VIOLENCE AGAINST WOMEN ACT (VAWA) SUSPENSION OF DEPORTATION AS CREATED IN 1994 WITH VAWA 2000, AND 2005 AMENDMENTS

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VAWA SUSPENSION OF DEPORTATION

History

The 1994 Violence Against Women Act (VAWA) [1] created two forms of immigration relief that were designed to sever the power and control abusive citizen and lawful permanent resident spouses and parents had over when and whether to file a family based immigration petition for their abused immigrant spouses, children and step-children. VAWA 1994 allowed immigrant spouses and children to who were battered or subject to extreme cruelty to self-petition for immigration relief and lawful permanent residency. It also created a defense to deportation that victims could have adjudicated by the judge in immigration court if the victim ended in deportation or exclusion proceedings called VAWA suspension of deportation. The Immigration and Nationality Act (INA) code section for suspension of deportation, including VAWA suspension of deportation was INA Section 244. (8 U.S.C. 1254 as in effect on March 31, 1997).

In 1996 U.S. immigration laws were significantly amended by the Illegal Immigration Reform and Immigrant Responsibility Act[2] (IIRAIRA) which ended suspension of deportation as an option for all immigrants except VAWA suspension of deportation victims and a limited group of other immigrants[3] against whom deportation or exclusion proceedings had been initiated on or before March 31, 1997. In redrafting the INA IIRAIRA ended suspension of deportation for post March 31, 1997 cases and took the code section INA 244 and used it for a different form of immigration relief Temporary Protected Status. As a result, although VAWA suspension of deportation continues to exist is one were to attempt to look up the code section for any form of suspension of deportation including VAWA suspension of deportation after April 1, 1997 it would not be possible to find VAWA suspension of deportation or other forms of suspension of deportation in the INA or the U.S. Code.

Despite this fact VAWA suspension of deportation continues as an important form of immigration relief for battered immigrant spouses and children of U.S. citizens and lawful permanent residents. As a result of the fact that many physically and sexually abusive spouses and parents use immigration related abuse to exert power and control over their immigrant spouses and children, immigrant spouse and child abuse victims could have immigration cases initiated against them prior to April 1, 1997 that the victim was not aware of. This most commonly happens in two ways. The perpetrator turned the victim in for immigration

[1] Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322, 108 Stat. 1955, September 13, 1994). These were provisions contained in the 1994 Violence Against Women Act.
[2] Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208 (Sept. 30, 1996).

[3] Generally, in order to file for suspension of deportation or VAWA suspension of deportation the immigrant must have been placed in deportation or exclusion proceedings (must have been issued a notice to appear in deportation or exclusion proceedings) before April 1, 1997. Immigrants placed in immigration court proceedings on or after April 1, 1997 would be required to apply for cancellation of removal or VAWA cancellation or removal.

enforcement or learned that the victim had an immigration case against her and then in order to ensure the victim would be ordered deported, the perpetrator took or destroyed the notices that came in the mail so that the victim did not know about the deportation case and did not appear in immigration court. These victims will have had deportation or exclusion orders issued against them *in abstentia*. When immigrant victims begin the process of seeking help to address the domestic violence and learn about VAWAs immigration protections, victims with prior orders of deportation or exclusion from pre-April 1, 1996 cases can file motions to reopen those cases and are able to apply for VAWA suspension of deportation.[4]

Since it is not possible to look up the INA code section for VAWA suspension of deportation this document quotes the full text of the suspension of deportation law as it existed before the enactment of IIRAIRA on April 1, 1997. This document starts with the INA before VAWA 1994 and highlights the 1994 amendments. Since VAWA 2000 and VAWA 2005 made addition amendments to VAWA suspension of deportation amending that law as it was in effect on March 31, 1997, this document also makes the additions and deletions to the law made by VAWA 2000 and VAWA 2005. This will help attorneys, advocates, and judges better understand the protections VAWA suspension of deportation offered immigrant spouse and children who have been subject to battering or extreme cruelty.

VAWA 1994 text are ***bold and italics; with deletions***

VAWA 2000[5] changes are *underlined and italics;* with deletions

VAWA 2005[6] changes are **underlined and bold;** with deletions

Immigration and Nationality Act Section 244; 8 U.S. 1254 (as in effect on March 31, 1997)

Sec.244. [8 U.S.C. 1254] (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien (other than an alien described in section 241(a)(4)(D))) [7]who applies to the Attorney General for suspension of deportation and—

(1) Is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continuous period of not less than seven (7) years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence;

[4] VAWA Application for Suspension of Deportation, EOIR-40 Form, USDOJ Executive Office for Immigration Review, http://niwaplibrary.wcl.american.edu/pubs/eoir-40-form.

[5] H.R. 1248, 106th Cong. (2000).
[6] H.R. 3402, 109th Cong. (2005).
[7] 241(a)(4)(D) (excludes those engaged in Nazi persecution or genocide).

(2) Is deportable under paragraph (2), (3), or (4) of section 241(a); [8A] has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character and a person whose deportation would, in the opinion of the Attorney General, result in exception extreme unusual hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

(3) [9] ***is deportable under any law of the United States except section 241(a)(1)(G)[10] and the provisions specified in paragraph (2);[11] has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application; has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and proves that during all of such time in the United States the alien was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.***

Note: VAWA 2000 amended this section to add the following additional language regarding the good moral character in VAWA suspension of deportation cases. That language can be found in INA Section 240A(b)(2)(C). It applies to both VAWA suspension of deportation and VAWA cancellation of removal and reads as follows:

> *(C) GOOD MORAL CHARACTER—Notwithstanding section 101(f), an act or conviction that does not bar the Attorney General from granting relief under this paragraph by reason of sub-paragraph (A)(iv)[12] shall not bar the Attorney General from finding the alien to be of good moral character under subparagraph (A)(i)(III) or section 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), if the Attorney General finds that the act or conviction was connected to*

[8] See endnote "A" for the text of INA 241 (a) (2), (3), and (4) as in effect on or before March 31, 1996.

[9] P.L. 103-322, 208 Stat. 1955, Sept. 13, 1994 ("164a" footnote in INA 1994): Paragraph (3) was inserted by §40703(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994 http://congressional.proquest.com.proxy.wcl.american.edu/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/http%3A$2f$2fprod.cosmos.dc4.bowker-dmz.com$2fapp-bin$2fgis-pubentry$2fe$2f7$2f7$2f5$2fcmp-1995-hjh-0005_from_1_to_658.pdf/entitlementkeys=1234.

[10] 241(a)(1)(G)(marriage fraud violating INA 212(a)(6)(C)(i) willfully misrepresenting a material fact to obtain immigration relief).

[11] See INA Section 241(a)(2), (3) and (4) as in effect prior to April 1, 1997. The text of that section is quoted in endnote "i" below.

[12] INA Section 240A(b)(2)(A)(iv) (as in effect on March 31, 1997) (The alien is not inadmissible under paragraph (2) (criminal grounds) or (3) (falsification of immigration documents, violation of foreign agent registration) section 1182(a) of 8 U.S.C. 1182(a); INA Section 212(a) (statutory language quoted in end note "i" and is not deportable under paragraphs (1)(G) (marriage fraud) or (2) through (4) (criminal offenses, falsification of immigration documents, violation of foreign agent registration, or security related grounds) of section 1227(a) of 8 U.S.C. 1227(a)); INA Section 237(a) (has not been convicted of an aggravated felony). Note that "public charge" was eliminated as grounds for inadmissibility, deportation or removal for qualified immigrants which included VAWA suspension of deportation and cancellation of removal applicants by Section 804 of VAWA 2013.

the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

(b)(1) The requirement of continuous physical presence in the United States specified in paragraphs (1) and (2) of subsection (a) of this section shall not be applicable to an alien who (A) has served for a minimum period of twenty-four months in an active duty status in the Armed Forces of the United States and, if separated from such service; was separated under honorable conditions, and (B) at the time of his enlistment or induction was in the United States.

(2) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.

Note: VAWA 2000 amended this section to add the following additional language regarding the continuous physical presence in VAWA suspension of deportation cases. That language can be found in INA Section 240A(b)(2)(B). It applies to both VAWA suspension of deportation and VAWA cancellation of removal and reads as follows:

240A(b)(2)(B) PHYSICAL PRESENCE: An alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2). If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in section 240A(b)(2)(B) and section 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(c) Upon application by an alien who is found by the Attorney General to meet the requirements of subsection (a) of this section the Attorney General may in his discretion suspend deportation of such alien.

(d) Upon the cancellation of deportation in the case or any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancellation of deportation of such alien is made.

Note: VAWA 2000 amended this section to add the following additional language granting parole to the children of adult victims and the parents of child victims who

are granted VAWA suspension of deportation. That language can be found in INA Section 240A(b)(4). It applies to both VAWA suspension of deportation and VAWA cancellation of removal and reads as follows:

(4) CHILDREN OF BATTERED ALIENS AND PARENTS OF BATTERED ALIEN CHILDREN—

(A) IN GENERAL.—the Attorney General shall grant parole under section 212(d)(5) to any alien who is a—

(i)child of an alien granted relief under section 240A(b)(2) or 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); or

(ii) parent of a child alien granted relief under section 240A(b)(2) or 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(B) DURATION OF PAROLE.—The grant of parole shall extend from the time of the grant of relief under section 240A(b)(2) or section 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens covered under thus paragraph shall be treated as if they were applications filed under section 204(a)(1)(A)(iii),(A)(iv), (B)(ii),or (B)(iii) for purposes of section 245(a) and (c). Failure by the alien granted relief under section 240A(b)(2) or section 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) may result in revocation of parole

(e) Note Section (e) contained the pre-April 1, 1997 voluntary departure statutory language that was replaced in IIRAIRA with INA Section 240B.

(f) The provisions of subsection (a) shall not apply to an alien who–[13]

(1) entered the United States as a crewman subsequent to June 30, 1964;

[13] This section applies to all suspension of deportation cases including VAWA suspension of deportation. It states that the following persons are ineligible for suspension of deportation – ship's crew members who entered the U.S. after June 30, 1964; student visa holders with J visas for graduate medical education even after they returned to their country to fulfill the 2 year foreign residency requirement, and student visa holders with J visas for another non-medical related form of graduate study unless the student fulfilled the 2 year foreign residence requirement of their visa.

(2) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J), or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education, or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residency requirement of section 212(e); or

(3)(A) was admitted to the United States as a non-immigrant exchange alien as defined under section 101(a)(15)(J) or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training (B) is subject to the two-year foreign residence requirement of section 212(e), and (C) has not fulfilled that requirement or received a waiver thereof.

(g) In acting on applications under subsection (a)(3), the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be with in the sole discretion of the Attorney General.

(c) Effective Date[14].—Any individual who becomes eligible for relief by reason of the enactment of the amendments made by subsections (a) and (b), shall be eligible to file a motion to reopen pursuant to section 240A(c)(7)(C)(iv)[15]. The amendments made by subsections (a)[16] and (b)[17] shall take effect as is included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208; 110 Stat. 587). Such portions of the amendments made by subsection (b)[18] that relate to section 244(a)(3)(as in effect before the title III- effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) shall take effect as if included in subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 1953 et seq.)

VAWA 2005 Protections for VAWA Suspension of Deportation Applicants

Section 812 of VAWA 2005 made the sanctions for failure to comply with voluntary departure orders inapplicable in VAWA self-petition, VAWA cancellation of removal, VAWA suspension of deportation and adjustment of status to lawful permanent residency cases involving VAWA victims.

SEC. 812. APPLICATION IN CASE OF VOLUNTARY DEPARTURE.

[14] For the VAWA 2000 amendments to VAWA suspension of deportation.

[15] Changed from 240(c)(6)(C)(iv) to 240A(c)(6)(C)(iv) (Corrected the code section to the proper citation).

[16] Section 1504(a) of the Violence Against Women Act of 2000, H.R. 1248, 106th Cong. (2000), makes amendments to VAWA cancellation of removal INA Section 240A(b)(2), adds the (B) physical presence amendments (B) , and the (C) good moral character amendments all have an effective date and apply to enforcement actions initiated on or before March 31, 1997. Enforcement actions initiated on or after April 1, 1997 would be VAWA cancellation of removal cases in which subsections (B) and (C) similarly apply.

[17] 1504 (b) of the Violence Against Women Act of 2000, H.R. 1248, 106th Cong. (2000), makes amendments adding parole protections for children of VAWA suspension of deportation and VAWA cancellation of removal recipients and parents of child VAWA suspension of deportation and VAWA cancellation of removal recipients. These protections for children and parents of VAWA suspension of deportation applicants take effect on September 13, 1994 as included in VAWA 1994, H.R. 3355, 103rd Cong. (1994), and cases involving enforcement actions initiated or filed on or before March 31, 1997.

[18] 1504(b)'s protections for children and parents of VAWA suspension of deportation applicants take effect as if included in VAWA 1994, H.R. 3355, 103rd Cong. (1994), September 13, 1994.

Section 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1229c(d)) is amended to read as follows:

(d) CIVIL PENALTY FOR FAILURE TO DEPART.—

(1) IN GENERAL.—Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien—

> **(A) shall be subject to a civil penalty of not less than $1,000 and not more than $5,000; and**
>
> **(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 240A, 245, 248, and 249.**

(2) APPLICATION OF VAWA PROTECTIONS.—The restrictions on relief under paragraph (1) shall not apply to relief under section 240A or 245 on the basis of a petition filed by a VAWA self-petitioner, or a petition filed under section 240A(b)(2), or under section 244(a)(3) (as in effect prior to March 31, 1997), if the extreme cruelty or battery was at least one central reason for the alien's overstaying the grant of voluntary departure.

(3) NOTICE OF PENALTIES.—The order permitting an alien to depart voluntarily shall inform the alien of the penalties under this subsection.''.

Section 813 (b) Address Preventing Reinstatement of Removal in VAWA Cases including VAWA Suspension of Deportation

(b) DISCRETION TO CONSENT TO AN ALIEN'S REAPPLICATION FOR ADMISSION.—

> **(1) IN GENERAL.—The Secretary of Homeland Security, the Attorney General, and the Secretary of State shall continue to have discretion to consent to an alien's reapplication for admission after a previous order of removal, deportation, or exclusion.**
>
> **(2) SENSE OF CONGRESS.—It is the sense of Congress that the officials described in paragraph (1) should particularly consider exercising this authority in cases under the Violence Against Women Act of 1994, cases involving nonimmigrants described in subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), and relief under section 240A(b)(2) or 244(a)(3) of such Act (as in effect on March 31, 1997) pursuant to regulations under section 212.2 of title 8, Code of Federal Regulations.**

Motions to Reopen

Section 825 Motions to Reopen: VAWA 2005 there is no filing deadline for motions to reopen for VAWA suspension of deportation, VAWA cancellation of removal cases, removal cases involving VAWA self-petitioners, T visa applicants and abused spouses whose abusive citizen or lawful permanent residents filed family based visa petitions (I-130) on their behalf. The following section first reports the motion to reopen statute that applies to VAWA suspension

of deportation cases and then is followed by the amendments VAWA 2005 made to the VAWA cancellation of removal rule which also cites VAWA suspension of deportation.

Motions to Reopen VAWA Suspension of Deportation Cases

Section 825(b) VAWA 2005:

(b) DEPORTATION AND EXCLUSION PROCEEDINGS.— Section 1506(c)(2) of the Violence Against Women Act of 2000 (8 U.S.C. 1229a note) is amended—

(1) by striking subparagraph (A) and inserting the following:

(A) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen or rescind deportation proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note))[19]*—*

(I) *there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3)*[20] *of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1252b(c)(3)) does not apply—*

(i) *if the basis of the motion is to apply for relief under*

(I) *clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)),*

(II) *clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)),*

(III) *or section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1254(a)(3));*

(IV) **the first section of Public Law 899-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty; or**

(V) **section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);** *and*

[19] The effective date of IIRAIRA is April 1, 1997

[20] 8 U.S.C. 1252b(c)(3) INA of 1995.

(c) Consequences of failure to appear

(1) In general --Any alien who, after written notice required under subsection (a)(2) of this section has been provided to the alien or the alien's counsel of record, does not attend a proceeding under section 1252 of this title, shall be ordered deported under section 1252(b)(1) of this title in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is deportable. The written notice by the Attorney General shall be considered sufficient for purposes of this paragraph if provided at the most recent address provided under subsection (a)(1)(F) of this section.

(2) No notice if failure to provide address information -- No written notice shall be required under paragraph (1) if the alien has failed to provide the address required under subsection (a)(1)(F) of this section.

(3) Rescission of order -- Such an order may be rescinded only—

(A) upon a motion to reopen filed within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (f)(2) of this section), or

(B) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with subsection (a)(2) of this section or the alien demonstrates that the alien was in Federal or State custody and did not appear through no fault of the alien.

The filing of the motion to reopen described in subparagraph (A) or (B) shall stay the deportation of the alien pending disposition of the motion.

(ii) *if the motion is accompanied by a suspension of deportation* **or adjustment of status** *application to be filed with the Secretary of Homeland Security or by a copy of the self-petition*[21] *that will be filed with the Department of Homeland Security upon the granting of the motion to reopen;* **and**

(II) any such limitation shall not apply so as to prevent the filing of one motion to reopen described in section 240(c)(7)(C)(iv)[22] **of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(7)).**

(ii) PRIMA FACIE CASE.—The filing of a motion to reopen under this subparagraph shall only stay the removal of a qualified alien (as defined in section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B))[23] **pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.''**;

(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens **who re physically present in the United States and** *who—*

(i) are, or were, in deportation **or exclusion** *proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and*

(ii) have become eligible to apply **for relief described in subparagraph (A)(i)** *for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section*

[21] INA Section 101(a)(51) (Self-petition includes all of the forms of self-petitioning relief covered in. VAWA self-petition for spouses and children of U.S. citizen and lawful permanent residents who perpetrate battering or extreme cruelty, VAWA self-petition for parents of citizen over 21 year old daughters and sons who battered or subject their parent to extreme cruelty, battered spouse waiver applicants, VAWA Cuban Adjustment Act (VAWA CAA), VAWA Haitian Refugee and Immigrant Fairness Act (VAWA HRIFA), and VAWA Nicaraguan and Central American Relief Act (VAWA NACARA).

[22] For text of VAWA cancellation of removal motions to reopen see the next section of this document

[23] Qualified alien is defined in 8 U.S.C. 1641(c)(1)(B):

(c)Treatment of certain battered aliens as qualified aliensFor purposes of this chapter, the term "qualified alien" includes—

(1)an alien who—

(A)has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)has been approved or has a petition pending which sets forth a prima facie case for—

(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)], (*VAWA self-petitioner abused by citizen spouse, parent, son or daughter)*

(ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)], (*VAWA self-petitioner abused by citizen spouse or parent)*

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996). (*VAWA suspension of deportation)*

(iv)status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)]; (*Immigrant spouse or child abused by their citizen or lawful permanent resident spouse or parent who had filed a family based visa petition on the immigrant spouse or child's behalf)*

(v)cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)]; (*VAWA cancellation of removal)*

204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)) as a result of the amendments made by—

(I) subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.)[24]*; or*
(II) this title.

Motions to Reopen VAWA Cancellation of Removal Cases

For the cancellation of removal motion to reopen statue we include the text of the INA code section current as of April 2020 and identifies the sections that were added by VAWA 2005.

Section 825 (a) VAWA 2005:

240(c)(7)Motions to reopen in VAWA Cancellation or Removal Cases

(A) In general -- An alien may file one motion to reopen proceedings under this section, **except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv).**

(B) Contents -- The motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material.

(C)Deadline

(i)In general -- Except as provided in this subparagraph, the motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of removal.

(ii)Asylum -- There is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under sections 1158 or 1231(b)(3) of this title and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.

(iii)Failure to appear --The filing of a motion to reopen an order entered pursuant to subsection (b)(5) is subject to the deadline specified in subparagraph (C) of such subsection.

(iv) Special rule for battered spouses, children, **and parents** A**ny limitation under this section on the deadlines for filing such motions shall not apply—**

(I) if the basis for the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) of this title, (*VAWA self-petition abusive citizen spouse or parent*) clause (ii) or (iii) of section 204(a)(1)(B) of this title, (*VAWA self-petition lawful permanent resident spouse or parent*) section 240A(b) of this title, (*VAWA*

[24] VAWA 1994, H.R. 3355, 103rd Cong. (1994).

cancellation of removal) **or section 244 (a)(3) of this title (as in effect on March 31, 1997)** *(VAWA suspension of deportation)*~~;~~

(II)if the motion is accompanied by a cancellation of removal application to be filed with the Attorney General or by a copy of the self-petition that has been or will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen;

(III)if the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the Attorney General may, in the Attorney General's discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child; **and**

(IV) if the alien is physically present in the United States at the time of filing the motion.

The filing of a motion to reopen under this clause shall only stay the removal of a qualified alien (as defined in section 1641(c)(1)(B))[25] of this title pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

[A] INA Section 241(a)(1)(G), (2), (3) and (4) as in effect prior to April 1, 1997

(a) Classes of Deportable Aliens.—Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General be deported if the alien is within one or more of the following classes of deportable aliens

(1)(G) MARRIAGE FRAUD. – An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)(entry without inspection)) if---

(i) the alien obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such entry of the alien and which, within 2 year subsequent to any entry of the alien in the United States, shall be judicially annulled

[25] Qualified alien is defined in 8 U.S.C. 1641(c)(1)(B):

(c)Treatment of certain battered aliens as qualified aliens. For purposes of this chapter, the term "qualified alien" includes—

(1) an alien who—

(A)has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)has been approved or has a petition pending which sets forth a prima facie case for—

(i)status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)], (*VAWA self-petitioner abused by citizen spouse, parent, son or daughter)*

(ii)classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)], (*VAWA self-petitioner abused by citizen spouse or parent)*

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996). (*VAWA suspension of deportation)*

(iv)status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)]; (*Immigrant spouse or child abused by their citizen or lawful permanent resident spouse or parent who had filed a family based visa petition on the immigrant spouse or child's behalf)*

(v)cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)]; (*VAWA cancellation of removal).*

or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's entry as an immigrant.

(2) CRIMINAL OFFENSES.—

(A) GENERAL CRIMES.—

(i) CRIMES OF MORAL TURPITUDE. — Any alien who-

(I) is convicted of a crime involving moral turpitude committed within five yearsA (or 10 years in the case of an alien provided lawful permanent resident status under section 245(i)) after the date of entry, and

(II)either is sentenced to confinement or is confined therefor in prison or correctional institution for one year or longer,

is deportable.

(ii)MULTIPLE CRIMINAL CONVICTIONS. — Any alien who at any time after entry is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii)AGGRAVATED FELONY. —Any alien who is convicted of an aggravated felony at any time after entry is deportable.

(iv) WAIVER AUTHORIZED.— Clauses (i), (ii) and (iii) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B)CONTROLLED SUBSTANCES. —

(i) CONVICTION. — Any alien who at any time after entry has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) DRUG ABUSERS AND ADDICTS. —Any alien who is, or at any time after entry has been, a drug abuser or addicts is deportable.

(C)CERTAIN FIREARM OFFENSES. —Any alien who at any time after entry is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carryingA or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is deportable.

(D)MISCELLANEOUS CRIMES. —Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate-

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18, United States Code;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 215 or 278 of this Act, is deportable.

(3)FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—

(A)CHANGE OF ADDRESS. —An alien who has failed to comply with the provisions of section 265 is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B)FAILURE TO REGISTER OR FALSIFICATION OF DOCUMENTS. —Any alien who at any time has been convicted—

(i)under section 266(c) of this Act or under section 36(c) of the Alien Registration Act, 1940,

(ii)of a violation of, or an attempt orA a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or an attempt or conspiracy to violate, section 1546 of title 18, United States code (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

(C)DOCUMENT FRAUD. —Any alien who is the subject of a final order for violation of section 274C is deportable.

(4)SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL. —Any alien who has engaged, is engaged, or at any time after entry engages in—

(i)any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii)any other criminal criminal activity which endangers public safety or national security, or

(iii)any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

(B)TERRORIST ACTIVITIES .—Any alien who has engaged, is engaged, or at any time after entry engages in any terrorist activity (as defined in section 212(a)(3)9B)(iii)) is deportable.

(C) FOREIGN POLICY.—

(i) IN GENERAL. —An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

(ii)EXCEPTIONS. —The exceptions described in clauses (ii) and (iii) of section 212(a)(3)(C) shall apply to deportability under clause (i) in the same manner as they apply to excludability under section 212(a)(3)(C)(i).

(D) ASSISTED IN NAZI PERSECUTION OR ENGAGED IN GENOCIDE. —Any alien described in clause (i) or (ii) of section 212(a)(3)(E) is deportable.

(5)PUBLIC CHARGE. — Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.[A] (Note Public Charge inadmissibility does not apply in VAWA suspension of deportation cases)