

## **Community of Practice for Victim Advocates Working with Immigrant Survivors**

### **VAWA Self-Petition: Filing the Application 101**

April 27, 2022

# Introductions




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What emoji best describes  
how you are feeling right  
now?

# Who can File for VAWA Self-Petition?

**Spouse**—The abused spouse **or former spouse** of a U.S. citizen or lawful permanent resident (child may be included)

**Child**—The abused child(ren) **and step-children** of a U.S. citizen or lawful permanent resident

**Parent** – The abused parent(s) of a U.S. citizen over the age of 21.



Note: VAWA immigration relief applies equally to women and men

# Basic VAWA Requirements

The survivor must show:

- “Qualifying” family relationship to the abuser
- Abuser is (or was) U.S. citizen or lawful permanent resident
- Subjected to battery or extreme cruelty by the abuser
- Resides or resided with the abuser
- Good moral character



# VAWA Confidentiality Prongs Chart

## Non-Disclosure

Protects victims **who have filed** a protected case with DHS

- \*VAWA self-petitions
- \*Battered spouse waiver
- \*VAWA Cancellation/Suspension
- \*U and T Visas
- \*Abused Spouses of work visa holders work authorization applications

## Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

### Protects:

- \***All victims abused by spouse or parent**
- \*All victims in the process of applying for U or T visas

## Location Prohibitions

### Protects:

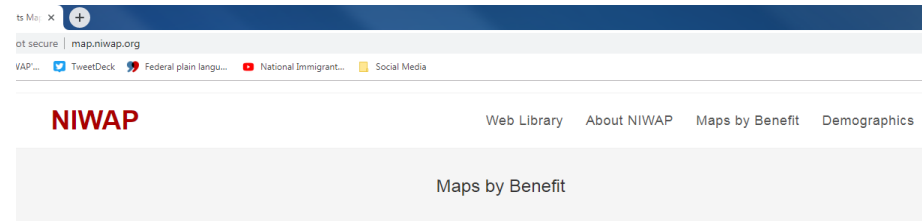
**All Victims**

### Requires:

No action at protected locations  
OR  
Notice to Appear must state how they complied with VAWA confidentiality

Violation = \$5,000 fine and/or disciplinary action

# Interactive Public Benefits Map



NIWAP

Web Library About NIWAP Maps by Benefit Demogr

Legal Services

Maps by Benefit

These maps break down available public benefits based on immigrant's state and immigration status.

We are still working on this site, so if you cannot click on your state, check back soon for completed maps.



### Cash Assistance (TANF)

Temporary Assistance for Needy Families (TANF) provides cash assistance to low income families with children.

[Go to Map](#)



### Child Care

Child Care services may be provided through public benefits.

[Go to Map](#)



### Children's Health Insurance Program

Medical assistance is available to children through the Children's Health Insurance Program (CHIP).

[Go to Map](#)



### Driver's License

State-specific requirements to be issued a driver's license.

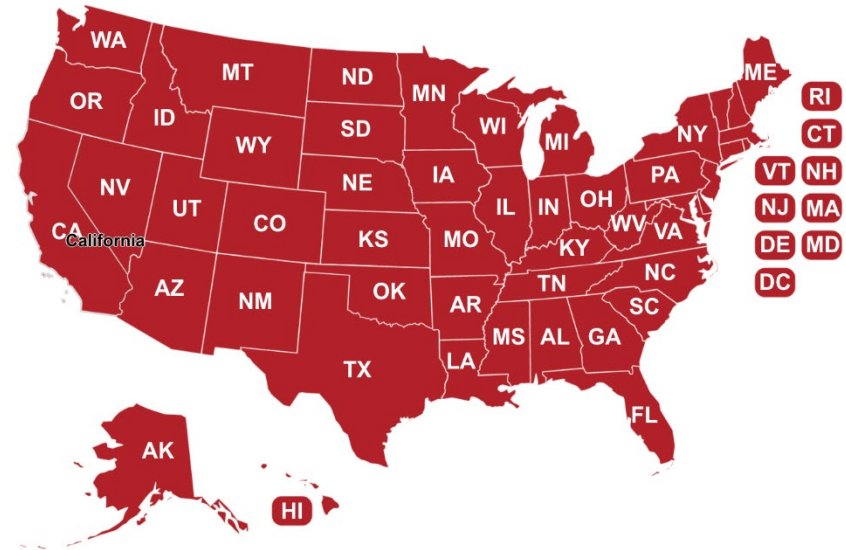
[Go to Map](#)



### Earned Income Tax Credit



### Emergency Housing & Safety Programs



<http://map.niwap.org/>

Click here for your state's detailed chart

# Safe Address For Filing

- Congress created special protections for people with pending or approved VAWA and U visa petitions.
- Victims may use a “safe address” on their petition
- “Safe address” can be the address of an attorney, preparer, shelter, or other safe place
- USCIS will use this safe address as the mailing address for all correspondence





What would be your first tell tale sign that a survivor qualify for the VAWA Self\_Petition

- A. They speak a language other than English
- B. She is still living with the abuser
- C. She is divorced
- D. Her abuser, is a successful business owner
- E. His wife passed away last and he had a protect order against when she died.

# Evidence of Legal Marriage

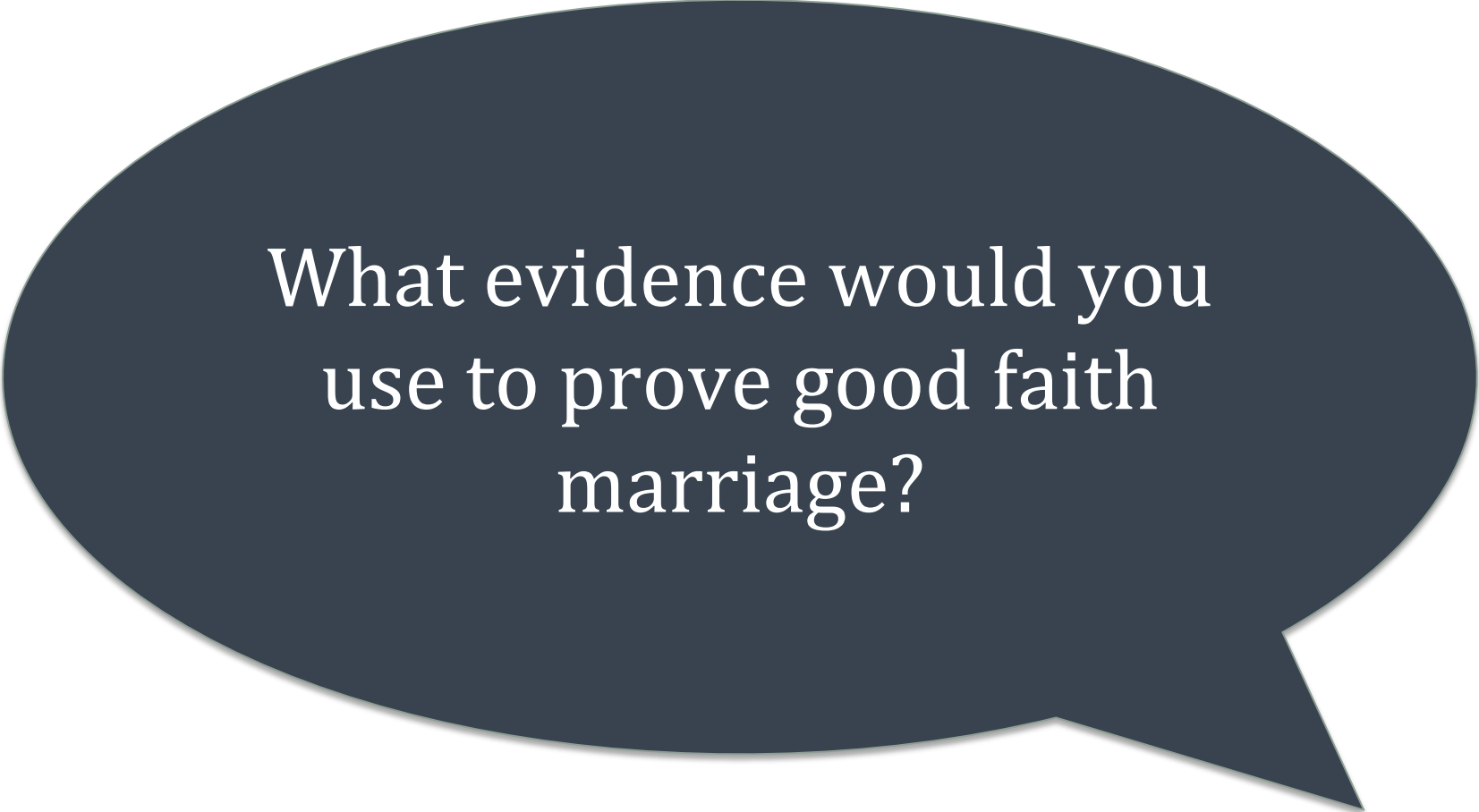
- Dissolution of prior marriages
- Evidence of formal marriage
- Evidence of informal marriage
- Common Law Marriage
  - Common law marriage occurred in CO, IA, KS, MT, NH, SC, TX, UT, DC

# Good Faith Marriage



# Good Faith Marriage

- Intent *at the time of the marriage*
- Their subjective state of mind
- Did they intend to establish a life together?
- Separation, even after a short marriage
- Providing cultural context is helpful in certain cases
  - Is not proof that marriage was fraudulent
- Bigamy
  - Immigrant can qualify as “spouse” if he or she was unaware of the bigamy at the time of the marriage ceremony



What evidence would you  
use to prove good faith  
marriage?


# Evidence of Good Faith Marriage

- Children
- Residence with the abuser
- Evidence about:
  - How the parties met
  - How the relationship developed
  - Should submit more evidence for shorter marriages
- No need for ongoing documentation from the time of marriage to:
  - Time of separation or present date

# Reviewing a Redacted VAWA Self-Petition

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Vermont Service Center  
ATTN: VAWA OFFICE  
75 Lower Weldon Street  
St. Albans, VT 05479-9400

**Re: I-360, Self-Petition for Classification as the A**  
**I-485, Application for Adjustment of Status**  
**I-765, Application for Employment Authoriz**



# Status of the Abuser

If Abuser loses status through DV, victim has two years to file I-360

- U.S. citizen
  - Birth certificate
  - Passport
  - Naturalization certificate
  - Baptismal record
  - School record
  - Affidavits
  - “A” number if naturalized
- LPR
  - Copy of resident card (I-551), front and back
  - Copy of passport or I-94 with “temporary proof of resident status” stamp
  - Immigration correspondence or notice
  - -“A” number



# Self-Petitioner Must Have Lived with Abuser

- No specified amount of time required
- Could have lived together inside or outside of the U.S.
- No requirement that survivor currently living with abuser
- The self-petitioner could be outside of the U.S. to qualify under VAWA

# What are ways we can show residence with the abuser ?



# Ways we Can Show Residence with the Abuser

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

# Immigration Law Definition of Domestic Violence = Battering or Extreme Cruelty

- “Battery or Extreme Cruelty”
- Includes:
  - All forms of abuse covered in state civil protection order statute
  - All forms of abuse that constitute domestic violence under states criminal laws
  - Forms of abuse that constitute extreme cruelty
    - No physical harm, crime, attempted crime required



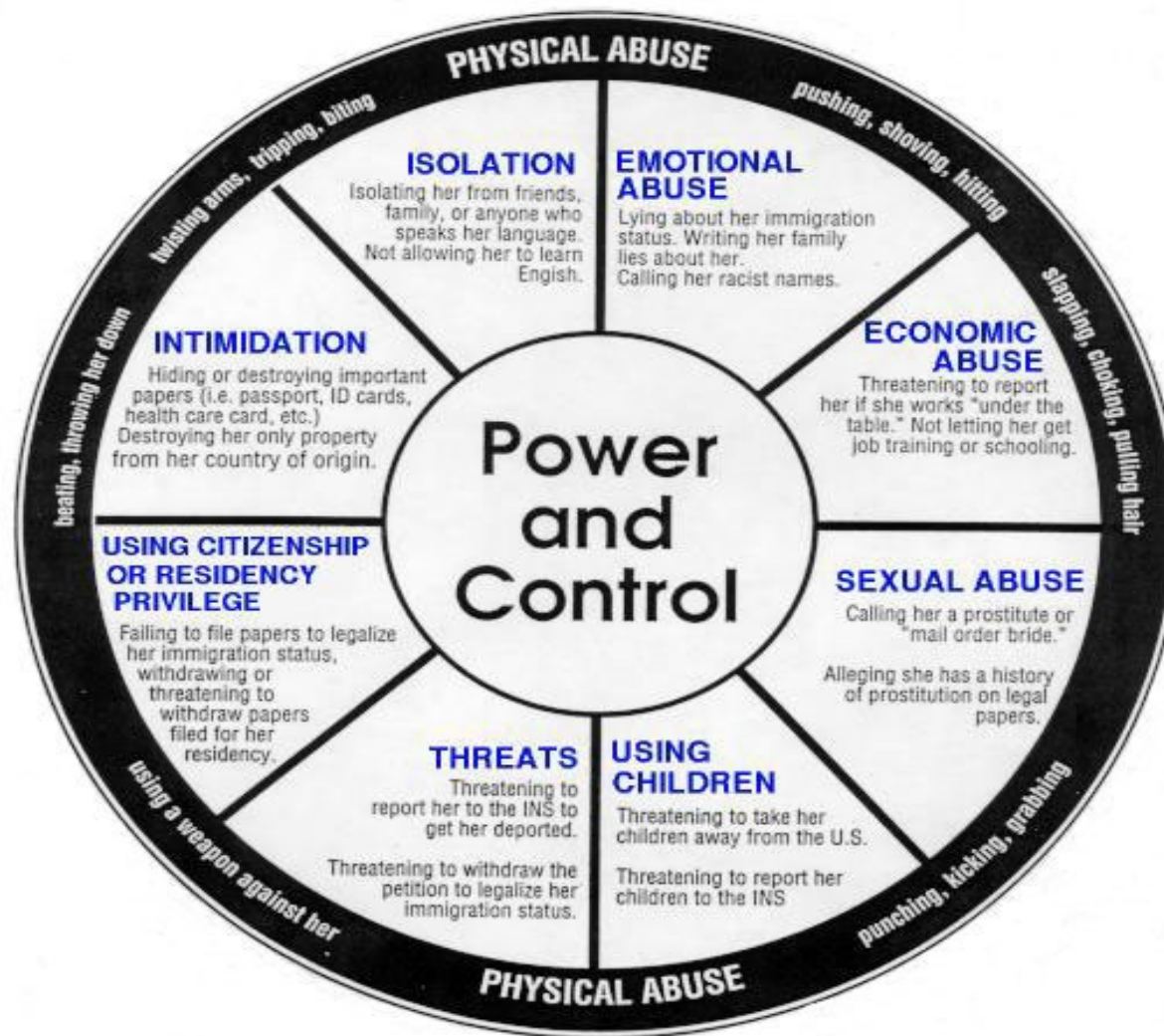
# Factors That Can Constitute Extreme Cruelty

- Correlate strongly with physical & sexual abuse
  - Isolation
  - Intimidation
  - Economic Abuse
  - Employment Related Abuse
  - Immigration related abuse
- Threats to kill or cause bodily harm
- Threats to harm children or family members
- Threats to take away money

# Forms of Extreme Cruelty

- Emotional abuse
- Economic abuse
- Sexual abuse
- Coercive control
- Deportation threats
- Immigration related abuse
- Financial exploitation
- Abuse at work
- Intimidation
- Abandonment
- Social isolation
- Degradation
- Possessiveness
- Threats to harm
- Harming pets
- Caregiver neglect

# Immigrant Power and Control Wheel





# Extreme Cruelty Includes:

- Abusive acts or Treatment that are Part of a Pattern of Coercive Control Process
- Defined by National Institute of Justice research to include:
  - Setting the Stage
  - Coercive Demand
  - Credible Threat
  - Surveillance
  - Delivery of threatened consequences

Share some examples of Extreme Cruelty where the survivor was not physically abused/Battered

# Evidence of Coercive Control

- Social isolation
- Religious persecution
- Monitoring phone and internet use
- Monitoring/controlling movement, whereabouts
- Social media control
- Showing up at victim's work/school
- Restricting what spouse eats
- Cutting off access to medication
- Sleep deprivation
- Threats of deportation
- Abuse in front of the children
- Threatening to take away the children
- Using children as a tool
- Threatening physical violence
- Displaying weapons
- Stealing spouse's sentimental property, money, documents
- Threats to commit suicide
- Having spouse committed

# Proof of Extreme Cruelty or Battery

- Self-petitioner's declaration
- Others' declarations (family, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelters, crisis lines, support groups)
- Protection orders
- Criminal court records
- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Medical records (injuries, scars, PTSD, migraines, insomnia)
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports

Raise your hand if you  
have helped VAWA eligible  
survivor write declaration  
in support of their  
application ?

# Declaration in Support of Application

## **Affidavit = A survivor's "story"**

- Unique opportunity for trauma informed healing
- Most important pieces of evidence submitted
- USCIS hears directly from the survivor, in her voice
- Less affidavit, than story of the survivor's experience
- Getting the full story for the immigration case can be a traumatic experience for survivors
- The goal is to develop an approach that:
  - Obtains more complete information
  - Improves outcomes and helps survivors heal

How could family courts assist in  
providing evidence of:  
Legal marriage?  
Good faith marriage?  
Residence together?

# Good Moral Character Requirement

- Must demonstrate that applicant is a person of “good moral character”
  - USCIS looks at the past 3 years
  - Can be shown by police clearance letter
- Generally means the applicant follows the law
- Can also show positive contributions to her family and community
- There are exceptions – Waivers



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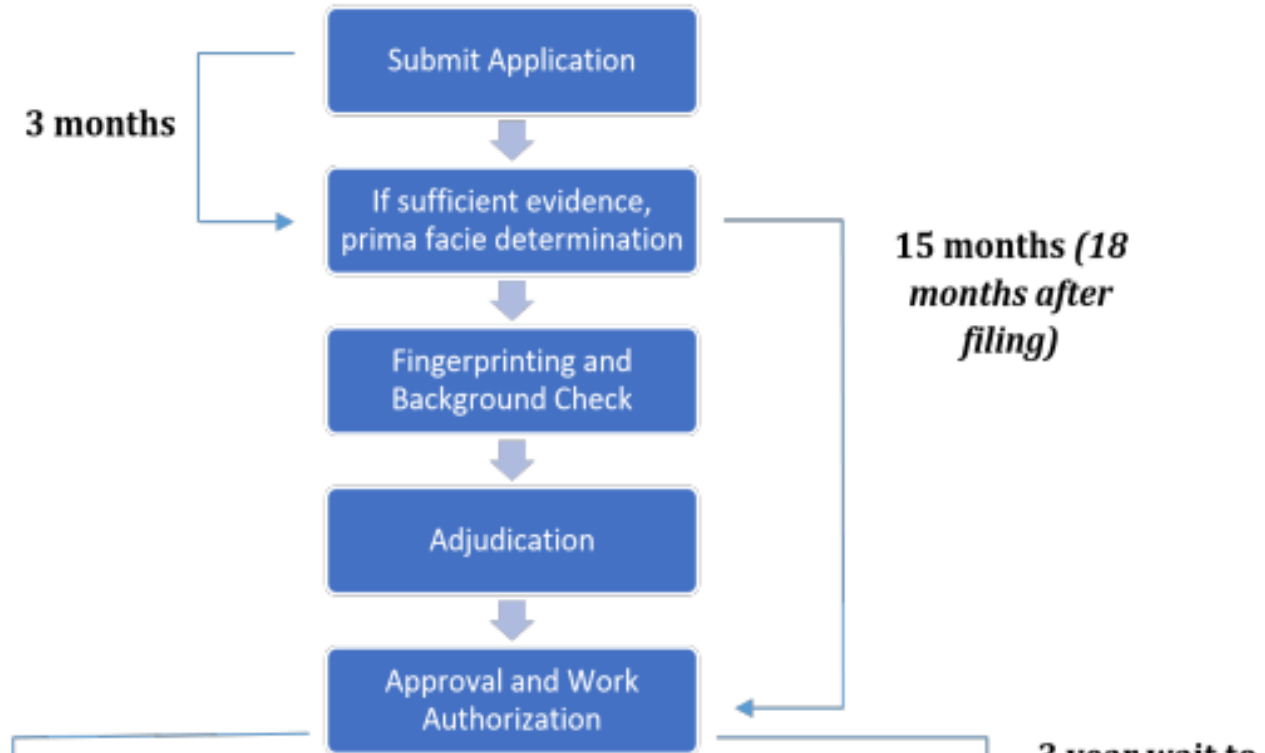
What happens after the  
Self-Petition is filed?

# VAWA Self-Petition Timeline

## VAWA Self-Petition Timeline with Background Checks

By Katelyn Deibler and Leslye E. Orloff

June 12, 2021



# Challenges to Gathering Evidence

A VAWA self-petition “may not be denied for failure to submit particular evidence. It may only be denied on evidentiary grounds if the evidence that was submitted is not credible or otherwise fails to establish eligibility.” VAWA “recognizes the fact that battered spouse and child self-petitioners are not likely to have access to the range of documents available to the ordinary visa petitioner for a variety of reasons.” Self-petitioners may be fleeing abusive situations and lack time to gather documents; abusive spouses may destroy documents to prevent the self-petitioner from fleeing; other self-petitioners may be petitioning without their spouse’s knowledge or consent. VAWA adjudicators “should be aware of these issues and should evaluate the evidence submitted in that light.”

- Memorandum from Paul W. Virtue, Office of the General Counsel, Immigration and Naturalization Service to Terrence M. O’Reilly, Director, Administrative Appeals Office (Oct. 16, 1998), 2001 WL 1047693.

# Technical Assistance and Materials

- NIWAP Technical Assistance:
  - Call (202) 274-4457
  - E-mail [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)



# A Note About Interpreter & Translators

- Plan ahead for interpretation needs
- Survivor writing in her own language
- Train your interpreters and translators in:
  - Domestic violence and sexual assault training
  - Interpreter training
  - Trauma training
- Be creative

# Make Self-Care Priority

- It is important to take care and time for yourself
- Working with those who have experienced violence may cause “vicarious trauma”



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