, FAMILY AND INTIMATE PARTNER VIOLENCE QUARTERLY, Vol. 9, Issue 2 &3, pg. 80, 81 (Fall 2016, Winter 2017).

prima facie determination the victim becomes as qualified immigrant eligible for some federal and states funded public benefits. Which benefits a VAWA self-petitioner and their children are eligible for will depend on the state, when the victim first entered the U.S., and the type of benefit they need. To identify what they immigrant survivor is eligible for in your state use NIWAP's interactive public benefits map and state public benefits charts²⁷

23. What resources are available to help immigrant domestic violence victims?

A: There are a number of resources in communities across the country with victim advocates and attorneys that are available for immigrant domestic violence victims. Those resources can be found in NIWAP's national directory. The NIWAP web library contains tools, training manuals, webinars and other resources to support attorneys, victim advocates and other professionals serving immigrant victim.²⁸ There are also federal resources for those who are limited English proficient (LEP).²⁹

24. Where can immigrant victims who are Limited English Proficient (LEP) receive help through a hotline or crisis line that can provide her an interpreter?

A: There are national and state resources for immigrant victims who are LEP.³⁰ The national technical assistance provide on language access for victims of domestic violence, sexual assault, stalking and dating violence is the Asian Pacific Institute on Gender Based Violence which provides technical assistance, training and a useful website of materials.³¹ The National Association of Judiciary Interpreters & Translators has a national directory of interpreters and translators that are available to victims.³² The Vera Institute of Justice has published a resource that provides best practices for representing immigrant victims who are LEP as well as a directory that is categorized by language and state.³³ For more resources, the National Center for State Courts provides an interactive map to language access materials by state.³⁴

25. Does the victim have to speak English to file a self-petition?

²⁷ See Leslye Orloff, State-Funded Public Benefits Comparison Chart, NIWAP, (April 9, 2021), <https://niwaplibrary.wcl.american.edu/pubs/state-benefits-comparison-chart>; see also, *All State Public Benefits Charts and Map*, NIWAP, (2019) (linking to state-by state charts with full legal citations documenting access to state and federal public benefits for VAWA and U visa victims and other immigrant survivors).

²⁸ National Immigrant Women's Advocacy Project (NIWAP): <https://niwaplibrary.wcl.american.edu/>.

²⁹ Civil Rights: Limited English Proficient, U.S. DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, <https://www.ojp.gov/program/civil-rights/limited-english-proficient-lep>; *Directory of Service Providers*, NIWAP, <http://directory.niwap.org/>.

³⁰ *Language Access General Materials*, NIWAP, (Updated June 18, 2019), <https://niwaplibrary.wcl.american.edu/language-access-materials>.

³¹ *Language Access General Materials*, NIWAP, (Updated June 18, 2019), <https://niwaplibrary.wcl.american.edu/language-access-materials>.

³² *Find a Translator: Search Directory*, NAJIT, <https://najit.org/resources/find-interpreter/>;

³³ *Bridging the Language Divide: Promising Practices for Law Enforcement*, VERA INSTITUTE OF JUSTICE, pg. 52-53 https://www.vera.org/downloads/Publications/bridging-the-language-divide-promising-practices-for-law-enforcement/legacy_downloads/vera_bridginglang_FINAL_tagged-v2.pdf.

³⁴ *Language Access Programs by State*, NATIONAL CENTER FOR STATE COURTS, <https://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/resources-for-program-managers/lap-map/map>.

A: No. English is not a requirement, in fact many survivors have limited English proficiency, often work with interpreter together with their lawyer or victim advocate to fill out documents and submit.³⁵

26. What happens if the victim’s citizen or lawful permanent resident abusive spouse finds out about the VAWA self-petition and tries to block the filing of the self-petition or tries to interfere in the victim’s VAWA self-petition case?

A: If the abusive spouse tries to block the filing of the self-petition, then those actions may be used as evidence in the case as support for an extreme cruelty showing. Immigration related abuse is not only relevant evidence to show extreme cruelty and battery but can also corroborate the existence of physical and sexual abuse.³⁶ Importantly, special VAWA confidentiality laws bar DHS from relying upon, seeking, or using information provided by an abuser to harm a victim or interfere with the victim’s immigration case.³⁷ In VAWA self-petitioning cases victims are protected by VAWA confidentiality the moment there is a marriage to a U.S. citizen or lawful permanent resident and there is abuse or a parent or step-child relationship that includes abuse. VAWA confidentiality protections apply in these cases before any VAWA self-petition is filed. If you are working with a survivor who is going to be filing a VAWA self-petition it is best practice to give the victim a letter on your agency’s stationary stating that they are a victim of domestic violence or child abuse and they are in the process of filing a VAWA self-petition. Instruct the victim to carry this with them and show it to any immigration enforcement official they encounter. They should call you immediately if this occurs.³⁸

27. Are people that file VAWA self-petitions being "flagged" by USCIS with that information being conveyed to ICE?

A: No. VAWA Self-petitions are not being flagged by USCIS and being conveyed to ICE.³⁹ On the contrary, VAWA self-petitions cases are “red flagged” when they are filed and places into a special centralized system that notifies all DHS staff including immigration enforcement officials that the victim has VAWA confidentiality protection any enforcement action against the victim cannot proceed without compliance with VAWA

³⁵ Civil Rights: Limited English Proficient, U.S. DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, <https://www.ojp.gov/program/civil-rights/limited-english-proficient-lep>; *Directory of Service Providers*, NIWAP, <http://directory.niwap.org/>.

³⁶ *Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-ava-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slides 20, 41, 42 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

³⁷ *Three Prongs of VAWA Confidentiality*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/conf-ava-bro-3prongsofconfidentiality>.

³⁸ If your battered immigrant client is stopped by immigration enforcement, call NIWAP for technical assistance contact info here: (202) 274.4457 or email at info@niwap.org.

³⁹ *DHS Q&A Sessions*, ASSISTA, (Nov. 9, 2005), <http://library.niwap.org/wp-content/uploads/ASISTA-NIWAP-presentation-LAV-training.pdf>.

confidentiality laws that limit enforcement against victims.⁴⁰ It also informs ICE and CBP that this person is a victim who should be afforded victim witnesses protection.⁴¹

Family Members That Can be Included in the Self-Petition

28. Can a VAWA self-petitioner include any of her children who are not citizens or lawful permanent residents in the victim's VAWA self-petition application?

A: Yes.⁴²

a) How does the victim include children in the VAWA self-petition?

A: An abused spouse can include an unmarried child or stepchild that is under the age of 21 years old.⁴³ If the child is over 21 years old, the victim applicant must file an additional I-130 form with the I-360 to Petition for an Alien.⁴⁴ Once the I-360 form is approved, the victim applicant may ask for deferred action on behalf of the child. If the self-petition is approved after the child 21 years old, the child will remain eligible for the VAWA self-petition and deferred action.⁴⁵

b) What documents are required to be sent with the victim's VAWA self-petition for the children to be included in the application?

A: The following documentation must be included for each child: (1) child's birth certificate, listing the names of the child's parents along with an English translation,

⁴⁰ MEMORANDUM: FIELD OFFICE DIRECTORS AND SPECIAL AGENTS IN CHARGE, USCIS, (Jan. 22, 2007) <https://niwaplibrary.wcl.american.edu/pubs/dhs-ice-field-officer-policy-va-wa-confidentiality-1-22-2007>; THE COUNCIL ON COMBATING VIOLENCE AGAINST WOMEN, DHS, (Mar. 15, 2013), <https://niwaplibrary.wcl.american.edu/pubs/dhs-va-w-council-instruction>; *VAWA Red Flags*, NIWAP, (July 16, 2015) <https://niwaplibrary.wcl.american.edu/pubs/vawa-red-flags>; I-360.

⁴¹ MEMORANDUM: DHS PROSECUTORIAL DISCRETION: CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS, USCIS, (June 17, 2011), <https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>.

⁴² Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 4, 9, 15, 18, 19, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>; *Webinar – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-va-wa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slides 21 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

⁴³ DOJ INS: Petitioner for Relatives, Widows and Widowers, and Abused Spouses, and Children, 8 C.F.R. 204.2(c)(4) (1996); *Webinar – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-va-wa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slides 29 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

⁴⁴ I-30 Form, Petition for Relative Alien, DHS USCIS, <https://www.uscis.gov/i-130>.

⁴⁵ Once the VAWA self-petition is filed, neither child applicant VAWA self-petitioners nor children included in their parent's VAWA self-petition age out. MEMORANDUM: AGE OUT PROTECTIONS AFFORDED BATTERED CHILDREN PURSUANT TO THE CHILD STATUS PROTECTION ACT AND THE VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT, USCIS, (Aug. 17, 2004) <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoageoutprotectionscspavtvp-08-17-04>; MEMORANDUM: REVISED GUIDANCE FOR THE CHILD STATUS PROTECTION ACT (CSPA), USCIS, (July 2004) <https://niwaplibrary.wcl.american.edu/pubs/revised-guidance-cspa>.

where applicable; (2) if the self-petitioner is the child's father: marriage license or certificate documenting the child's parents were married, Evidence of the child's legitimation; or evidence of a bona fide parent-child relationship (pictures, letters).⁴⁶

c) Can a VAWA self-petitioner include in their application children of the marriage who were not born in the United States and who are also not U.S. citizens?

A: Yes. All children under 21 and not born in US may be included.⁴⁷ If a victim has stepchildren who need protection they may also be included in the self-petition.

29. Which family members can an adult victim include in their self-petition?

A: For a spouse applicant, their unmarried children or stepchildren who are under the age of 21 may be included in their application. For a child applicant who has suffered battery and extreme cruelty, their parent, stepparent, or unmarried children under the age of 21 may be included. For a parent applicant that has been abused by their U.S. citizen child over the age of 21, their unmarried children under the age of 21 may be included.⁴⁸

30. Which family members can child victims include in their VAWA self-petitions? Does this include siblings?

A: The self-petitioning child must be unmarried and under the age of 21 at the time filing. Generally in immigration law, adopted children are considered "children" for immigration purposes only if the adoption was finalized before the child reached the age of 16 and the child has been in the adoptive parent's physical and legal custody for two years (or is the sibling of an adopted child who meets all of the requirements and is adopted by the same parents before the age of 18).⁴⁹

31. Which elder abuse victims qualify to self-petition?

A: Petitioner will qualify as a qualified elder abuse victim if the abuser is their child over the age of 21 and a U.S. citizen child.⁵⁰

a) Can a victim abused by their son-in-law or daughter-in-law qualify to self-petition?

⁴⁶ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 18, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

⁴⁷ *Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-va-wa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slides 21 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

⁴⁸ Same as above *Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-va-wa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slide 29 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

⁴⁹ INA § 101(b)(1)(E)(i).

⁵⁰ *VAWA Self-Petitioning Eligibility Flow Chart for Abused Elders, Vulnerable for Disabled Adults*, NIWAP, (June 17, 2019) <https://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-elder-abuse-flow-chart-6-17-19-pdf>.

A: In order to qualify as a self-petitioning parent must be eligible for classification as an immediate relative under INA § 201(b)(2)(A)(i). The definition requires the abuser child to be over the age of 21 when the self-petition is filed in order for the abused parent to qualify for VAWA self-petitioning. This includes biological parents, stepparents, and adoptive parents.⁵¹ Son-in-laws and daughters-in-law do not meet these definitions. If a person suffered domestic violence or other form of abuse covered by the U visa statute perpetrated by their son-in-law or daughter-in-law they would qualify for a U visa, but not a VAWA self-petition.

Collecting Evidence to Support the Self-Petition

32. What kind of documentation should the petitioner victim collect to best support the VAWA self-petition case?

A: DHS is required to accept “any credible evidence” submitted in support of the petition.⁵² There are no specific forms of evidence that DHS can require. DHS is required to accept any credible evidence submitted in support of the application. Police reports, medical records, and protection orders are all examples of helpful evidence, but they are not required.⁵³ NIWAP’s Evidence checklist provides a list of the requirements that must be met by an applicant and some suggestions of evidence that may be offered to meet each requirement. The following list includes the requirements and the provided link contains the suggested forms of evidence for each:⁵⁴

- Proof of applicant’s identity and immigration status
- Evidence of spouse’s/parent’s/over 21-year-old citizen son or daughter’s Immigration status
- Evidence of the marital relationship
- Termination of Previous marriages
- Proof of good faith marriage
- If abusive spouse has died within the last two years
- If applicant has divorced her abusive spouse within the last two years (there are requirements to show)
- If abusive spouse is engaged in a bigamous relationship (there are requirements to show)

⁵¹ INA § 101(b).

⁵²See Leslye E. Orloff, Kathryn C. Isom, Edmundo Saballos, *Mandatory U-Visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act’s Immigration Protections And Its “Any Credible Evidence” Rules – A Call for Consistency*, GEORGETOWN J. OF GENDER & L., <https://niwaplibrary.wcl.american.edu/pubs/call-for-consistency-mandatory-undermines-vawa> (containing a detailed discussion of any credible evidence laws and a full legislative history).

⁵³ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 7, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.
Webinar – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slides 32-54 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

⁵⁴ *Evidence List: Immigrant Victims Applying for VAWA Self-Petitioning*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/evidence-checklist-vawaselfpetition>.

- Proof of parent/child relationship
- Proof of residence with abusive spouse/former spouse/parent/over 21-year-old citizen child
- Proof of Battering or Extreme Cruelty
- Good Moral Character
- Dependent Children to Be Included in the Victims VAWA Self-Petition as Derivative Children
- If Applicant Lived Outside of the United States

a) What do the stronger cases look like?

A: The strongest cases usually include strong detailed declarations that are accompanied by the most additional evidence the victim can submit. The VAWA any credible evidence rules were created based upon an understanding that some immigrant victims would not be able to obtain supporting evidence, because it is under the control of the perpetrator, it is too dangerous to collect, or due to isolation, coercive control, or fear corroborating evidence does not exist. . In cases where a lot of the evidence is not possible to obtain or provide, the detailed declaration can make a very strong case. NIWAP has developed a trauma informed interview tool and approach that can assist attorneys and victim advocates in the development of strong well documented VAWA self-petition declarations.⁵⁵

33. How does a VAWA self-petitioner prove they suffered abuse that meets the definition of battering or extreme cruelty under U.S. immigration laws?

A: Proof of battering and extreme cruelty is a non-exhaustive list. The following is a list of suggestions to prove battering and extreme cruelty:⁵⁶

- Self-petitioner’s declaration
- Others’ declarations (family members, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelter crisis lines, support groups)
- Protection orders
- Criminal records
- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Medical records (injuries, scars PTSD, migraines, insomnia)
- Veterinarian records (pet and animal cruelty)
- Counselors (marriage, religious, mental health)
- Police Reports

⁵⁵ WEBPAGE: Trauma Informed Help for Immigrant Survivors, NIWAP, (Updated Nov. 11, 2020) <https://niwaplibrary.wcl.american.edu/trauma-informed-help-for-immigrant-survivors>; Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>.

⁵⁶ Leslye E. Orloff, Brittany Roberts, Stefanie Gitler, “Battering or Extreme Cruelty” Dawing Examples from Civil Protection Order and Family Law Cases, NIWAP, (Sept. 12, 2015) <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>; Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>;

a) Should evidence of immigration related abuse perpetrated by the citizen spouse be included in the VAWA self-petition including for example that the abusive spouse filed a family based visa petition (I-130) for the spouse and threatens to withdraw or has withdrawn the application or the abusive husband filed the I-130 family based visa petition for the children but not the immigrant victim spouse?

A: Yes. Immigration related abuse is not only relevant evidence to show extreme cruelty and battery but can also corroborate the existence of physical and sexual abuse. It is evidence commonly included in VAWA self-petitions and USCIS VAWA adjudicators have received training on the role immigration related abuse plays as a coercive control tool. Immigration related abuse is 10 times more likely in relationships where physical/sexual abuse occurs as opposed to emotional abuse. This type of abuse may also predict the escalation of abuse.⁵⁷

b) What fraud protections are there in the VAWA self-petitioning process to ensure that applicants cannot fake abuse gain legal immigration status through the VAWA self-petition?

A: All VAWA self-petitions are handled by a centralized, specially trained expert unit of USCIS, known as the VAWA Unit at the Vermont Service Center. The VAWA Unit staff receive specialized training on VAWA's immigration protections, laws, regulations and policies on VAWA self-petitions, legislative history, and the dynamics of the barriers facing immigrant victims of domestic violence, in addition to the detection and prevention of fraud.⁵⁸

c) Has the COVID-19 crisis made it harder for victims to win favorable decisions in VAWA self-petition cases based on extreme cruelty?

A: Yes. COVID-19 has posed many barriers for victims due to the closures and delays of courts. There have been many challenges of accessing attorneys to assist with the application process, as well as getting the appropriate evidentiary documents from agencies. There is also important that victim advocates and attorneys working with VAWA self-petitioners and other immigrant survivors have correct information about what COVID-19 related relief immigrant survivors are eligible to receive. Most pandemic related relief and services are open to all persons without regard to immigration states including emergency Medicaid for testing and treatment of

⁵⁷ Mary Ann Dutton, Leslye E. Orloff, Giselle Aguillar Hass, *Characteristics of Help-Seeking Behaviors, Resources, and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEORGETOWN J. ON POVERTY L. & POL. No. 2, (Summer 2000) [https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors](https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors;); *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slide 20 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

⁵⁸ William Kandel, Congressional Research Service, *Immigration Provisions of the Violence Against Women Act (VAWA)*, (May 15, 2012) <https://niwaplibrary.wcl.american.edu/pubs/vawa-2013-crs-report>

COVID-19. In addition, immigrant survivors who have legal work authorization are eligible for unemployment insurance and other CAREs Act relief.⁵⁹

d) Can economic and emotional abuse play a role in proving extreme cruelty, even when these forms of abuse would not be enough to get a protection order in the state?

A: Yes. There are many forms of emotional abuse that can constitute or contribute to extreme cruelty.⁶⁰ The VAWA self-petitioning regulations define “battering or extreme cruelty “as:

“being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.”⁶¹

“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.”⁶²

The following is a non-exhaustive list of evidence of coercive control that could contribute to proving extreme cruelty.⁶³

- Forms of Abuse

⁵⁹ WEBPAGE: Resources to Support Immigrant Survivors of Domestic Violence and Sexual Assault During the COVID-19 Pandemic, NIWAP, (Updated May 8, 2020) <https://niwaplibrary.wcl.american.edu/other-resources-covid-19>.

⁶⁰Giselle Hass, Mary Ann Dutton, Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, 7 INTERNATIONAL JOURNAL OF VICTIMOLOGY 1,2,3, (Summer 2000) <https://niwaplibrary.wcl.american.edu/pubs/lifetime-prevalence-dv-latinas> (containing a detailed discussion on extreme cruelty).

⁶¹ 8 C.F.R. §204.2(c)(1).

⁶² DOJ INS, 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).

⁶³ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: *Ch. 7 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 9-12, <https://niwaplibrary.wcl.american.edu/pubs/ch7-preparing-vawa-self-petition>; Leslye E. Orloff, Brittany Roberts, Stefanie Gitler, “Battering or Extreme Cruelty” *Dawing Examples from Civil Protection Order and Family Law Cases*, NIWAP, pg. 4-6, (Sept. 12, 2015) <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>; Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>; Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents, NIWAP, slide 44a (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

- Intimidation and Degradation
- Economic and Employment Related Abuse (forced labor, unemployment)
- Social Isolation
- Sexual Abuse Immigration-Related Abuse (rape and other forms of sexual behavior)
- Possessiveness and Harassment
- Physical Abuse
- Psychological Abuse leading to PTSD
- Verbal Abuse
- Constant Arguments About Couple's Sexual Relations
- Domination and Invalidation of Spouse
- Physical and Verbal Intimidation without Explicit Threat
- Using Child as a Tool
- Constant Complaints about Finances
- Alienating Parent from Children
- Indifference Toward Raising Children in Mutual Religious Beliefs
- Refusal to Participate in Children's Activities and Religious or Cultural Rights of Passage
- Hiding Personal and Sentimental Items

e) Can evidence of abused pets help prove battering or extreme cruelty?

A: Yes. Evidence of abused pets can prove intimidation of a victim. Veterinarian records can be a form of evidence to prove the abuse towards the pets.⁶⁴

34. What is the best way for a Limited English Proficient (LEP) victim to access the help needed to file a self-petition?

A: All programs that receive federal funding to serve domestic violence victims are required to provide language accessible services through the use of qualified interpreters.⁶⁵ Best practices are for victim advocates and attorneys working with LEP survivors to provide qualified interpreters and to advocate with other agencies from whom the LEP survivor needs assistance to ensure that they provide qualified interpreters as well.⁶⁶

35. How can case managers and victim advocates help advocate for VAWA self-petitioners and help them advocate for themselves?

⁶⁴ *Understanding Animal Abuse as Intimate Partner Violence*, BATTERED WOMEN'S JUSTICE PROJECT, (Jan. 2017), [BWJP_Understanding-Animal-Abuse-as-Intimate-Partner-Violence_1-2017.pdf](https://www.ncdsv.org/BWJP_Understanding-Animal-Abuse-as-Intimate-Partner-Violence_1-2017.pdf) (ncdsv.org); *Animal Cruelty and Domestic Violence*, NAT'L SHERIFFS' ASSOC., <https://www.sheriffs.org/Animal-Cruelty-and-Domestic-Violence>.

⁶⁵ *Language Access General Materials*, NIWAP, (Updated June 18, 2019), <https://niwaplibrary.wcl.american.edu/language-access-materials>.

⁶⁶ Leslye Orloff, Amanda Baron, Martha Cohen, *Ensuring Language Access to Immigrant Victims of Sexual Assault*, Ch. 2, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch2-victims-language-access>.

A: Nationally, the vast majority 91.6% of VAWA self-petition cases are filed with assistance from an attorney or victim advocate.⁶⁷ Case managers and victim advocates play an important role in collaborating with attorneys representing VAWA self-petitioners.⁶⁸ Victim advocates have the long-term relationships of trust with survivors and trauma informed expertise that improves the quality of a victim's immigration case when victim advocates and attorneys work together on a victim's self-petition case. When attorneys and victim advocates collaborate on the victim's self-petition cases, victim advocates help victims through the trauma of developing the self-petition affidavit and attorneys can represent more victims more effectively.⁶⁹ Case managers and victim advocates help screen petitioners for eligibility, gather evidence and supporting documentation, and help with drafting the declaration in using trauma-informed best practice approaches.⁷⁰

36. What role can the following professionals play in assisting immigrant victims filing VAWA self-petitions – victim advocates, psychologist, interpreters?

A: Victim advocates can assist in collecting evidence and preparing a victim's declaration for the VAWA self-petition case. Psychologists, victim advocates and case managers can provide their own affidavits that serve as supporting evidence documenting the battering and extreme cruelty, the trauma and abuse the VAWA self-petitioner and her children suffered.⁷¹ Affidavits from professionals who worked with immigrant survivors over a period of time are particularly helpful. In cases where the abuse was primarily extreme cruelty an evaluation by a forensic psychologist could also be helpful as is a statement from the victim's therapist.⁷²

37. What are best practices for attorneys and victim advocates collaborating to help victim's file VAWA self-petitions?

A: Victims need access to legal representation to file VAWA, U visa and T visa cases as early as possible. The victim advocates can serve as investigators for the pro bono lawyers. When victim advocates collaborate and help the lawyers collect evidence and particularly the initial draft of the victim's story for her immigration case affidavit, this approach delivers immigration assistance to the victim in a more culturally sensitive and trauma informed way. The victim advocate helps the victim collect the evidence in support of their case. The lawyer prepares and files the victim's case remotely with direct communication

⁶⁷ U VISA DEMOGRAPHICS – ANALYSIS OF DATA THROUGH FY 2019, USCIS, pg. 6, <https://niwaplibrary.wcl.american.edu/pubs/uscis-u-visa-demographics>.

⁶⁸ WEBINAR: *VAWA Confidentiality and Protections for Rural Immigrant Victims of Domestic Violence with Praxis*, NIWAP, (June 27, 2018), <https://niwaplibrary.wcl.american.edu/june-27-2018-vawa-confidentiality-praxis>.

⁶⁹ Leslye E. Orloff, *Remote Representation of Immigrant Victims in VAWA & U Visa Cases Statewide in New York*, NIWAP, (June 19, 2020) <https://niwaplibrary.wcl.american.edu/pubs/remote-representation-model-new-york-state>.

⁷⁰ WEBPAGE: Trauma Informed Help for Immigrant Survivors, NIWAP, (Updated Nov. 11, 2020) <https://niwaplibrary.wcl.american.edu/trauma-informed-help-for-immigrant-survivors>; WEBPAGE: The U Visa and VAWA Training Modules, NIWAP, (Nov. 19, 2018) <https://niwaplibrary.wcl.american.edu/the-u-visa-and-vawa-training-modules>.

⁷¹ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 7 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 15-16, <https://niwaplibrary.wcl.american.edu/pubs/ch7-preparing-vawa-self-petition>.

⁷² BARTON F. EVANS, GISELLE A. HASS, *FORENSIC PSYCHOLOGICAL ASSESSMENT IN IMMIGRATION COURT: A GUIDEBOOK FOR EVIDENCE-BASED AND ETHICAL PRACTICE* (1 ed. 2018).

between the victim and the lawyer arranged for by the victim advocate remotely on an as needed basis.⁷³

a) Do all VAWA self-petitioners need attorneys?

A: Petitioners are not required to have an attorney when filing, however it is recommended that trained attorneys assist petitioners during the process. VAWA self-petitioners need assistance with the filing of the VAWA self-petition from attorneys and/or victim advocates with specialized experience with VAWA self-petition cases and cases involving immigrant crime victims. This is particularly necessary when victims have any red flags or other issues of inadmissibility in their case is beyond the fact that the victim may be undocumented.⁷⁴ It is important to note that any immigrant who is not a naturalized citizen or lawful permanent resident can qualify to self-petition including both immigrants who are in the U.S. lawfully and those who are undocumented.

b) How can victim advocate best support self-petitioners?

A: Victim advocates will be able to assist petitioners with the filing process by helping to collect and organize evidence for the application, help prepare fill out the trauma informed interviewing tool and help the victim write their story for their affidavit, assist with any accessing language access resources, with safety planning, and in accessing other resources depending on the needs of the applicant during the VAWA self-petitioning process. Additionally, the victim advocates can collaborate with attorneys representing the victim by serving as investigators for pro bono attorneys and creating trusting relationships with the victims ..⁷⁵

38. Considering the difficulties victims have with transportation and travel in a time of COVID-19 what options might there be for remote representation of victims who need to file VAWA self-petitions?

A: It is important that immigrant victims living in larger cities, rural communities, small⁷⁶ towns, and suburban communities, have access to resources for remote legal representation in VAWA self-petition cases. NIWAP and the California Coalition Against Sexual Assault (CALCASA) have created a model for remote representation of immigrant victims by pro bono law firms. This model is in the process of potentially being adopted by state of New York.⁷⁷ NIWAP provides technical assistance that helps victim advocates

⁷³ Leslye E. Orloff, *Remote Representation of Immigrant Victims in VAWA & U Visa Cases Statewide in New York*, NIWAP, (June 19, 2020) [https://niwaplibrary.wcl.american.edu/pubs/remote-representation-model-new-york-state-i-360-Form-Petition-for-Amerasian-Widow\(er\)-or-Special-Immigrant-DHS-USCIS-pg-2](https://niwaplibrary.wcl.american.edu/pubs/remote-representation-model-new-york-state-i-360-Form-Petition-for-Amerasian-Widow(er)-or-Special-Immigrant-DHS-USCIS-pg-2), <https://www.uscis.gov/i-360> (stating the instructions for the I-360 form).

⁷⁴ *VAWA Red Flags*, NIWAP, (July 16, 2015) [https://niwaplibrary.wcl.american.edu/pubs/vawa-red-flags-i-360-Form-Petition-for-Amerasian-Widow\(er\)-or-Special-Immigrant-DHS-USCIS-pg-2](https://niwaplibrary.wcl.american.edu/pubs/vawa-red-flags-i-360-Form-Petition-for-Amerasian-Widow(er)-or-Special-Immigrant-DHS-USCIS-pg-2), <https://www.uscis.gov/sites/default/files/document/forms/i-360instr.pdf> (stating the instructions for the I-360 form).

⁷⁵ Leslye E. Orloff, *Remote Representation of Immigrant Victims in VAWA & U Visa Cases Statewide in New York*, NIWAP, (June 19, 2020) <https://niwaplibrary.wcl.american.edu/pubs/remote-representation-model-new-york-state-WEBINAR-VAWA-Confidentiality-and-Protections-for-Rural-Immigrant-Victims-of-Domestic-Violence-with-Praxis>, NIWAP, (June 27, 2018), <https://niwaplibrary.wcl.american.edu/june-27-2018-vawa-confidentiality-praxis>.

⁷⁶ Contact NIWAP for technical assistance by calling (202) 274-4457 or by email info@niwap.org.

⁷⁷ Leslye E. Orloff, *Remote Representation of Immigrant Victims in VAWA & U Visa Cases Statewide in New York*, NIWAP, (June 19, 2020) <https://niwaplibrary.wcl.american.edu/pubs/remote-representation-model-new-york-state>.

and attorneys develop, design, and implement victim advocate/attorney collaborations that are effective in expanding representation of immigrant survivors in VAWA self-petitioning and U visa cases.

39. What is the best way to prepare documents that need to be translated as evidence to include in the VAWA self-petition cases where the evidence is written in another language for example, texts, emails, social media screenshots, and key word searches?

A: If documents are submitted in a language other than English, the applicant must also submit a full English translation. The translator must sign a certification that the English language translation is complete and accurate, and that the translator is competent to translate from the non-English language into the English language. The certification should also include the date, the translator's signature and printed name, and may contain the translator's contact information.⁷⁸

40. Could social media posts count as and be treated similar to love letters in proving good faith marriage in a VAWA self-petition case?

A: Yes. Social media is a platform that could contain signs and evidence of a Good Faith marriage.⁷⁹

41. How might children be considered proof of good faith marriage, particularly in a case where the children are conceived by marital rape?

A: A child is a sign of a good faith marriage. Even if the child is conceived by marital rape, the marriage can still be found in good faith. Facts of that battering or extreme cruelty that are occurring within a marriage provides evidence that of the validity of the marriage for the victim's VAWA self-petition case. This includes evidence of sexual assault occurring within a marriage. The VAWA self-petitioning regulations require consideration of the totality of the circumstances and the totality of the evidence submitted that fact that a child was born as a result of marital rape, provides evidence both of abuse and of good faith marriage..⁸⁰

42. How should we best advise clients to proceed when their spouse/relative has their important documents, or has destroyed their documents?

A: If the documents have not been destroyed, a victim can seek a civil protection order from the family court that orders the perpetrator to turn the documents over to the victim or

⁷⁸ I-360 Form, Petition for Amerasian, Widow(er), or Special Immigrant, DHS USCIS, pg. 11, <https://www.uscis.gov/i-360> (stating the instructions for the I-360 form). For more information on language access and translation: see *Language Access, Interpretation, and Translation*, ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, (2011), <https://www.api-gbv.org/culturally-specific-advocacy/language-access/>.

⁷⁹ Leslye Orloff, Brittany Roberts, *Good Faith Marriage in VAWA Self-Petitioning Cases*, NIWAP, (Feb. 17, 2013), <https://niwaplibrary.wcl.american.edu/pubs/good-faith-marriage-vaawa>; Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

⁸⁰ DOJ INS, 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); Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 19, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

the victim's counsel. This can be accomplished as part of an order where the documents are turned over in the presence of local police standing by at the residence during the exchange. Some judges order that the perpetrator turn over the documents in open court. A protection order judge can also order that the perpetrator pay for the replacement of destroyed documents.⁸¹ The destruction of important documents is part of the pattern of abuse and provides evidence of abuse. One of the reasons Congress created VAWA's any credible evidence rules was to provide victims the flexibility identify other ways of meeting their burden of proof in VAWA self-petition cases if they did not have access to documents typically used as proof.⁸² They types of evidence victims typically collect and submit as part of their VAWA self-petition cases to full support their application help address gaps in evidence that has be destroyed or is unattainable due to the perpetrator's abuse. The best practices would be to: (1) collect all necessary details of the client's story by asking open-ended questions through a series of interviews. Advocates can collect this information for the attorney; (2) Obtain the draft affidavit the advocate developed in collaboration with the client and organize it in a format that will be most effective for the adjudicator; (3) Collect affidavits and other documents corroborating the existence of domestic violence and a good faith marriage; (4) Index and summarize supporting documents by elements of proof so DHS examiners may easily understand which documents support which elements of proof and how/when documents were destroyed by abuser; (5) Include a cover letter providing a road map through the case.⁸³

43. As part of the evidence in a VAWA self-petitioning case, the victim is asked to submit a copy of their passport. Which pages of the passport need to be submitted, or is a full copy of the passport required?

A: A full copy of passport is required.⁸⁴

44. What is the procedure for filing FOIA (Freedom of Information Act) requests for VAWA self-petitioners and why are these requests important in VAWA self-petition cases?

A: FOIAs are filed on Form I-693 with USCIS, U.S. CBP, ICE, (which office depends on what you are looking for) or EOIR (the Immigration Court). Filing FOIA requests are important because you want to get a copy of anything that an applicant or the applicant's abuser has filed before, decisions on cases, notes from officers, contact at the border, and/or proof of entry, removal, voluntary return, etc. FOIA requests are recommended any time a previous application has been filed or the victim has had prior contact with

⁸¹ Leslye Orloff, Cecilia Olavarria, Laura Martinez, Jennifer Rose, Joyce Noche, *Battered Immigrants and Civil Protection Orders Ch. 5.1*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch5-1-imm-civil-protection-orders>.

⁸² See Leslye E. Orloff, Kathryn C. Isom, Edmundo Saballos, *Mandatory U-Visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act's Immigration Protections And Its "Any Credible Evidence" Rules – A Call for Consistency*, GEORGETOWN J. OF GENDER & L., <https://niwaplibrary.wcl.american.edu/pubs/call-for-consistency-mandatory-undermines-va-wa>.

⁸³ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 14, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

⁸⁴ INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154 (a)(1)(B)(ii)(II)(aa)(BB) (2000); Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 25, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

immigration officials. The main goal for filling out the FOIA is ensuring that all of the information filled out is consistent between all forms and to learn what information DHS has already received on the self-petitioner and to provide a full explanation of any potential inconsistencies.⁸⁵

45. What are some reasons why a VAWA self-petition may be denied?

A: A case may be denied if the applicant does not provide sufficient evidence and meet the victim's burden of proof for each VAWA self-petition eligibility requirement.⁸⁶ Prior to denial, USCIS will issue a request for further evidence (RFE) that gives the self-petitioner an opportunity to supplement the evidence in the case and address the adjudicator's questions. USCIS is also issue a notice of intent to deny that provides victims an additional opportunity to submit needed evidence.⁸⁷

Self-Petitioning Eligibility Requirements

46. To be eligible to file a VAWA self-petition, must there be formal criminal charges of the physical/sexual violence or a police report filed?

A: No.⁸⁸

47. Can the victim self-petition while continuing to reside with the abuser? Does the self-petition require that the victim separate from the abuser?

A: The petition should state when, where, and for how long the petitioner resided with the abuser, and the nature of the relationship while living together. There is no requirement that the victim separate from the abuser.⁸⁹ VAWA self-petitioning was designed to allow battered immigrant spouses to confidentially self-petition so that they can safely apply whether or not they have separated from the abuser. Many VAWA self-petitioners continue living with their abusers until they receive legal work authorization as part of their VAWA self-petition case.⁹⁰

⁸⁵ Immigration Nationality Act § 212 (d)(5)(A); Tri-Parte MOA - USCIS, ICE, and CPB, signed on Sept. 28, 2008, www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf.

⁸⁶ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

⁸⁷ MEMORANDUM: Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents, pg. 11, USCIS, (April 16, 1996), https://niwaplibrary.wcl.american.edu/pubs/aleinikoff_letter_implementation_selfpetition; POLICY MEMORANDUM: Requests for Evidence and Notices of Intent to Deny, USCIS, (June 3, 2013), <https://niwaplibrary.wcl.american.edu/pubs/uscis-pm-rfe>.

⁸⁸ 8 C.F.R. 204.2(c)(2)(iv); Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

⁸⁹ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 15, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

⁹⁰ Krisztina E. Szabo, David Stauffer, Benish Anver, Leslye Orloff, *Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP, (Feb. 12, 2014) https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12

48. How does the victim prove the citizenship or immigration status of their abusive husband or parent?

A: The victim must prove the immigration status of their abusive spouse as part of the evidence required for approval of their self-petition.⁹¹ When the abuser is a naturalized citizen or lawful permanent resident USCIS will search its own records to verify the citizenship or immigration status of the abuser when requested by the self-petitioner.⁹² Victim advocates and attorneys should work with self-petitioners as part of safety planning to identify safe ways victims can obtain the perpetrators “A” number or a copy of the perpetrators passport. One way to obtain documents that prove the perpetrator’s citizenship or lawful permanent resident status can be obtain a court order as part of a protection order of family law case ordering the perpetrator to turn over that information.⁹³ The following is a list of documents that victims should obtain copies of that can be used to prove the abuser’s U.S. Citizen or Lawful Permanent Resident Status:⁹⁴

- U.S. Citizen
 - Birth Certificate
 - Passport
 - Naturalization Certificate
 - Baptismal Record
 - School Record
 - Affidavits
 - “A” Number if Naturalized
- Lawful Permanent Citizen
 - Copy of resident card (I-551), front and back
 - Copy of Passport or I-94 with “temporary proof of resident” stamp
 - Immigration Correspondence or Notice
 - “A” Immigration Case number

a) How might cases of naturalized citizen or lawful permanent resident spouses differ from cases involving U.S. born abusive spouses or parents?

⁹¹ 8 C.F.R. 204.2(c)(iii)

⁹² 8 C.F.R. 204.1(g)(3); 8 C.F.R. 103.2(b)(17).

⁹³ Leslye Orloff, Cecilia Olavarria, Laura Martinez, Jennifer Rose, Joyce Noche, *Battered Immigrants and Civil Protection Orders Ch. 5.1*, pg. 20-22, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch5-1-imm-civil-protection-orders>.

⁹⁴Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 7 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 18-19, <https://niwaplibrary.wcl.american.edu/pubs/ch7-preparing-avaa-self-petition>; DOJ INS, *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); *Webinar–VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-avaa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slide 46 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/avaa-self-petition-2020>.

A: Petitioner can provide the alien number of the abuser and let USCIS know when the abuser was granted status. In many cases the USCIS can cross-check this in their databases.⁹⁵

b) What are the risks of denial if the victim cannot prove that the perpetrator is a U.S. born citizen, naturalized citizen, or lawful permanent resident?

A: A victim may be placed in removal proceedings if the case is denied. However, prior to denial victims will be provided an opportunity to through the request for further evidence and notice of intent to deny process to supplement the record with additional proof of the abuser's citizenship or lawful permanent residency status..⁹⁶ If a victim encounters problems proving the abusive spouse's citizenship or lawful permanent residency status, the victim might additionally consider filing a U visa application which provides the victim a back-up option should USCIS deny the victim's self-petition for failure to prove the perpetrator's citizenship.

49. Does the victim have to be legally married to the citizen or lawful permanent resident abuser to file a VAWA self-petition?

A: Yes, the victim must be legally married to the citizen or lawful permanent resident abuser to be eligible to file.⁹⁷

50. Does VAWA self-petitioning require a marriage?

A: Yes, it is required that the self-petitioning spouse be married or have been married to the abusive citizen spouse.⁹⁸ The victim must file the VAWA self-petition within two years of termination of the marriage.⁹⁹

a) How are same-sex marriages treated for VAWA self-petitioning purposes?

A: On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA). As a matter of federal law, all marriages performed in the

⁹⁵ 8 C.F.R. 204.1(g)(3); 8 C.F.R. 103.2(b)(17); Federal Register / Vol. GI, No. 59 / Tuesday, March 26, 1996 1 Rules and Regulations 13063; Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

⁹⁶ DOJ INS, 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); 8 C.F.R. 103.2(b); 8 C.F.R. 103.5a(b); POLICY MEMORANDUM: *Change in Standard Timeframes for Applicants or Petitioners to Respond to Requests for Evidence, Revisions to Adjudicator's Field Manual (AFM)*, USCIS, (July 7, 2011), <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/change-timeframes-rfe.pdf>; Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

⁹⁷ DOJ INS, 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).

⁹⁸ DOJ INS: Petitioner for Relatives, Widows and Widowers, and Abused Spouses, and Children, 8 C.F.R. 204.2(c)(4) (1996); *Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

⁹⁹ DOJ INS: Petitioner for Relatives, Widows and Widowers, and Abused Spouses, and Children, 8 C.F.R. 204.2(c)(4) (1996).

United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision DHS began granting immigration visa petitions filed by same sex married couples in the same manner as ones filed by heterosexual married couples. As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly.¹⁰⁰

b) Are same-sex marriages recognized in all states?

A: Yes. The U.S. Supreme Court has ruled that it is unconstitutional for states to ban same-sex marriages, any valid same-sex marriage performed in the United States should be recognized by USCIS.¹⁰¹

c) Which of the following would qualify for a VAWA self-petition: civil union, religious marriage, and/or common law marriage?

A: Only common law marriages will be recognized. Common-law marriage can be valid under immigration law as long as it was formed in a U.S. state or a country that recognizes common-law marriages under the law. If a common-law marriage was validly formed in a state that recognizes common-law marriage, it can be still be valid and recognized in a different state that is not a common-law marriage jurisdiction.¹⁰² In 2021 common law marriages are recognized in the following states: Colorado, Iowa, Kansas, Montana, New Hampshire, South Carolina, Texas, Utah and the District of Columbia.

51. Can the fact that the abusive citizen or lawful permanent resident spouse filed a family-based visa petition (I-130) help prove a good faith marriage?

A: Yes. This family-based visa petition filed by the spouse and the information contained in that immigration case file includes evidence provided by the abusive citizen or lawful permanent resident spouse that can be helpful in proving both that they were legally married and a good faith marriage. .¹⁰³

52. Could evidence that the victim and their abusive citizen or lawful permanent resident spouse had a relationship prior to their marriage potentially provide sufficient evidence of good faith marriage?

¹⁰⁰ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 1, FN 1, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>; *Implementation of the Supreme Court Ruling on the Defense of Marriage Act*, DHS, <https://www.dhs.gov/news/2013/07/01/implementation-supreme-court-ruling-defense-marriage-act>.

¹⁰¹ *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

¹⁰² *Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slide 50 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>; *Ch. 2: Marriage and Marital Union for Naturalization*, USCIS, <https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-2>.

¹⁰³ Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

A: The evidence alone would not be sufficient, but it could be combined with other evidence to strengthen a showing of a good faith marriage. The types of evidence that is commonly submitted to prove good faith marriage include:¹⁰⁴

- Description in the self-petitioner’s affidavit of courtship, wedding (include pictures), shared residence, and shared experiences (one affidavit describing this and the abuse or other relevant information can be submitted);
- Marriage license;
- Insurance policies listing her spouse, joint leases, jointly filed income tax returns, bank accounts, and other evidence of shared household and financial obligations;
- Birth certificates of their children;
- Photographs of the wedding;
- Photographs of the self-petitioner with her spouse and other family members, preferably taken on different dates and at different locations including at home and on vacation;
- Letters or cards exchanged with her spouse, including love letters and between her family members and spouse;
- Names, addresses and phone numbers of people who knew the abuser and the applicant as a married couple;
- Photo IDs with the applicant's married name;
- Letters from her employer or healthcare provider stating that she changed her name or listed the abuser as an emergency contact.

If the petitioner is currently not married to the abuser by reason of the abuser’s bigamy, death, or divorce, the self-petitioner may still qualify if she can prove that: (1) she believed that she has legally married the abuser, but the marriage was invalid due to her abuser’s bigamy; (2) she was the spouse of a U.S. citizen who died within the past two years; or (3) she was divorced from the abuser within the past two years.¹⁰⁵

53. What are the options for proving that the VAWA self-petitioner lived for some period of time with her abusive spouse when the domestic violence dynamics in the relationship kept the victim from using social media and the client never received mail at the address, and the spouse controlled all of the bills?

A: Best practices would be to provide as much detail as possible in the declaration as to why the victim does not have the evidence to support this. The self-petition should include affidavits from family members, friends, and neighbors who can attest to the fact that the self-petitioner lived with her husband listing the location, the duration of time that the person completing the affidavit had knowledge that they were residing together and stating

¹⁰⁴ See Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: *Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, pg. 19, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>; see also *Evidence List: Immigrant Victims Applying for VAWA Self-Petitioning*, pg. 2-3, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/evidence-checklist-vawaselfpetition>; *Checklist of Required Initial Evidence for Form I-360*, USCIS, <https://www.uscis.gov/i-360Checklist>.

¹⁰⁵ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: *Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 4, 5, 6 <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

how they know this information. Ways to show that the victim was residing with the abuser includes:¹⁰⁶

- Lease or rental agreements
- Utility or other bills
- Children’s school or medical records
- Letters addressed to both spouses, or to each spouses if the letters show the same address at the same time
- Other documents listing self-petitioner and abuser at the same time
- Declarations from landlords, neighbors, and friends

54. Can people file for a VAWA self-petition after they divorce from their abusive spouse?

A: The Self-Petition is available to spouses and former spouses of an U.S. Citizen or lawful permanent resident abuser if filed while still married or within 2 years of the termination of the marriage by divorce or other means. Additionally, the self-petition is available to children and stepchildren abused by the child’s citizen or lawful permanent resident parent or stepparent. If the abuse was by a stepparent, then the child should file the self-petition before any divorce occurs.¹⁰⁷

a) How could divorce impact the victim’s ability to file a VAWA self-petition?

A: Divorce will not negatively impact a victim’s ability to file a self-petition. The self-petitioner must demonstrate that she was divorced from the abuser within the past two years, and that there was a connection between the divorce and the battery or extreme cruelty by the abusive spouse..¹⁰⁸

b) What if a victim believes she is still married but the perpetrator obtained a divorce without the victim’s knowledge?

A: The victim will have two years from the date that the divorce that the abuser obtained became final to file that VAWA self-petition. She will also have to prove that there is a connection between the divorce and the battering or extreme cruelty..¹⁰⁹

55. Can an abused spouse apply for VAWA self-petition when the abuser has recently passed away?

¹⁰⁶ Webinar– *VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>; Webinar Slides – *VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slide 52 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>; *Evidence List: Immigrant Victims Applying for VAWA Self-Petitioning*, pg. 4, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/evidence-checklist-vawaselfpetition>.

¹⁰⁷ Leslye E. Orloff and Charles Palladino, *Bench Card: Overview of Types of Immigration Status*, NIWAP, pg. 6 (Oct. 14, 2013) <https://niwaplibrary.wcl.american.edu/pubs/bchcrd-immstaturtypes>; *Arguijo v. United States Citizenship & Immigration Services*, No. 1:13-cv-0575 (7th Cir. 2020), <https://niwaplibrary.wcl.american.edu/pubs/7th-cir-stepchild-amicus>

¹⁰⁸ INA § 204(a)(1)(A)(iii)(II)(CC)(ccc); INA Section 240(a)(1)(B)(ii)(II)(CC)(bbb); Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 5 <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

¹⁰⁹ INA § 204(a)(1)(A)(iii)(II)(CC)(ccc); INA Section 240(a)(1)(B)(ii)(II)(CC)(bbb).

A: If the self-petitioner was the spouse of an abusive U.S. citizen (not permanent resident) who died within the past two years the victim is eligible to file for the self-petition.¹¹⁰

a) Does the victim need a copy of the perpetrator’s death certificate to apply and how can the victim obtain the perpetrator’s death certificate if the abuser’s family member refuses to give it to the victim as part of the abuse?

A: The following documents should be provided: marriage certificate, death certificate of the U.S. citizen spouse, and proof of U.S. citizenship (U.S. passport, birth certificate, or naturalization certificate).¹¹¹ A spouse should be able to obtain a copy of their spouse’s death certification by requesting a copy from the vital records office of the jurisdiction where the death occurred. State law controls who can obtain copies of death certificates and what type of death certificate, informational or certified, will be provided. In VAWA self-petitioning cases any-credible evidence rule would preclude DHS from requiring specific documents. A victim who could not obtain a death certificate from the vital records office could explain in the self-petition that they do not qualify under state law for the certificate and could submit an affidavit of the funeral director or someone who attended the funeral as evidence.

56. If a citizen or lawful permanent resident father has filed a family based visa petition (I-130) for his immigrant 20 year old daughter and the father has abused his daughter when she was under 21 years old, she is now over 21 years old, can she still file a VAWA self-petition?

A: Yes. Children who were battered or subjected to extreme cruelty by their citizen or lawful permanent resident parent or stepparent while they were under age 21, have until the age of 25 to file their self-petition.¹¹² The over 21 year old child must demonstrate that the abuse was at least one central reason for the delay in filing.¹¹³ This ensures that abused children and children subjected to incest have time after they are able to leave the abusive home to learn about and file their VAWA self-petition.¹¹⁴

57. If a father with a pending application for lawful permanent residency, abuses his daughter while she is under 21, but the father does not receive lawful permanent residency until the child is over 21 can the abused child self-petition, and if not, what are the child’s abuse related options?

¹¹⁰ INA § 204(a)(1)(A)(iii)(II)(CC)(bbb); Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 18 <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

¹¹¹ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, pg. 18, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

¹¹² INA Section 204(a)(1)(D)(v); INA § 204(a)(1)(D)(v). USCIS Policy Memorandum, “Continued Eligibility to File for Child VAWA Self-Petitioners After Attaining Age 21,” PM-602-0048 (Sept. 6, 2011)

¹¹³ INA § 204(a)(1)(D)(v); USCIS Policy Memorandum, “Continued Eligibility to File for Child VAWA Self-Petitioners After Attaining Age 21,” PM-602-0048 (Sept. 6, 2011).

¹¹⁴ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, pg. 3, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

A: If the child is applying prior to turning 25 and can demonstrate that can show that the abuse was “at least one central reason” for the filing delay. Prior to the VAWA 2000 amendments, the self-petitioner’s abusive spouse or parent must have been a citizen or lawful permanent resident at the time the self-petition was filed, but after the amendments, the abuse can occur prior to the abuser attaining status.¹¹⁵

58. Does how a person entered the United States affect eligibility for VAWA self-petitioning or the VAWA self-petitioning case?

A: People who enter the US lawfully with any type of visa qualify to apply for self-petition if they victims of abuse and the abuser is a US citizen or lawful permanent resident spouse. Undocumented individuals qualify as well to file VAWA self-petitions. Victims who entered the U.S. lawfully and victims who did not will have different application requirements they must meet to attain lawful permanent residency through VAWA self-petitioning.¹¹⁶

59. To apply for a VAWA self-petition does the victim have to be physically present in the United States at the time of filing?

A: No. While most self-petitioners file self-petitions while they are residing in the U.S., the VAWA self-petitioning statute allows three categories of VAWA self-petitioners to file self-petitions from abroad:¹¹⁷

- The spouse, child or intended spouse of an employee of the U.S. government;
- The spouse, child or intended spouse of a member of the U.S. uniformed services;
- Victims who were battered or subjected to extreme cruelty in the United States.

Victims filing from abroad follow the same filing procedures that apply to applications filed within the United States. Victims filing from abroad file their self-petitions with the VAWA Unit at the Vermont Service Center of USCIS. .¹¹⁸ Victims were abused by citizen or lawful permanent resident spouses or parents who are U.S. government employees or who work for the uniformed services may have only been subjected to battering or extreme cruelty committed abroad with none of the abuse occurring in the United States.

60. If an abused spouse of a U.S. citizen entered the country on a fiancé visa would they be eligible to self-petition?

A: Possibly. If the immigrant spouse who entered the U.S. on a fiancé visa married their spouse within 90 days of entering the U.S. the immigrant spouse is eligible to self-petition.

¹¹⁵ INA § 204(a)(1)(D)(v). USCIS Policy Memorandum, “Continued Eligibility to File for Child VAWA Self-Petitioners After Attaining Age 21,” PM-602-0048 (Sept. 6, 2011) (discussing late filing).

¹¹⁶ INA § 212(a)(6)(A)(i); INA § 212(a)(9)(B) and(C); Instructions for Application for Waiver of Grounds of Inadmissibility, pg. 15, USCIS, <http://niwaplibrary.wcl.american.edu/pubs/i-601instr-inadmissibility-waivers-vawa-nacara-hrifa>; *Adjustment of Status for VAWA Self-Petitioner Who is Present Without Inspection: Memo from Michael L. Aytes*, USCIS, (April 11, 2008), <http://niwaplibrary.wcl.american.edu/pubs/adjust-status-present-without-inspection>; *Fact Sheet: USCIS Issues Guidance for Approved Violence Against Women Act (VAWA) Self-Petitioners*, USCIS, (April 21, 2008), <http://niwaplibrary.wcl.american.edu/pubs/uscisguidancevawafactsheet>.

¹¹⁷ INA §§ 204(a)(1)(A)(v), 204(a)(1)(B)(iv).

¹¹⁸ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 3.03 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>.

If the sponsoring spouse failed to marry the fiancé visa recipient immigrant spouse or married them more than 90 days after the victim entered the U.S. on a fiancé visa, the immigrant victim fiancé or spouse is not eligible to self-petition. They would, however, be eligible to apply for a U visa based on domestic violence or if placed in removal proceedings would be able to apply for VAWA cancellation of removal once they have been physically present in the U.S. for three years.¹¹⁹

61. Is a victim eligible to self-petition if they are in removal/deportation proceedings before the immigration judge?

A: Yes, but they will not be able to apply for lawful permanent residency before USCIS unless the removal proceedings are terminated. Applicants in removal processes often apply for VAWA Cancellation of Removal and also submit an I-360 self-petition to USCIS as well. Once the self-petition is approved the victim could apply for lawful permanent residency before the immigration judge in removal proceedings.¹²⁰

62. How can a VAWA self-petition help an abused spouse whose abusive citizen or lawful permanent resident spouse filed an I-130 family-based visa petition on the victim's behalf when the victim has also been placed in removal proceedings?

A: Victims in removal proceedings also who file VAWA self-petitions, ideally want to have their VAWA self-petition adjudicated before the date on which their VAWA cancellation of removal case is scheduled to be heard by the immigration judge. Once the victim's VAWA self-petition has been approved the immigration judge can hear the victim's request for lawful permanent residency instead of adjudicating the victim's VAWA cancellation of removal case. When an abusive spouse had previously filed a family based visa petition (I-130) for the victim, the priority date of that earlier application can be recaptured.¹²¹ This can make abused spouses of lawful permanent residents immediately eligible for lawful permanent residency, eliminating what could otherwise be a multiple year wait. This can also mean that the victim VAWA self-petition is adjudicated more swiftly because their case is assigned an earlier place in line. The I-130 application will also contain useful proof of legal marriage and good faith marriage that will be helpful for the victim's VAWA self-petition and VAWA cancellation of removal cases.

¹¹⁹ Lelsye Orloff, Carole Angel, and Sally Robinson, *U Visas: Victims of Criminal Activity Ch. 10*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch10-u-visas>; Rebecca Story, Cecilia Olavarria, and Moira Fisher Preda, *VAWA Cancellation of Removal Ch. 9*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch9-vawa-cancellation-of-removal>.

¹²⁰ Webinar– *VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>; Webinar Slides – *VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slides 34, 59, 60, 67 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>; Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition. – This one is OK I doubt they are citing anything but their experience

¹²¹ MEMORANDUM: Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents, pg. 4-5, USCIS, (April 16, 1996), https://niwaplibrary.wcl.american.edu/pubs/aleinikoff_letter_implementation_selfpetition;

63. Can a battered immigrant spouse abused by their citizen or lawful permanent resident husband file a VAWA self-petition if they have been previously ordered deported?

A: Yes, a victim who was previously removed or deported is still eligible to file a VAWA self-petition. However, since they could be subject to reinstatement of removal, it is important that they be referred on an immigration attorney with expertise on VAWA cancellation of removal to assist them in securing the special exercise of discretion not to reinstate removal for VAWA self-petitioners that Congress included in VAWA 2005.¹²² The abused immigrant spouse or former spouse may be eligible to reopen their removal proceedings, file for cancellation of removal and obtain a stay of removal while their VAWA self-petition and/or cancellation of removal cases are pending. They will also be able to obtain lawful permanent residency from the immigration judge after the VAWA self-petition has been approved. Self-petitioners who were previously ordered removed may also have difficulty proving good moral character in their VAWA self-petition case.¹²³

64. What are best practices in the case of a victim whose abusive spouse filed a family-based visa petition on the victim's behalf that is pending adjudication (I-130) when the victim is currently separated due their abusive spouse due to domestic violence?

a) Can the victim self-petition?

A: Yes, the pending VAWA self-petition will not affect the adjudication of the family-based visa petition (I-130) filed by the spouse.¹²⁴ By filing a self-petition the victim is accomplishing several things. First, when a self-petition is filed USCIS is alerted about the domestic violence in the relationship and that the victim is entitled to VAWA confidentiality protections. DHS officials are prohibited from informing the abuser about the existence of the self-petition and they are precluded from relying upon information provided by the perpetrator spouse take any adverse action against the victim. This includes using information provided by the abusive spouse to initiated immigration enforcement actions against the victim and from such information in the adjudication of the victim's self-petition.¹²⁵

b) What happens if the interview date is scheduled in the family-based visa petition (I-130) case before the VAWA self-petition has been approved?

What happens after the self-petition has been approved?

A: The purpose of the interview in the I-130 family-based petition case to establish the family relationship and that there is a good faith marriage. USCIS has discretion to decide whether to waive the interview on a case-by-case basis.¹²⁶ Interviews will

¹²² Violence Against Women Act, Pub. L. No. 103-322, § 813(b) (2005).

¹²³ INTEROFFICE MEMORANDUM: *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, pg. 6, USCIS, <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>.

¹²⁴ Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

¹²⁵ Alina Husain, Leslye Orloff, *VAWA Confidentiality: Statute, Legislative History, and Implementing Policy*, NIWAP, (February 22, 2017), <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

¹²⁶ POLICY MANUAL: Ch. 5 – Interview Guidelines, USCIS, <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-5>.

take place unless USCIS does not have questions regarding whether the marriage was in good faith. If there is an interview scheduled for the family-based visa petition (I-130) filed by the abusive spouse, the victims and their attorney need to decide in advance how they will handle safety concerns related whether and how they will reveal in the interview the existence of the self-petition because the abuser will also be present. They should take a copy of the self-petition with them that they can provide the immigration official conducting the interview during any part of the interview conducted separately with the victim spouse. The interviewing officer needs to know about the existence of the self-petition and once they do, VAWA confidentiality laws preclude them in the I-130 case from relying upon adverse information provided by the abusive spouse.¹²⁷ The victim can choose to proceed with the family based visa petition which could be adjudicated more swiftly than the VAWA self-petition or the victims attorney at the interview can submit proof the self-petition and simply state that the petitioner is moving forward on a self-petition (I-360) in lieu of the abuser's family based visa petition (I-130).¹²⁸ The strategy is the same whether the self-petition is pending or has been approved, except that once the self-petition has been approved some victims attorneys have been able to get the self-petition related adjustment of status application adjudicated instead of the abuser's I-130 adjudicated at the interview.¹²⁹

65. How likely is an abused immigrant victim with no criminal arrests and/or convictions to win a VAWA self-petition case?

A: The likelihood of a self-petition being granted turns on the evidence of the battering and extreme cruelty, as well as the strength of the evidence of the marital or parent/child relationship. The showing of good moral character is also required. It is in the context of the good moral character determination required for adjudication of the VAWA self-petition where the victim's criminal history is considered.¹³⁰ USCIS looks at the good moral character of an applicant from the previous 3 years, which can be shown through a police clearance letter or a state issued criminal background check for each jurisdiction in which the victim has resided for at least 6 months over the past three years.¹³¹ Other ways to show good moral character is by proving positive contributions to her family and the community at large.¹³²

¹²⁷ *Three Prongs of VAWA Confidentiality*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/conf-vawa-bro-3prongsofconfidentiality>.

¹²⁸ Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

¹²⁹ NIWAP can provide technical assistance to attorneys on best practices and safety planning to help determine how to proceed in such cases. Call (202) 274-4457 or email info@niwap.org.

¹³⁰ Center for Public Policy Studies, Immigration and State Courts Strategic Initiative, National Immigrant Women's Advocacy Project, *Good Moral Character*, NIWAP, (Oct. 15, 2013),

<https://niwaplibrary.wcl.american.edu/pubs/good-moral-char-tool>; INTEROFFICE MEMORANDUM: *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, pg. 6, USCIS, <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>.

¹³¹ Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 7 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 6, <https://niwaplibrary.wcl.american.edu/pubs/ch7-preparing-vawa-self-petition>

¹³² Moira Fisher Preda, Cecilia Olavarria, Janice Kaguyutan, and Alicia Carra, *Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants: Ch. 7 Preparing the VAWA Self-Petition and Applying for Residence*, NIWAP, pg. 7-9, <https://niwaplibrary.wcl.american.edu/pubs/ch7-preparing-vawa-self-petition>;

66. Does a VAWA self-petition applicant's criminal history need to be completely clean?

A: No, but if there are grounds of inadmissibility triggered due to criminal history that will affect good moral character for the self-petition purposes and once the self-petition is approved will also become a factor in the victim's lawful permanent residency application.¹³³ For this reason it is very important that victims with criminal histories are working with both experienced immigration attorneys with expertise on VAWA self-petitions and victim advocates who will have built the trusting relationships that typically lead victims to reveal criminal histories sooner and in more detail to the victim advocate.

a) What factors impact the self-petitioner's ability to prove good moral character?

A: INA Section 101(f) lists factors that will be considered in establishing good moral character.¹³⁴ Also, if the victim has a conviction that makes them inadmissible or removable their VAWA self-petition case will be more complex and the victim will need assistance from an experienced immigration attorney with expertise on VAWA self-petition and the intersection of criminal and immigration laws to determine what waivers may be available.¹³⁵

b) What if the abuser is coercing the victim to do illegal things?

A: In drafting the VAWA self-petition statute Congress created a number of waivers and exceptions to inadmissibility to address this issue. For certain grounds of inadmissibility there are special waivers available to VAWA self-petitioners. Best practice is to raise these facts and address them in the victim's self-petition and explain how the abuser was coercing the victim to do illegal things. Even if a person is inadmissible, they can still be found to have good moral character and have a self-petition approved. This allows the VAWA unit adjudicators adjudicating the case to learn the totality of the circumstances surrounding the

Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-va-wa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slide 54 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>.

¹³³ INTEROFFICE MEMORANDUM: *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, pg. 6, USCIS, <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>; Limayli Huguet, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

¹³⁴ INA § 101(f); POLICY MANUAL: Ch. 2 Adjudicative Factors, USCIS, <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-2>; INTEROFFICE MEMORANDUM: *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, USCIS, <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>

¹³⁵ Limayli Huguet, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020). <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

criminal behavior and see it as part of the pattern of battering or extreme cruelty that the victim suffered. Victims in their self-petitions should apply for any and all waivers for which they are eligible.

The goal is to have the waivers adjudicated and granted by the specially trained VAWA Unit as part of the VAWA self-petition adjudication. Once a waiver has been granted in the self-petition adjudication, it cannot be re-adjudicated by a USCIS official outside of the VAWA unit who may be adjudicating the victims' application for lawful permanent residency.¹³⁶ If a victim is inadmissible and no waiver is available, although their self-petition can be approved, the victim will not be able to attain lawful permanent residency through the VAWA self-petitioning process. The victim will have to file an application for a U visa which has a broader set of waivers available.¹³⁷

67. Can you provide a detailed break-down of the VAWA self-petitioning inadmissibility waivers available and the requirements to be granted a waiver?

A: The adjudication of a VAWA self-petition requires proof of good moral character and obtaining lawful permanent residency once a VAWA self-petition is approved requires victims to be admissible or seek waivers of inadmissibility. The following waivers of inadmissibility are available for VAWA self-petitioners:¹³⁸

- Crimes involving moral turpitude
- Multiple criminal convictions
- Engaging in prostitution within the past 10 years
- Immigrants who committed a serious criminal offense who claimed immunity from prosecution
- Controlled substance violation relating to a single offence for possession of 30 grams or less of marijuana
- Not in possession of valid immigration documentation
- Unlawfully present in the U.S. after past immigration violations
- Health related grounds relating to communicable diseases and vaccinations
- Giving false testimony for the purpose of obtaining and immigration benefit
- Smuggling people into the United States
- Subject to a civil penalty for document fraud

¹³⁶ MEMORANDUM From the Office of the Executive Associate Commissioner – *Revocation of VAWA-Based Self-Petitions (I-360s)*, (Aug. 5, 2002), <https://niwaplibrary.wcl.american.edu/pubs/memo-on-revocation-of-vawa-self-petitions-august-5-2002>.

¹³⁷ Limayli Huguét, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

¹³⁸ Limayli Huguét, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

a) What are the questions on the forms (VAWA self-petition, lawful permanent residency application) that relate to inadmissibility?

A: The questions on these applications that have the most relevance to inadmissibility are all of the questions pertaining to:¹³⁹

- Unlawful presence;
- Entries and exits to and from the United States;
- False document use;
- Fraud;
- Fraudulent statements and criminal convictions; and
- Bad acts.

b) Are VAWA self-petitioners exempt from any inadmissibility grounds?

A: Yes, VAWA self-petitioners are:

- Excluded from public charge;¹⁴⁰
- Exempt from the 3 and 10 year bars for unlawful presence in the U.S.;¹⁴¹ and
- Exempt from unlawful entry, immigrants present without admission or parole.¹⁴²

¹³⁹ Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

¹⁴⁰ INA § 212(a)(4)(E); Public Charge: Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 157 (Aug. 14, 2019) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, and 248).

¹⁴¹ See INA § 212(a)(6)(A)(i); INA § 212(a)(6)(A)(ii) (providing a VAWA self-petitioner waiver for each of these grounds that applies to all VAWA self-petitioners); INA § 212(a)(9)(B)(ii) (the unlawful presence also includes visa overstays and immigrants who remain in the U.S. after violating the terms of their visas for more than 180 days which results in a 3 year bar to admissibility to the U.S. or more than a year which creates a 10 year bar to admissibility to the U.S.; INA § 212(a)(9)(B)(iii) (providing exceptions to the 3 and 10 year bars imposed by INA § 212(a)(9)(B)(i) for minors); see also INA § 212(a)(9)(B)(iii)(V) (demonstrates that the human trafficking was at least one central reason for the unlawful presence); see also INA § 212(a)(9)(B)(iii)(IV) (discussing exemption from unlawful presence where connected to the battering or extreme cruelty); see also I-601 Form Instructions, Instruction for Application for Waiver of Grounds of Inadmissibility, DHS USCIS, 2, <https://www.uscis.gov/i-601>. see also *Adjustment of Status for VAWA Self-Petitioner Who is Present Without Inspection*, Memo from Michael L. Aytes, USCIS, April 11, 2008, <http://niwaplibrary.wcl.american.edu/pubs/adjust-statuspresent-without-inspection> (describing DHS guidance on the matter); *Fact Sheet: USCIS Issues Guidance for Approved Violence Against Women Act (VAWA) Self-Petitioners*, USCIS, April 21, 2008, <http://niwaplibrary.wcl.american.edu/pubs/uscisguidancevawafactsheet>.

¹⁴² See INA § 212(a)(6)(A) (waiver included in the exemption from the 3 and 10 year bars for battered immigrants) ; INA § 212(a)(6)(A)(i); INA Section 212(a)(6)(A)(ii) (provides a VAWA self-petitioner waiver for each of these grounds that applies to all VAWA self-petitioners); INA § 212(a)(9)(B)(ii) (the unlawful presence also includes visa overstays and immigrants who remain in the U.S. after violating the terms of their visas for more than 180 days which results in a 3 year bar to admissibility to the U.S.); INA § 212(a)(9)(B)(iii) (provides exceptions for Battered Immigrants); see also Limayli Huguet, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>; see also I-601 Form Instructions, Instruction for Application for Waiver of Grounds of Inadmissibility, DHS USCIS 2, <https://www.uscis.gov/i-601>; see also *Adjustment of Status for VAWA Self-Petitioner Who is Present Without Inspection*, Memo from Michael L. Aytes, USCIS, April 11, 2008, <http://niwaplibrary.wcl.american.edu/pubs/adjust-statuspresent-without-inspection> (describing DHS guidance on the matter); *Fact Sheet: USCIS Issues Guidance for Approved Violence Against Women Act (VAWA) Self-Petitioners*, USCIS, April 21, 2008, <http://niwaplibrary.wcl.american.edu/pubs/uscisguidancevawafactsheet>.

There are also certain waivers that apply to VAWA self-petitioners. To facilitate identification of inadmissibility grounds that VAWA self-petitioners are exempt from or for which they have a waiver available, NIWAP developed an inadmissibility chart linked in the footnote below.¹⁴³

c) How, on what form, does a self-petitioner apply for a waiver?

A: Usually Form I-601.¹⁴⁴

d) How does inadmissibility impact VAWA self-petitioning cases:

i. During adjudication of the VAWA self-petition?

A: Inadmissibility can affect the good moral character requirement at INA 101(f).¹⁴⁵

ii. When the approved VAWA self-petitioner applies for lawful permanent residency?

A: If the victim had an inadmissibility issue in their case that was adjudicated as part of the VAWA self-petition and they were granted an inadmissibility waiver. They can file for adjustment of status to lawful permanent residency and their inadmissibility cannot be re-adjudicated.¹⁴⁶ As part of the lawful permanent residency application only admissibility issues that arose after the self-petition was granted or that were not raised when the self-petition was adjudicated will be decided when lawful permanent residency is adjudicated. Victims should not apply for lawful permanent residency as self-petitioners unless they have already received waivers of inadmissibility or they are eligible for waivers or exemptions. Victims for whom waivers may not be granted should apply for U visas.

68. Are inadmissibility waivers possible for the victim's children who are included in the victim's self-petition?

A: Yes. The inadmissibility waivers and the same procedures and approach discussed in the questions above apply to self-petitioners and any children that the victim has included in their self-petition.¹⁴⁷

¹⁴³ Limayli Huguét, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

¹⁴⁴ I-601 Form Instructions, Instruction for Application for Waiver of Grounds of Inadmissibility, DHS USCIS, 2, <https://www.uscis.gov/i-601>.

¹⁴⁵ Limayli Huguét, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

¹⁴⁶ MEMORANDUM From the Office of the Executive Associate Commissioner – *Revocation of VAWA-Based Self-Petitions (I-360s)*, (Aug. 5, 2002), <https://niwaplibrary.wcl.american.edu/pubs/memo-on-revocation-of-vawa-self-petitions-august-5-2002>.

¹⁴⁷ Limayli Huguét, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

69. How do the inadmissibility waivers and exemptions available to VAWA self-petitioners differ from those available to U visa applicants?

A: Compared to the VAWA self-petition where only a limited number of waivers, exemptions and exclusions from inadmissibility apply, for U Visa applicants, the Secretary of DHS has broader the discretion to grant waivers for most grounds of inadmissibility. As discussed above for VAAW self-petition cases it is always best to identify any inadmissibility grounds applicable and request waivers at the time the U visa application is being adjudicated. Once decided these issues will not be re-adjudicated when the victim applies for lawful permanent residency as a U visa holder. The only inadmissibility grounds that would be decided as part of the lawful permanent residency application would be inadmissibility that arose after the victim was granted a U visa. All waivers of inadmissibility in U visa cases require a showing that the waiver should be granted based on humanitarian need, to promote family unity, or public interest.¹⁴⁸ Provided is a link to a full comparison chart on the inadmissibility waivers of VAWA self-petitioners, U visas, T visas, and special immigrant juvenile status cases.¹⁴⁹

USCIS VAWA Self- Petitioning Policies and Procedures

70. Have there been any changes to the VAWA self-petitioning laws in the U.S. in recent years?

A: There have been no changes in VAWA self-petitioning laws since 2013. The VAWA self-petitioning regulations were issued in 1996 and remain in effect except there they have been overruled by statute. The VAWA self-petitioning regulations include a very useful preamble that provides additional direction on the regulations.¹⁵⁰ Both INS and USCIS have issued policies that together with the regulations implement VAWA self-petitioning laws. The policies are particularly helpful in the areas of the law where VAWA self-petitioning statutes were amended after the 1996 regulations were issued. NIWAP's VAWA self-petitioning webinar and materials page contains links to all of the relevant policies.¹⁵¹ The 2018 Notice to Appear policy was rescinded in January 2020¹⁵² and the blank-space policy paused on December 24, 2020 has not been reinstated.

71. Is there a fee to file a VAWA self-petition? At what points in the VAWA self-petition case might a victim need to file a fee waiver?

¹⁴⁸INA § 245(m).

¹⁴⁹ Limayli Huguet, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases*, NIWAP, pg. 3 (Dec. 29, 2020), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

¹⁵⁰ DOJ INS: Petitioner for Relatives, Widows and Widowers, and Abused Spouses, and Children, 8 C.F.R. 204.2(c)(4) (1996).

¹⁵¹ *Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-ava-self-petition-webinar>.

¹⁵² MEMORANDUM: *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, DHS, (Jan. 20, 2021), <https://niwaplibrary.wcl.american.edu/pubs/civil-immigration-enforcement-priorities-1-20-21>.

A: No. There are no fees to file a self-petition,¹⁵³ but there are fees for inadmissibility waivers. USCIS allows for applicants to apply for a fee waiver if they are unable to pay for the filing fees based on a number of factors. A request for the fee waiver is a way of filling out an immigration application without paying for the filing fee if the applicant cannot afford it.¹⁵⁴ An applicant may be eligible to apply for the fee waiver if they meet one of the three requirements:

- There is a financial hardship due to factors such as costly medical expenses, unemployment, eviction, or homelessness; or
- The household income is at or below 150% of the federal poverty guideline; or
- The household receives a means-tested public benefit.

a) What are best practices for securing approval of fee waivers?

A: As a matter of law, there is no requirement that they use the I-912 form, but it is and highly recommended to use the I-912 form. Best practices for requesting a fee waiver would be to include a cover letter and checking all of the expenses of the applicant. A cover letter is an opportunity to outline what the fee waiver application contains, as well as an opportunity to go into detail about the evidence that is enclosed in the application. The cover letter also gives the applicant an opportunity to further explain their financial need for the fee waiver while referencing the evidence, as well as spelling out the history of the violence with survivors, immigration relief, denial, and “any credible evidence.”¹⁵⁵

b) What kinds of documentation should victims provide to support the fee waiver request, particularly for victims without income and those who did not file taxes?

A: To prove that the household income is at or below 150% of the federal poverty guideline, it would be sufficient to show tax documentations and to include the Individual Taxpayer Identification Number (ITIN). An applicant may show proof of living below 150% of the Federal Poverty Guideline without a tax return as well. If the applicant does not have a tax return, the following secondary forms of evidence may be as proof:

- (1) Pay-check stubs;
- (2) Proof of work with valid documentation;
- (3) Work permit; (4) Proof letter from employer;
- (5) Alimony obligations; (6) Child Support obligations;
- (7) Employers statements;
- (8) For SIJS: application may submit court order of foster care, court order dependency approval (I-360).

¹⁵³ Fee Schedule – Form G-1055, DHS, USCIS, <https://niwaplibrary.wcl.american.edu/pubs/uscis-fees>.

¹⁵⁴ Form I-912 Instructions, USCIS, <https://niwaplibrary.wcl.american.edu/pubs/fee-waiver-instructions>.

¹⁵⁵ *William Wilberforce Trafficking Victim’s Protection Reauthorization Act of 2008*, Dec. 23, 2008, Pub. L. 110-457, 122 STAT. 5044, <https://niwaplibrary.wcl.american.edu/pubs/william-wilberforce-trafficking-victims-protection-reauthorization-act-2008>; Faiza Chappell, Leslye Orloff, *How to File a Fee Waiver*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/how-to-file-a-fee-waiver-memo>.

Financial hardship may be proven by showing proof of survivor documentation, assets including bank account statements, receipts of rent, groceries, childcare, medical expenses, and other daily expenses.¹⁵⁶

72. How does the blank space policy USCIS recently adopted affect VAWA self-petitioning cases?

A: The blank space policy was paused December 24, 2020 based on *Vangala v. USCIS*.¹⁵⁷ The policy resulted in numerous rejections of VAWA self-petitions (I-360) where “N/A” or “none” were not completed in each and every blank space, despite the fact that those sections did not apply to the applicant’s VAWA self-petition.

73. Is there a risk of deportation if a VAWA application is denied?

A: There is always this risk whenever anyone files seeking benefits from USCIS. The 2018 Notice to Appear policy under which notices to appear in VAWA self-petitions, T visa and U visa cases were issued for cases that were denied was rescinded in January of 2020 and is no longer in effect.¹⁵⁸

a) How do you navigate the risks of a VAWA self-petition being denied?

A: Developing a well-documented case and only filing a VAWA self-petition that contains sufficient evidence on each element of proof required to obtain a prima facie determination. Putting forward the strongest evidence will help to mitigate the risks.¹⁵⁹

74. Under what circumstances might an adult or child immigrant detained at the border be VAWA self-petitioning eligible?

A: Most VAWA self-petitioners will be victims who suffered spouse or child abuse perpetrated against them in the United States. Abused spouses and children of citizens and lawful permanent residents who are U.S. government employees or who are members of the U.S. uniformed services can self-petition even when all of the abuse perpetrated against them occurred abroad.¹⁶⁰ There are a number of circumstances often related to the abuse that could lead to a VAWA eligible victim leaving or being taken out of the U.S. Abusers either take victims out of the U.S. for a “visit” knowing that victims will not be able to reenter legally. Too often this is a strategy used to in retaliation or to cut the victim off from her children or VAWA self-petitioning relief. Others will take victims over the border to abuse them in a place where U.S. laws cannot protect the victims. When victims attempt to reenter some may be detained at the border. The fact that a VAWA self-

¹⁵⁶ PM-602-0004 *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2009: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions*; Revisions to Adjudicators Field Manual (AFM) Chapters 23.5 and 39 (AFM Update AD10-38).

¹⁵⁷ *AILA Policy Brief: USCIS’s “No Blank Space” Policy Leads to Capricious Rejections of Benefits Requests*, AILA, (Oct. 22, 2020) <https://www.aila.org/advo-media/aila-policy-briefs/uscis-no-blank-space>.

¹⁵⁸ MEMORANDUM: *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, DHS, (Jan. 20, 2021), <https://niwaplibrary.wcl.american.edu/pubs/civil-immigration-enforcement-priorities-1-20-21>.

¹⁵⁹ Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

¹⁶⁰ INA §§ 204(a)(1)(A)(v), 204(a)(1)(B)(iv).

petitioning eligible battered spouse or child has been detained does not impact their ability to file a VAWA self-petition.¹⁶¹

75. Are there ways to expedite adjudication of a VAWA self-petition case and what might be the criteria?

A: The Vermont Service Center, including the VAWA Unit, have a long standing practice with regard to working with ICE on cases that need expediting. Typically requests to expedite are sent directly from ICE to the VAWA Unit. Once a request has been made the VAWA Unit and ICE will work in collaboration to determine if an expedite is warranted or not.¹⁶² There are also expedite criteria that apply when an advocate or attorney for a VAWA self-petitioner, T or U visa applicant is requesting that a case be expedited. The request to expedite adjudication of a VAWA, T or U visa application should explain why the case meeting one or more of the following criteria:

- Severe financial loss to company or individual
- Extreme emergent situation
- Humanitarian situation
- Department of Defense or National Interest Situation
- USCIS error
- Compelling interest of USCIS

Expedite requests submitted by victim's advocates or attorneys have only be granted in a limited number of cases over the years. The likelihood of approval is greatest when the request to expedite is requested by ICE.

VAWA Self-Petitioners with Family Law Cases

76. How can family law attorneys representing victims in protection order, divorce, and custody cases assist battered immigrants who are filing VAWA self-petitions.
a) **How could the family law proceeding help the victim obtain evidence to support the VAWA self-petition case?**

a)

A: Family law attorneys can assist victims in obtaining evidence needed for a victim's VAWA self-petition in the following ways:

¹⁶¹ Webinar– *VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>.

¹⁶² MEMORANDUM: *Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions*, USCIS, (Aug. 20, 2010), <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-icememoalienspend10>; POLICY MEMORANDUM: *Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator's Field Manual (AFM) New Chapter 10.3(i): AFM Update AD-11-16*, USCIS, (Feb. 4, 2011), <https://niwaplibrary.wcl.american.edu/pubs/imm-memo-coordinadjudremoval>.

- Obtain a civil protection order that requires the abuser to turn over evidence that a victim can submit in their self-petition case.¹⁶³ It can be particularly helpful to have the perpetrator provide the victim with their immigration case number (“A” number) or passport number in open court as part of the protection order case. This will help the victim prove the immigration status or citizenship of the perpetrator.
 - Seek information about the perpetrator’s immigration status (“A: number) or citizenship (passport number) through family court discovery.
 - File a request for production of documents in a family court, divorce or custody, case to obtain copies of documents or return of documents the victim needs for their self-petition case.
- b) What evidence should the family lawyer present and seek rulings on?**
- *A:* Obtain from the court orders in protection order, custody, divorce or other family court proceedings orders¹⁶⁴ that make specific findings regarding the following:
 - Marriage of the parties
 - That the parties have a common law marriage
 - Parent-child relationship
 - History and specific incidents of domestic violence and/or child abuse

77. What are the pros/cons of disclosing the victim’s immigration status or the fact of the self-petition in family court? If questions regarding the petitioner’s VAWA self-petition application status or citizenship status generally come up during a family law case, could the information be withheld under VAWA confidentiality laws and under what circumstances might it be disclosed?

A: Federal VAWA Confidentiality laws limit disclosure of any information about the existence of, information contained in, and information about actions taken in any VAWA confidentiality immigration protected case to anyone including state courts. It is important to note that the VAWA confidentiality judicial exception applies to appeals of victims’ immigration cases in federal courts. There is no exception for state family, civil or criminal court discovery to VAWA confidentiality protected case information and case files including VAWA self-petitions.¹⁶⁵ In a family law case, particularly one that involves contested

¹⁶³ See Leslye Orloff, Laura Martinez, Soraya Fata, Rosemary Hartman, and Angela Eastman, *Protection Orders for Immigrant Victims of Sexual Assault Ch.14*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch14-protectionorders-sa> (containing a list of the types of documents and information that could be turned over through a protection order case); Leslye Orloff, Cecilia Olavarria, Laura Martinez, Jennifer Rose, Joyce Noche, *Battered Immigrants and Civil Protection Orders Ch. 5.1*, pg. 20-22, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/ch5-1-imm-civil-protection-orders>; *Evidence List: Immigrant Victims Applying for VAWA Self-Petitioning*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/evidence-checklist-vawaselfpetition>.

¹⁶⁴ Andrea Carcamo Cavazos, Leslye Orloff, *Immigrants and Protection Orders Bench Card*, NIWAP, (Aug. 23, 2018), <https://niwaplibrary.wcl.american.edu/pubs/battered-immigrants-protection-orders-benchcard>.

¹⁶⁵ Implementation of Section 1367 Information Provisions: DHS Instructions System, pg. 7, DHS, <https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001>;

custody, there can be advantages to the victim revealing to the court that the victim will be or had obtained work authorization and/or legal immigration status through a VAWA self-petition. Attorneys need to weigh the safety risks and the benefits for the custody case to determine what if anything should be revealed in the family court case.¹⁶⁶ However, if the victim chooses to reveal the existence of the VAWA self-petition case in family law litigation, the perpetrator will not be able to discover anything else about the VAWA self-petition case and will not be able to obtain from discovery of information contained in the VAWA self-petition case file.¹⁶⁷

78. How can the family lawyer prevent discovery of the VAWA self-petition case file through the family court case?

A: Attorneys across the country have been successful in using VAWA confidentiality protections to prevent and counter immigration related abuse in family court cases. Attorneys representing victims should be prepared to object and brief VAWA confidentiality issues if needed to prevent the use of state court discovery to obtain information about the existence of, outcomes in, and information contained in VAWA confidentiality protected cases. NIWAP can provide sample briefs and sample motions to counsel representing immigrant victims on family court discovery and VAWA confidentiality protections.¹⁶⁸ It is highly recommended that immigrant victims involved in family court litigation be screened early for and file applications for VAWA self-petitions and U visa protections as early as possible. Once a VAWA self-petition or U visa case is filed the victim receives VAWA confidentiality protection from deportation and discovery of the immigration case is restricted.¹⁶⁹

VAWA Self-Petitioner Eligibility for Work Authorization, Benefits, and Services

79. Do VAWA self-petitioners receive legal work authorization, and if so, when and under what category?

Limayli Huguet, Benish Anver, Jane Anderson, Leslye Orloff, Quick Reference Guide for Judges: VAWA Confidentiality and Discovery Related Case Law, NIWAP, (March 26, 2019), <https://niwaplibrary.wcl.american.edu/pubs/judges-vawa-confidentiality-cases-and-discovery>; *Discovery and Use of Immigration Information in Court Checklist*, CENTER FOR JUDICIAL EDUCATION & RESEARCH, (Feb. 2019) <https://niwaplibrary.wcl.american.edu/pubs/ca-discovery-vawa-confidentiality-bench-card>.

¹⁶⁶ NIWAP provides technical assistance for family lawyers representing immigrant victims on these issues. Call us at (202) 274.4457 or info@niwap.org.

¹⁶⁷ See *Utilizing VAWA Confidentiality Protections in Family Court Proceedings*, WINNING CUSTODY CASES FOR IMMIGRANT SURVIVORS: THE CLASH OF LAWS, CULTURES, CUSTODY AND PARENTAL RIGHTS (2017) <https://niwaplibrary.wcl.american.edu/winning-custody-article-2017>; NIWAP provides technical assistance on family court discovery and VAWA confidentiality. (202) 264-4457 or info@niwap.org.

¹⁶⁸ WEBPAGE: *VAWA Confidentiality Protections for Immigrant Crime Victims*, NIWAP, (Updated March 8, 2021) (containing a detailed list of VAWA confidentiality webinars, motions, training materials, policies and case law).

¹⁶⁹ Veronica T. Thronson, Leslye E. Orloff, Carole Angel, *Family and Intimate Partner Violence Quarterly*, Vol. 9, Issue 2 &3, pg. 80, 81 (Fall 2016, Winter 2017).

A: When a self-petitioner or U visa victim obtains employment authorization depends on the category in which the applicant is qualified.¹⁷⁰

- Self-petitioners whose abusers are their U.S. citizen spouses, parents, or over 21 year old children can file their application for lawful permanent residency (I-485) together with their VAWA self-petition (I-360). Once the self-petitioner's application for lawful permanent residency has been filed the victim can file for work authorization permit under (c)(9)(for victims with pending lawful permanent residency applications filed), applicant must submit their work authorization application (form I-765) with proof that the application for adjustment of status remains pending. Self-petitioners in this category generally receive work authorization within 3-4 months of filing.
- VAWA self-petitioners whose abusers are their lawful permanent resident spouses or parents are not eligible work authorization until their VAWA self-petition has been approved and they have been granted deferred action status. This can take up to 18 months after the victim files their self-petition. To file for work authorization under (c)(31)(for approved VAWA self-petitioners), the applicant must submit the work authorization application (form I-765) with proof of the approved VAWA self-petition.¹⁷¹
- Approved VAWA self-petitioners and U visa victims who have received wait-list approval both received deferred action status. Upon receipt of deferred action they qualify for work authorization under (c)(14)(for persons who have been granted deferred action). The VAWA self-petitioner or U visa applicant must submit the work authorization application (form I-765) with a copy of their grant of deferred action.
- Attorneys representing VAWA self-petitioners and U visa applicants should also file a copy of their G-28 along with each of these applications.

80. How could a self-petitioner receive legal work authorization based on their approved VAWA self-petition before receiving legal immigration status (a green card) in the U.S.? Is it true that an approved VAWA self-petitioner abused by their lawful permanent resident spouse can receive legal work authorization and have that authorization renewed throughout the period of time they are awaiting to apply for lawful permanent residency?

A: The way that the VAWA self-petitioning process is structured there are a number of immigrants who are under U.S. immigration laws granted legal work authorization although they have not been granted any form of legal immigration status in the United States. Approved VAWA self-petitioners and wait-list approved U visa applicants are granted deferred action which comes with eligibility for legal work authorization. They both are examples of categories of immigrants to whom DHS has granted deferred action

¹⁷⁰ See 8 C.F.R. 274a.12 (listing eligibility categories); *Employment Authorization*, USCIS, <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/employer-information/employment-authorization>.

¹⁷¹ Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition; *Employment Authorization*, USCIS, <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/employer-information/employment-authorization>.

which is an agreement from DHS that provides some formal protection against deportation but does not provide legal immigration status.¹⁷² VAWA self-petitioners whose abusers are lawful permanent resident spouses or parents will have deferred action status for up to three years while they wait in line to be able to apply for lawful permanent residency.¹⁷³ Similarly, U visa wait-list approved immigrants will have a more than 10 year wait with deferred action and work authorization while they await issuance of their U visa.¹⁷⁴ During the time that VAWA self-petitioners and U visa victims have work authorization while they await lawful permanent residency or the U visa they will need to continually renew their work authorization applications.

a) Can you describe the process that an approved VAWA self-petitioner abused by a lawful permanent resident spouse or parent goes through to obtain work authorization and lawful permanent residency?

A: To work authorization, the approved VAWA self-petitioner must file the I-765 form requesting work authorization under category c (9) deferred action. Along with the form the VAWA self-petitioner should include a copy of the notice of deferred action they received when their VAWA self-petition was approved. In this case, the petitioner would request a c (9) work eligibility group or eligibility based on the pending adjustment of status application (I-485).¹⁷⁵

b) Can a VAWA self-petitioner abused by a lawful permanent resident spouse or parent file a request for work authorization together with their VAWA self-petition?

A: Generally, no. In order to file for work authorization the immigrant must fall within one of the work authorization eligibility categories. Since abused spouses and children of lawful permanent residents are not immediately eligible and must wait in line to apply for lawful permanent residency they cannot obtain work authorization as a person with a pending application for lawful permanent residency. Thus, they must wait until their VAWA self-petition is approved and they are granted deferred action to be able to apply for work authorization under c (14) as a deferred action recipient. There is one exception, if the victim's abusive lawful permanent resident spouse previously filed a family based I-130 petition for the victim that was withdrawn, the victim's VAWA self-petition application recaptures the earlier priority date of that

¹⁷² *Employment Authorization*, USCIS, <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/employer-information/employment-authorization>.

¹⁷³ *Visa Availability and Priority Dates*, USCIS, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates> (contained in sections "Finding Your Priority Date" and "Priority Dates for Family-Sponsored Preference Cases).

¹⁷⁴ U VISA DEMOGRAPHICS – ANALYSIS OF DATA THROUGH FY 2019, USCIS, <https://niwaplibrary.wcl.american.edu/pubs/uscis-u-visa-demographics>.

¹⁷⁵ I-360 Form, Petition for Amerasian, Widow(er), or Special Immigrant, DHS USCIS, <https://www.uscis.gov/i-360>; I-765 Form, Employment Authorization, DHS USCIS, <https://www.uscis.gov/sites/default/files/document/forms/i-765.pdf>; I-485 Form, Application to Register Permanent Residence or Adjustment of Status, DHS USCIS, <https://www.uscis.gov/sites/default/files/document/forms/i-485-pc.pdf>.

application. When that priority date is current,¹⁷⁶ the victim file an application for lawful permanent residency and receive earlier work authorization based on category c (9).

c) When a VAWA self-petition is approved, if the victim did not already receive work authorization as a spouse of a citizen with a pending application for lawful permanent residency, does the victim get work authorization automatically?

A: If the petitioner decides that they want to be granted employment authorization when they complete the VAWA self-petition form I-360 there is a question that asks if they want to be granted work authorization. They must check the box “yes.” If this box is checked than after the victim’s VAWA self-petition is approved, the victim will automatically be granted work authorization. There is no need to file any additional forms. It can take up to 18 months¹⁷⁷ for VAWA self-petitions to be approved.

d) For VAWA self-petitioners who have work authorization, at what point in their case will they be able to work without continuing to file applications to renew their work authorization and does each application to renew work authorization require payment of another application fee?

A: Until the victim is granted lawful permanent residency they will need to renew VAWA work authorization and they may be eligible to apply for a fee waiver.

e) If a victim has work authorization through another immigration program that is close to expiration, and the victim has filed a VAWA self-petition is the prima facie determination enough to receive continued work authorization?

A: No. In order to receive work authorization while the VAWA self-petition is pending, the applicant must have also filed an application for lawful permanent residency at the same time as they filed their self-petition.¹⁷⁸ Generally, only abused spouses and children of U.S. citizens will be eligible to file their self-petitions and applications for lawful permanent residency together.

81. When a VAWA self-petitioner receives a prima facie determination what legal rights or options does this open up for the client?

A: It typically takes between 3 and 4 months after filing for VAWA self-petitioners to receive prima facie determinations. When a VAWA self-petitioner receives their prima facie determination letter, this makes them a qualified immigrant eligible to receive certain federal and state funded public benefits. Which public benefits the victim and their

¹⁷⁶ *Visa Availability and Priority Dates*, USCIS, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates> (contained in sections “Finding Your Priority Date” and “Priority Dates for Family-Sponsored Preference Cases”).

¹⁷⁷ Kaitlin Deibler, Leslye Orloff, *VAWA Self-Petition Timeline with Background Checks*, NIWAP, (March 29, 2019), <https://niwaplibrary.wcl.american.edu/pubs/3f-vawa-timeline-3-29-19>.

¹⁷⁸ Evangeline Abriel & Sally Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants*, ILRC, 7th Edition.

children included in their application are eligible for varies by state, by the public benefits program they need, and when the victim and each child included in the self-petition first entered the United States. To help victim advocates and attorneys easily determine what each particular VAWA self-petitioner and their children are eligible for, NIWAP developed an interactive public benefits map and charts.¹⁷⁹ There are some public benefits that all VAWA self-petitioners and their children with prima facie determinations qualify for. These include public and assisted housing¹⁸⁰ and post-secondary educational grants and loans.¹⁸¹ It is important to note that the prima facie determination does not provide self-petitioners access to work authorization and is not a form of legal immigration status.

82. What state or federal public benefits are VAWA self-petitioners eligible to receive e.g., Medicaid, food stamps, housing?

A: As a qualified immigrant, the petitioner is eligible to receive some federal public benefits, but will have to wait 5 years to gain access to federal means-tested public benefits (Medicaid, SSI, Food Stamps (SNAP), TANF and TANF funded child care). Some states provide access to these benefits to immigrants in their states with state funds during the 5 year waiting period. What a self-petitioner can access depends on the state they live in and when they first entered the U.S. Self-petitioners who first entered the U.S. prior to August 22, 1996 are not subject to the 5 year waiting period and are immediately eligible for some of these benefits.¹⁸² NIWAP's Interactive Public Benefits Map will assist in identifying which victims qualify for which benefits in your state.¹⁸³

a) How does applying for benefits affect the victim's VAWA self-petition or the victim's ability to gain lawful permanent residency based on an approved VAWA self-petition?

A: Applying for public benefits does not affect the victim's VAWA self-petition or a self-petitioner's ability to obtain lawful permanent residency (a green card). VAWA self-petitioners may apply for and receive any state or federal public benefits for which they are eligible without any immigration consequences. This is because VAWA self-petitioners, U and T visa applicants and SIJS children are exempt from

¹⁷⁹ *All State Public Benefits Charts and Map*, NIWAP, (2019) <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

¹⁸⁰ *WEBPAGE: Access to Public Assisted Housing VAWA Self-Petitioners*, NIWAP, (Sept. 10, 2020) <https://niwaplibrary.wcl.american.edu/access-public-assisted-housing-vawa-self-petitioners>.

¹⁸¹ *WEBPAGE: Training Materials – Education*, NIWAP, (Feb. 2018), <https://niwaplibrary.wcl.american.edu/training-materials-education>.

¹⁸² Soraya Fata, Leslye Orloff, *Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence Ch. 16*, NIWAP, (<https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims>).

¹⁸³ *Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slide 55 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020>; *Interactive Infographic on Protection on Protections of Immigrant Victims*, DHS, (2018) <https://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims>.

the public charge ground of inadmissibility.¹⁸⁴ NIWAP developed several tools and infographics to assist victim advocates and attorneys working with VAWA self-petitioners better understand victim protections related to public charge.¹⁸⁵

83. What forms of housing assistance are VAWA self-petitioners eligible to receive and what are the application requirements?

A:¹⁸⁶

a) Emergency shelter and transitional housing?

A: All immigrant survivors of domestic violence, sexual assault, child abuse, stalking and other U visa criminal activity are eligible for emergency shelter and for transitional housing without regard to their immigration status.¹⁸⁷ However, many transitional housing agencies will impose eligibility requirements that are not imposed by their federal agency funders that resulted in transitional housing programs turning away immigrants.¹⁸⁸ In a joint agency letter the DOJ, HUD and HHS confirmed that their emergency shelter and transitional housing grantees are to be open to all persons with no immigration status restrictions. Imposing such restrictions directly or indirectly would violate anti-discrimination grant requirements.¹⁸⁹ NIWAP has developed a tool to assist victim advocates and attorneys assist their VAWA self-petitioner and immigrant survivor client's access transitional housing programs.¹⁹⁰

¹⁸⁴ Catherine Longville, Leslye Orloff, *Immigrant Crime Victims and Public Charge: Post-VAWA 2013*, NIWAP, (Aug. 14, 2019), <https://niwaplibrary.wcl.american.edu/pubs/public-charge-ground-of-inadmissibility-and-immigrant-crime-victims>; *Webinar– VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, (Apr. 22, 2020), <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>; *Webinar Slides – VAWA Self-Petition: Protections for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents*, NIWAP, slide 55 (Apr. 22, 2020), <http://niwap.wpengine.com/pubs/vawa-self-petition-2020> (Public charge is a ground of inadmissibility. Grounds of inadmissibility are reasons that a person could be denied a green card, visa, or admission into the United States).

¹⁸⁵ *Public Charge Test for Housing Benefits*, NIWAP, <https://niwaplibrary.wcl.american.edu/pubs/flow-chart-public-charge-test-housing-benefits>; *Public Charge Test for Housing Benefits*, NIWAP

<https://niwaplibrary.wcl.american.edu/pubs/infographic-public-charge-and-housing>; Rafaela Rodrigues, Leslye Orloff, *The Impact of the 2002 Public Charge Rule on Transitional Housing*, NIWAP, (Oct. 12, 2020), <https://niwaplibrary.wcl.american.edu/pubs/the-impact-of-transitional-housing-on-public-charge>.

¹⁸⁶ *Immigrant Access to Federally Assisted Housing: Slides*, NIWAP, slides 14, 15, 16 (July 24, 2017) <https://niwaplibrary.wcl.american.edu/pubs/crla-training-immigrant-access-to-federally-assisted-housing-7-17-17-leo-update>; *Interactive Infographic on Protection on Protections of Immigrant Victims*, DHS, (2018) <https://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims>.

¹⁸⁷ Catherine Longville, Leslye Orloff, *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status*, NIWAP, (Mar. 22, 2014), <https://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants>.

¹⁸⁸ Meghan Fitzpatrick, Benish Anver, David Stauffer, Krisztina Szabo, Leslye Orloff, *Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime*, NIWAP, (June 3, 2014), <https://niwaplibrary.wcl.american.edu/pubs/access-shelters-housing>.

¹⁸⁹ *WEBPAGE: Three Federal Agencies Issue Joint Agency Letter on Shelters and Transitional Housing*, NIWAP, (Aug. 12, 2016), <https://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing>.

¹⁹⁰ *Evidence to Meet Typical Additional Admission Criteria Imposed*, NIWAP, (Feb. 22, 2017) <https://niwaplibrary.wcl.american.edu/pubs/transitionalhousingbrochure>.

b) Public and assisted housing?

A: IN 1996, Congress granted access to public and assisted housing to VAWA self-petitioners. HUD has issued a legal memo confirming that VAWA self-petitioners have “satisfactory immigrant status” when applying for Section 214 housing. The memo addressed that housing providers must verify immigrant status by using the SAVE system, documents to verify VAWA self-petitioner’s status are required, and VAWA protections apply.¹⁹¹

84. When do VAWA self-petitioners get social security numbers?

A: Petitioners receive work authorized social security numbers when they are issued employment authorization cards.¹⁹² VAWA self-petitioners who are receiving public and assisted housing benefits (housing vouchers) will often need to obtain non-work social security numbers in order to continue receiving public and assisted housing benefits. Many VAWA self-petitioners whose abusers are their citizen spouses or parents will obtain work authorization in time to provide that social security number within HUD’s normal timeframes. However, it can take up to 18 months for a VAWA self-petition to be approved and it is only upon approval that VAWA self-petitioners abused by lawful permanent resident spouses or parents will receive legal work authorization which is necessary to obtain a regular “work authorized” social security number. This time frame is too long for HUD in most instances. As a result, VAWA self-petitioners with lawful permanent resident abuser spouses or parents will need to obtain a letter from the local public housing authority that can be used to obtain a non-work social security number.¹⁹³

COVID-19 Crisis

85. Has domestic violence and/or sexual assault increased during the COVID-19 crisis and how has the crisis particularly affected immigrant survivors?

A: COVID-19 has created many risks for increased domestic violence and sexual assault cases. Domestic violence is an underreported crime that is often stigmatized and not made public. Factors such as stress, unemployment, and financial pressures may cause an increase in the frequency and severity of violence and create more dangerous situations for

¹⁹¹ WEBPAGE: *Access to Public Assisted Housing VAWA Self-Petitioners*, NIWAP, (Sept. 10, 2020) <https://niwaplibrary.wcl.american.edu/access-public-assisted-housing-vawa-self-petitioners>; *Immigrant Access to Federally Assisted Housing: Slides*, NIWAP, slide 43 (July 24, 2017) <https://niwaplibrary.wcl.american.edu/pubs/crla-training-immigrant-access-to-federally-assisted-housing-7-17-17-leo-update>.

¹⁹² RM 10211.600 Requests for an SSN from an Alien Without Work Authorization, (July 31, 2014) <https://niwaplibrary.wcl.american.edu/pubs/non-work-ssns>.

¹⁹³ *See Obtaining Non-work Social Security Numbers Needed by VAWA Self-Petitioners to Maintain Public and Assisted Housing (Section 214 Housing)*, NIWAP, (Nov. 7, 2019)

<https://niwaplibrary.wcl.american.edu/pubs/non-work-ssns-vawa-self-petitioners> (explaining the process of obtaining non-work social security numbers of VAWA self-petitioners); *see also, Request That Social Security Administration Issue A Non-Work SSN to a Benefits Eligible Immigrant*, (June 2014)

<https://niwaplibrary.wcl.american.edu/pubs/sample-non-work-ssn-request-form> (sample request form).

victims, especially when compounded with the increased isolation that has come with social distancing.¹⁹⁴

86. The COVID-19 crisis has made it harder for battered immigrants to obtain legal assistance in VAWA self-petition cases, what are the victim’s options if the perpetrator is successful in getting Immigration and Customs Enforcement (ICE) to initiate an enforcement action against the victim?

A: The best way to provide victims VAWA confidentiality protection from deportation that stops immigration enforcement officials from relying on perpetrator provided information to stop, arrest, detain or conduct immigration enforcement against a victim is to file the victim’s VAWA self-petition. Once the self-petition is filed the case is logged into a special computer system at DHS that informs immigration enforcement officials that the self-petitioner is a victim. This warns enforcement officials that they are violating VAWA confidentiality laws if they rely upon or respond to “tips” from the abuser. Screening immigrant survivors early VAWA self-petition or U visa eligibility and providing eligible victims a letter on your agency’s stationery stating that the victim is “in the process” of filing for a VAWA self-petition or a U visa is an important first step. Victims should be advised to carry these letters with them and show them to any immigration enforcement official who contacts them. This officially triggers VAWA confidentiality protection including for victims who are in the process of identifying or are in line waiting for a trained attorney or victim advocate with expertise working on immigration matters involving immigrant survivors. For victims who obtain protection orders it can also be helpful if the victim is stopped by immigration enforcement officials to show them a copy of the protection order that the victim received.¹⁹⁵

VAWA Self-Petitioning Data

87. How many VAWA self-petitions filed are granted and denied each year?

A: Since the VAWA self-petitions began being approved in 1997 through the end of fiscal year 2020 a total of 126,039 self-petitions have been approved. Over the lifetime of the VAWA self-petitioning program 76% of VAWA self-petitions have been approved and 24% were denied. Over the past 10 years (fiscal years 2011-2020) a total of 58,430 VAWA self-petitions were approved. During that decade 71% of VAWA self-petition filings were approved and 29% were denied.¹⁹⁶

¹⁹⁴ NEW YORK STATE COUNCIL ON WOMEN AND GIRLS: COVID-19 DOMESTIC VIOLENCE TASKFORCE, May 28, 2020, <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/DVTF-Report-FINAL.pdf>; *FAST FACTS: Survivors of Domestic and Sexual Violence are at Heightened Risk Now, and Will Remain So Long After the Current Crisis*, NATIONAL TASKFORCE ON SEXUAL & DOMESTIC VIOLENCE, <http://www.4vawa.org/ntf-action-alerts-and-news/2020/4/16/survivors-of-domestic-and-sexual-violence-are-at-heightened-risk-now-and-will-remain-so-long-after-the-current-crisis>.

¹⁹⁵ NIWAP provides case-by-case individualized technical assistance on VAWA confidentiality protections against detention and immigration enforcement. Call (202) 274-4457 or info@niwap.org.

¹⁹⁶ VAWA T, U Case Processing Data 1997-2020 Fiscal Year, DHS & INS (February 10, 2021), <https://niwaplibrary.wcl.american.edu/pubs/vawa-t-u-data-1997-2020>.