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# IMMIGRATION RELIEF

Legal Assistance for Noncitizen Crime Victims



fee for filing an I-601 application is \$585;<sup>68</sup> however, VAWA self-petitioners may ask for a fee waiver by filing Form I-912, Request for Fee Waiver.<sup>69</sup>

As in all areas of immigration law, it is very important that an applicant find a lawyer to help with the application; inadmissibility issues in particular are exceedingly complex, and in the event that a self-petitioner faces inadmissibility grounds, it is strongly recommended that she find help from an experienced immigration attorney.

#### 4. *Petitioners Already in Removal Proceedings*

Self-petitioners who are already in removal proceedings can self-petition under VAWA, although USCIS has the sole jurisdiction over VAWA applications.<sup>70</sup> Thus, a petitioner may inform the immigration judge of her intention to self-petition under VAWA if she wishes to request either administrative closure or a motion to continue her removal proceedings. Alternatively, the battered immigrant spouse in removal proceedings may be eligible to apply for cancellation of removal under VAWA.<sup>71</sup>

### III. Battered Spouse or Child Waiver for Victims of Domestic Violence Present as Conditional Lawful Permanent Residents

In 1986, Congress passed the Immigration Marriage Fraud Act requiring that if a USC or LPR petitions for his or her spouse to gain LPR status

OF INADMISSIBILITY, OMB No. 1615-0029 (rev. 12/16/12), <http://www.uscis.gov/sites/default/files/files/form/i-601instr.pdf>.

68. *Id.*

69. See U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-192, APPLICATION FOR ADVANCE PERMISSION TO ENTER AS NONIMMIGRANT, OMB No. 1615-0017 (rev. 04/15/13), <http://www.uscis.gov/sites/default/files/files/form/i-192.pdf>; see also USCIS.GOV, FEE WAIVER GUIDANCE, <http://www.uscis.gov/feewaiver> (last visited Apr. 7, 2014).

70. See U.S. CITIZENSHIP & IMMIGR. SERV., REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER, REPORT TO CONGRESS (Oct. 22, 2010), <http://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf>.

71. See *infra* Chapter 2, Section IV, VAWA Cancellation of Removal.

based on a marriage that is less than two years old, the spouse will only have conditional residence, valid for two years.<sup>72</sup> At the end of the two-year conditional period, in order to obtain LPR status without conditions, the couple must file a joint petition to remove the conditional status and may be required to attend an interview with USCIS.<sup>73</sup> This, again, puts an abusive USC or LPR spouse in a position of power over his noncitizen spouse. If the conditional residence expires, the lawful status of the immigrant spouse is terminated, and she may be put into removal proceedings automatically. An abuser can threaten or refuse to file the joint petition to remove conditions, thus holding the threat of deportation over his immigrant spouse. Accordingly, victims in abusive relationships may feel forced to stay in that abusive situation in order to meet the conditional residence requirements.

Congress responded to this situation in the 1990 Immigration Act by introducing a waiver of the joint filing requirement in three situations if the immigrant spouse can establish:

- (i) Deportation or removal from the United States would result in extreme hardship;
- (ii) The marriage upon which his or her status was based was entered into in good faith by the conditional resident alien, but the marriage was terminated other than by death, and the conditional resident was not at fault in failing to file a timely petition; or
- (iii) The qualifying marriage was entered into in good faith by the conditional resident but during the marriage the alien spouse or child was battered by or subjected to extreme cruelty committed by the citizen or permanent resident spouse or parent.<sup>74</sup>

72. Immigration Marriage Fraud Act of 1986, Pub. L. No. 99-639, 100 Stat. 3537 (1986).

73. INA § 216(c)(1), 8 U.S.C. § 1186a(c)(1) (2012).

74. 8 C.F.R. § 216.5(a)(1) (2013); see also INA § 216(c)(4), 8 U.S.C. § 1186a(a)(1) (2012).

Thus, this provision allows victims of domestic violence to apply independently to have the conditions of their residency removed, without the need for their spouses' knowledge or cooperation.

### A. Eligibility Requirements

In order to show eligibility for a waiver of the joint petition to remove conditions on residence, the battered immigrant spouse must meet several of the same requirements required for a self-petitioner under VAWA. First, the battered immigrant spouse must demonstrate that she is a current conditional resident.<sup>75</sup> Second, she must show that she is or was in a valid good faith marriage.<sup>76</sup> There is no requirement that the petitioner remain married to her abuser at the time of filing, nor is it required that she be separated.<sup>77</sup> Finally, the battered immigrant spouse must demonstrate that she, or her child, was subject to battery or extreme cruelty at the hands of her USC or LPR spouse.<sup>78</sup> The definition of battery or extreme cruelty remains the same as for a self-petitioner under VAWA.

### B. Nature of Relief

If granted, a waiver of the joint filing petition allows the battered immigrant spouse to remove the conditions of her lawful permanent residence, thereby becoming an LPR without restrictions. Children of victims who have conditional residence can be included in the application as well.<sup>79</sup>

### C. Applying for Relief

To file for a waiver of the joint petition to remove conditions on residence, the battered immigrant spouse must file Form I-751, Petition to Remove the Conditions on Residence.<sup>80</sup> There is no requirement that this petition

75. INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4) (2012); 8 C.F.R. § 216.5 (2013).

76. *Id.*

77. 8 C.F.R. § 216.5(e)(3)(ii) (2013).

78. INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4) (2012); 8 C.F.R. § 216.5 (2013).

79. INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4) (2012); 8 C.F.R. §§ 216.4(a)(1), 216.5 (2013).

80. See U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-751, PETITION TO REMOVE THE CONDITIONS ON RESIDENCE, OMB No. 1615-0038 (rev. 04/11/13), <http://www.uscis.gov/sites/default/files/files/form/i-751.pdf>.

be filed within the 90-day period prior to the end of the two-year conditional residency period, as there is with a joint petition; rather, the battered immigrant spouse can apply for an I-751 waiver at any time.<sup>81</sup> There are fees for filing Form I-751 (\$505 plus an \$85 biometrics fee, as of August 19, 2013), or, if the battered immigrant spouse cannot afford these fees, she may file Form I-912, Request for Fee Waiver.<sup>82</sup>

When filing the I-751 application, the battered immigrant spouse should also include a copy of her green card to establish her conditional residence, as well as evidence of the battery or extreme cruelty and of her good faith marriage.

## IV. VAWA Cancellation of Removal for Victims of Domestic Violence

Victims of domestic violence, particularly those without lawful status, may find themselves in removal proceedings. VAWA cancellation of removal (called "suspension of deportation" prior to 1996) is a form of relief designed to keep victims of abusive USC or LPR spouses or parents from being removed (or deported). This relief from removal is available only when the victim has been placed in removal proceedings, and it may be granted only by an immigration judge. While some victims may prefer to ask the immigration judge to terminate or delay removal proceedings in order to file a VAWA self-petition with USCIS,<sup>83</sup> cancellation of removal may be the only relief available if the victim has been divorced for more than two years, if she has remarried, or if she is not able to show that her marriage was entered into in good faith.

81. 8 C.F.R. § 216.5(a) (2013).

82. See U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-751, PETITION TO REMOVE THE CONDITIONS ON RESIDENCE, OMB No. 1615-0038 (rev. 04/11/13), <http://www.uscis.gov/sites/default/files/files/form/i-751.pdf>; see also USCIS.GOV, FEE WAIVER GUIDANCE, <http://www.uscis.gov/feewaiver> (last visited Apr. 8, 2014).

83. See *supra*, Section II.C.4, Petitioners Already in Removal Proceedings.

## A. Eligibility Requirements

A victim applying for this form of relief (the respondent) must show that she has been battered or subjected to extreme cruelty by a spouse, intended spouse, or parent who is or was a USC or LPR.<sup>84</sup> The definition of battery or extreme cruelty remains the same as for a self-petition under VAWA or a waiver of the joint petition to remove conditions on residence. As with a VAWA self-petition, the respondent must show that she has been a person of good moral character for the three years immediately preceding the filing of her application for cancellation of removal, although waivers may be available if the respondent can show that a lack of good moral character is related to having been battered or subjected to extreme cruelty.<sup>85</sup>

The respondent must also demonstrate that she has been physically present in the United States for a continuous period of not less than three years,<sup>86</sup> that she is not inadmissible or deportable due to aggravated felonies,<sup>87</sup> and that removal from the United States would cause extreme hardship to herself, her child, or her parents.<sup>88</sup> The respondent who wants to apply for relief from removal has the burden of proof establishing that she satisfies the eligibility requirements and that she merits a favorable exercise of discretion.<sup>89</sup>

### 1. Marriage or Intended Marriage to U.S. Citizen or Lawful Permanent Resident

Unlike the provisions for self-petitioning under VAWA, to qualify for cancellation of removal based on battery or extreme cruelty at the hands of a USC or LPR spouse, there is no requirement that the marriage be entered into in good faith.<sup>90</sup> Instead, a marriage is considered valid for purposes of cancellation of removal under VAWA if it is valid in the jurisdiction where

84. See INA § 240A(b)(2)(A)(i)(I)–(III), 8 U.S.C. § 1229b(b)(2)(A)(i)(I)–(III) (2012).

85. *Id.* § 1229b(b)(2)(A)(iii).

86. *Id.* § 1229b(b)(2)(A)(ii).

87. *Id.* § 1229b(b)(2)(A)(iv).

88. *Id.* § 1229b(b)(2)(A)(v).

89. See INA § 240(c)(4)(A), 8 U.S.C. § 1229a(c)(4)(A) (2012).

90. *Bermudez v. Alberto Gonzalez*, 2006 WL 5101280 \*9 (2006) (stating that cancellation of removal within the meaning of the act does not encompass good faith marriage).

it was performed.<sup>91</sup> As with a VAWA self-petition, the law provides for protection in cases such as bigamy if the immigrant spouse intended to marry and did not have knowledge that the marriage was invalid.<sup>92</sup> In addition, the death of the abusive spouse or divorce from the abusive spouse will not preclude a claim for cancellation.<sup>93</sup> Unlike the VAWA self-petition, there is no requirement that the application for cancellation of removal be filed within a particular period after the termination of a marriage.<sup>94</sup>

### 2. Physical Presence

The respondent must show that she was continuously present in the United States for not less than three years prior to applying for the relief.<sup>95</sup> Absences from the United States do not break the “continuous presence” requirement as long as the victim can demonstrate that such absences were connected to the battering or extreme cruelty.<sup>96</sup> To avoid breaking the continuous presence, no single absence can exceed more than 90 days, and the total time of absence must not exceed 180 days.<sup>97</sup>

### 3. Extreme Hardship

In order to qualify for cancellation of removal, the applicant must show that her removal from the United States would result in extreme hardship

91. See USCIS.GOV, ADJUDICATOR'S FIELD MANUAL—REDACTED PUBLIC VERSION, CHAPTER 21 FAMILY-BASED PETITIONS AND APPLICATIONS, SECTION 21.3 PETITION FOR A SPOUSE, *supra* note 17; see also U.S. CITIZENSHIP & IMMIGR. SERV., POLICY MANUAL, VOLUME 12: CITIZENSHIP & NATURALIZATION, PART G: SPOUSES OF U.S. CITIZENS, CHAPTER 2, MARRIAGE AND MARITAL UNION FOR NATURALIZATION, *supra* note 17.

92. INA § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii) (2012) (describing “intended” and bigamous marriages, entered into in good faith by the immigrant spouse).

93. See Memorandum from Paul W. Virtue, Acting Executive Associate Commissioner, Dept. of Justice, Office of Programs, *Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues* (May 6, 1997) (addressing VAWA provisions for battered spouses and children).

94. See generally INA § 240A(b)(2)(A), 8 U.S.C. § 1229b (2012).

95. See *id.* § 1229b(b)(2)(A)(ii).

96. *Id.* § 1229b(b)(2)(B).

97. *Id.* § 1229b(b)(2)(B).

to herself or to her child or parent.<sup>98</sup> The factors specified in the regulations are as follows:

- (1) The nature and extent of the physical and psychological consequences of the battering or extreme cruelty;
- (2) The impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, alimony, maintenance, child custody, and visitation);
- (3) The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, particularly those related to the abuse or surviving the abuse, which would not be available or reasonably accessible in the home country if the applicant were removed;
- (4) The existence of laws, social practices, or customs in the home country that would penalize or ostracize the applicant or applicant's child for leaving an abusive situation, or for taking action to stop the abuse, including divorce;
- (5) The abuser's ability or lack thereof to travel to the applicant's country, and the ability, willingness, or lack thereof of the home country's authorities to protect the applicant and/or the applicant's child from future abuse;
- (6) The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the home country would physically or psychologically harm the applicant or the applicant's children if they were removed.<sup>99</sup>

Because cancellation of removal is a discretionary relief, applicants must meet the requirements of extreme hardship, and it is often the most difficult

98. *Id.* § 1229b(b)(2)(A)(v).

99. 8 C.F.R. §§ 1240.20(c), 1240.58(c) (2013). *See also* Memorandum from Paul Virtue, General Counsel, Immigration and Naturalization Serv., Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children (Oct. 16, 1998).

factor to prove. It is very important to obtain expert testimony and evidence about how the applicant would likely be treated in her home country if she were removed. Country conditions regarding treatment of women and legal and societal attitudes concerning domestic violence should be approached in a manner similar to that required in an asylum case.<sup>100</sup>

#### 4. Inadmissibility and Deportability

Victims applying for cancellation of removal must also show that they are not inadmissible<sup>101</sup> or deportable<sup>102</sup> and that they have not been convicted of an aggravated felony.<sup>103</sup> While most grounds of inadmissibility and deportability would make a person ineligible for cancellation of removal relief, there are waivers available for convictions of domestic violence, for stalking, and for violations of orders of protection.<sup>104</sup> The requirements to qualify for a waiver include proof that the applicant was acting in self-defense; that the applicant violated a protection order intended to protect her; or that the applicant committed a crime that did not result in serious bodily injury and that there was a connection between the crime and the abuse.<sup>105</sup>

#### B. Nature of Relief

Successful cancellation of removal results in LPR status for the respondent, whose children can also be paroled into the United States and can ultimately receive lawful permanent residence as well.

100. *See generally* Sarah Ignatius et al., *Protections for Immigrant Victims of Domestic Violence*, in *IMMIGRATION LAW AND THE FAMILY* 140 (13th ed. 2013).

101. *See* INA § 240A(b)(2)(A)(iv), 8 U.S.C. § 1229b(b)(2)(A)(iv) (2012).

102. *Id.*

103. The definition of an aggravated felony was expanded by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (1996), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

104. *See generally* INA § 237(a)(2)(E)(i)-(ii), 8 U.S.C. § 1227(a)(2)(E)(i)-(ii) (2012).

105. *See generally id.* § 1227(a)(7)(A)(i) (2012).

## Appendix D

# Battered Spouse or Child Waiver for Removal of Conditional Resident Status Checklist

- Form I-751, Petition to Remove Conditions on Residence**, signed and completed. This form and accompanying instructions can be found at <http://www.uscis.gov/i-751>.
- A copy of both sides of permanent resident card or alien registration card
- Applicant's declaration describing how he or she meets each eligibility requirement
- Evidence that the marriage was entered into in good faith and was not for the purpose of circumventing immigration laws, such as:
  - Birth certificates of children born to the marriage
  - Lease or mortgage contracts showing joint occupancy or ownership of residence
  - Financial records showing joint ownership of assets and joint responsibility for liabilities, including checking or savings accounts, joint tax returns, insurance documents, joint utility bills, or joint loans
  - Any other relevant documents that establish the marriage was entered into in good faith
  - Affidavits sworn to or affirmed by at least two people who have known both the applicant and spouse since the applicant's

conditional residence was granted and have personal knowledge of the marriage and relationship

- Evidence of the abuse, such as:
  - Copies of reports or official records issued by police, courts, medical personnel, school officials, clergy, or social workers
  - Legal documents relating to an order of protection against the abuser or relating to legal steps the applicant may have taken to end the abuse
  - Evidence that the applicant sought safe haven in a shelter for the abused
  - Photographs evidencing injuries
  - A copy of a divorce decree, if the marriage was terminated by divorce on grounds of physical abuse or extreme cruelty
- Criminal history—if the applicant has ever been arrested or detained, whether or not charges were filed or the applicant was convicted, the applicant must submit information relating to the arrest.
- Any other relevant credible evidence
- Any submitted documents that contain a foreign language must be accompanied by a full English translation that is certified as complete and accurate by a translator competent to translate from the foreign language.
- Filing fee: \$505, plus an additional biometric services fee of \$85 (as of 01/07/14). Checks or money orders should be made out to U.S. Department of Homeland Security.
- If the applicant cannot afford the filing fees, she or he may submit **Form I-912, Request for Fee Waiver**, with supporting evidence. This form and accompanying instructions can be found at <http://www.uscis.gov/i-912>.
- Mailing address: See instructions at <http://www.uscis.gov/i-751>.

## Appendix E

### VAWA Cancellation of Removal Checklist

- Form EOIR-42b, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents**, signed and completed. This form and accompanying instructions can be found at <http://www.justice.gov/eoir/eoirforms/eoir42b.pdf>.
- Applicant's declaration describing how he or she meets each eligibility requirement
- Evidence to show the applicant has maintained continuous physical presence in the United States for three or more years, such as:
  - Bankbooks
  - Leases or deeds
  - Licenses
  - Church or school records
  - Employment records and evidence of tax payments
- Evidence to show the applicant has been a person of good moral character during the entire period of continuous physical presence in the United States, such as:
  - Police records from each jurisdiction in which the applicant resided
  - Affidavits of witnesses attesting to the applicant's good moral character
  - Affidavit from the applicant's employer(s), which should include information regarding the nature and duration of the employment and earnings

- Documentation of the applicant's relationship to those who would suffer hardship by the applicant's removal and proof of such persons' U.S. citizenship or lawful permanent resident status, such as:
  - Birth certificates
  - Marriage certificate
  - Proof of divorce or termination of marriage
  - U.S. passport
  - Green card
  - Certificate of naturalization
- Evidence to show that the applicant's removal from the United States would result in extreme hardship to the applicant or to the applicant's child or parent. This can include evidence demonstrating the following:
  - Nature and extent of the physical and psychological consequences of the battering or extreme cruelty
  - Impact of the loss of access to the U.S. courts and criminal justice system
  - Need for social, medical, mental health, or other supportive services, which would not be available or reasonably accessible in the home country
  - Existence of laws, social practices, or customs in the home country that would penalize or ostracize the applicant or the applicant's child
  - Abuser's ability to travel to the applicant's home country, and the ability and willingness of the home country's authorities to protect the applicant or the applicant's child from future abuse
  - Likelihood that the abuser's family, friends, or others in the home country would physically or psychologically harm the applicant or the applicant's children
- Copies of any documents the applicant was issued by the Department of Homeland Security
- Any other relevant credible evidence
- Any submitted documents that contain a foreign language must be accompanied by a full English translation that is certified as complete and accurate by a translator competent to translate from the foreign language.

- Photos: two identical passport-style color photos taken within 30 days of filing the application
- Filing fee: \$100, plus an additional biometric services fee of \$85 (as of 01/07/14). Checks or money orders should be made out to U.S. Department of Homeland Security.
- If the applicant is unable to pay the filing fee, she may ask the immigration judge to permit her to file Form EOIR-42B without fee (a fee waiver).
- Mailing address: See instructions at <http://www.justice.gov/eoir/eoirforms/eoir42b.pdf>.