



## Immigration Relief for Immigrant Survivors of Abuse

[July 2017]

	<b>VAWA</b>	<b>U Visa</b>	<b>T Visa</b>	<b>SIJS</b>	<b>Asylum</b>
What kind of crime or abuse counts?	Battery or extreme cruelty perpetrated by a USC or LPR spouse or parent or an adult USC son or daughter <sup>1</sup>	Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or fraud in foreign labor contracting <sup>2</sup>	Sex or labor trafficking  Sex trafficking requires element of force, fraud or coercion unless the sex trafficking survivor is under 18  Labor trafficking includes recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through use of force, fraud, or coercion for purposes of involuntary servitude, peonage, debt bondage or slavery <sup>3</sup>	Parental abandonment, abuse, neglect, or a similar basis under state law [abandonment, abuse, neglect are defined by and evaluated under the relevant state law] <sup>4</sup>  Not in child's best interest to be returned to country of origin <sup>5</sup>	Persecution or a well-founded fear of future persecution based on race, religion, nationality, membership in a particular social group, or political opinion <sup>6</sup>

<sup>1</sup> INA § 204(a)(1)(A)(iii) (spouse of USC) and INA § 204(a)(1)(B)(ii) (spouse of LPR); INA § 204(a)(1)(A)(iv) (child of USC) and INA § 204 (a)(1)(B)(iii) (child of LPR); INA § 204(a)(1)(A)(vii) (parent of USC).

<sup>2</sup> INA § 101(a)(15)(U)(iii). Other similar crimes can count, as well as attempt, conspiracy or solicitation to commit such crimes.

<sup>3</sup> 22 USC § 7102.

<sup>4</sup> INA § 101(a)(27)(J)(i).

<sup>5</sup> INA § 101(a)(27)(J)(ii).

<sup>6</sup> INA § 101(a)(42)(A).

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What kind of harm must the applicant show she suffered?	No exhaustive list but must show subjective experience of harm suffered	Substantial physical or mental harm	Extreme hardship involving unusual and severe harm if removed	No specific standard, but must have sufficient evidence of abandonment, abuse, neglect or similar basis that a juvenile court will find that reunification with one or both parents is not viable on that basis	Past persecution or a well-founded fear of future persecution
Does the perpetrator need to have immigration status?	Yes, the perpetrator must be or have been a USC or LPR	No	No	No	No
Does the applicant need to show a family relationship to the perpetrator?	Yes – she must be or have been the spouse, child or parent of a USC or the spouse or child of an LPR	No	No	Yes – she must be a child of the perpetrator, and must not be able to be reunified with parent because of abuse, neglect, abandonment, or similar basis	No
What type of cooperation with law enforcement does the applicant need to show?	None	Must be helpful, or likely to be helpful in criminal investigation or prosecution; for applicants who are under 16 or unable to provide information due to a disability, a parent, guardian, or next friend may instead assist law enforcement <sup>7</sup>	Must comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; <sup>8</sup> for applicants who are under 18, compliance is not required <sup>9</sup>	None	None – however the applicant is expected to have reported past persecution to law enforcement, and if they did not, they must show that it would have been futile or dangerous <sup>10</sup>

<sup>7</sup> INA § 101(a)(15)(U)(i)(III).

<sup>8</sup> 8 CFR § 214.11(h).

<sup>9</sup> 8 CFR § 214.11(h)(4)(ii).

<sup>10</sup> See, e.g., *Castro-Martinez v. Holder*, 674 F.3d 1073 (9th Cir. 2011); *Rahimzadeh v. Holder*, 613 F.3d 916 (9th Cir. 2010).

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Does the applicant need certification from law enforcement of her helpfulness?	No	Yes – it must be signed by a qualifying law enforcement agency on Form I-918, Supplement B <sup>11</sup>	No – it’s helpful to have a signed Form I-914, Supplement B, but can submit secondary evidence including trial transcripts, court documents, police reports, news articles & affidavits instead <sup>12</sup>	No – however, a juvenile court (such as a dependency, delinquency, probate or family court) must make factual findings of eligibility	No
What kind of things will bar an applicant?	Since a VAWA self-petitioner must establish that she has good moral character (GMC), any past or ongoing acts that bar her from doing so would also bar her from VAWA; in addition, grounds of inadmissibility apply at adjustment stage (except that present without admission or parole, <sup>13</sup> unlawful presence, <sup>14</sup> and public charge <sup>15</sup> do not apply)	U applicants must demonstrate admissibility (except that public charge ground does not apply <sup>16</sup> ); however, there is a generous waiver available	T applicants must demonstrate admissibility (except that public charge ground does not apply <sup>17</sup> ); however, there is a generous waiver available. In addition, not eligible if there is substantial reason to believe applicant has committed an act of severe form of trafficking in persons <sup>18</sup>	No bars to SIJS; grounds of inadmissibility apply at adjustment stage (except that public charge, labor certification, present without admission or parole, misrepresentation [including false claim to citizenship], stowaways, lack of documents, and unlawful presence do not apply)	One year bar, persecutor of others, firm resettlement, safe third country, prior asylum application denied, conviction of particularly serious crime in U.S., commission of serious non-political crime outside U.S., danger to security of U.S., involvement in terrorist activities or providing “material support” to terrorist activity

<sup>11</sup> INA § 214(p)(1); 8 CFR § 214.14(a)(2); *see also* DEP’T OF HOMELAND SEC. U.S. CITIZENSHIP AND IMMIGRATION SERV., INSTRUCTIONS FOR SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION (2017), <https://www.uscis.gov/sites/default/files/files/form/i-918supbinstr.pdf>.

<sup>12</sup> 8 CFR § 214.11(h)(3); *see also* DEP’T OF HOMELAND SEC. U.S. CITIZENSHIP AND IMMIGRATION SERV., INSTRUCTIONS FOR APPLICATION FOR T NONIMMIGRANT STATUS, at 8 (2017), <https://www.uscis.gov/sites/default/files/files/form/i-914instr.pdf>.

<sup>13</sup> *See* Michael L. Aytes, Assoc. Dir. Dom. Oper., USCIS, Re: “Adjustment of status for VAWA self-petitioner who is present without inspection,” April 11, 2008, at 2; *see also* INA § 212(a)(6)(A).

<sup>14</sup> INA § 212(a)(9)(B)(iii)(IV).

<sup>15</sup> INA § 212(a)(4)(E)(i).

<sup>16</sup> INA § 212(a)(4)(E)(ii).

<sup>17</sup> INA § 212(d)(13)(A).

<sup>18</sup> 8 CFR § 214.11(b)(5).

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What waivers are available?	<p><b>Bars to GMC can be waived if:</b> (1) the act or conviction is waivable with respect to the self-petitioner for purposes of determining whether they are admissible or deportable &amp; (2) the act or conviction was connected to the abuse suffered<sup>19</sup></p> <p><b>VAWA-specific waivers of inadmissibility:</b> communicable disease ground,<sup>20</sup> many criminal grounds,<sup>21</sup> fraud or misrepresentation,<sup>22</sup> and re-entering or attempting to reenter after removal<sup>23</sup></p>	<p><b>Waivable in public or national interest:</b> all grounds except those related to perpetrators and participants of Nazi persecution, genocide, acts of torture or extrajudicial killings<sup>24</sup></p>	<p><b>Waivable in national interest:</b> health-related grounds<sup>25</sup></p> <p><b>Waivable if the trafficking was at least one central reason for unlawful presence in the U.S.:</b> unlawful presence<sup>26</sup></p> <p><b>Waivable if incident to or caused by victimization and if in national interest:</b> all other grounds except security-related, international child abduction, &amp; renunciation of USC to avoid taxation<sup>27</sup></p>	<p><b>Not waivable with SIJS waiver:</b> security and terrorism grounds, and most crimes grounds<sup>28</sup></p> <p><b>Waivable for humanitarian purposes, family unity, or when in public interest:</b> all other grounds</p>	<p><b>Asylum bars:</b> limited waivers to terrorism bar,<sup>29</sup> exceptions to 1 year bar,<sup>30</sup> previous denial of asylum,<sup>31</sup> firm resettlement,<sup>32</sup> safe 3<sup>rd</sup> country</p> <p><b>At time of adjustment:</b></p> <p><b>Automatically waived:</b> public charge, labor certification, immigration documentation requirement<sup>33</sup></p> <p><b>Not waivable:</b> Reason to believe drug trafficker or Nazi persecutor, security and terrorist grounds<sup>34</sup></p> <p><b>Waivable for humanitarian purposes, to assure family unity, or when in public</b></p>

<sup>19</sup> INA § 204(a)(1)(C).

<sup>20</sup> INA § 212(g)(1)(C).

<sup>21</sup> INA § 212(h)(1)(C).

<sup>22</sup> INA § 212(i).

<sup>23</sup> INA § 212(a)(9)(C)(iii).

<sup>24</sup> INA § 212(d)(14).

<sup>25</sup> See INA § 212(d)(13)(B)(i).

<sup>26</sup> See INA § 212(a)(9)(B)(iii)(V).

<sup>27</sup> See INA § 212(d)(13)(B)(ii).

<sup>28</sup> But may be waivable with INA § 212(h) waiver.

<sup>29</sup> See INA § 212(d)(3)(B).

<sup>30</sup> See INA § 208(a)(2)(B), (D); 8 CFR § 208.4(a)(4), (5).

<sup>31</sup> See INA § 208(a)(2)(C), (D); 8 CFR § 208.4(a)(4), (5).

<sup>32</sup> 8 CFR § 208.15(b).

<sup>33</sup> See INA § 209(c).

<sup>34</sup> *Id.*

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					<b>interest:</b> all other grounds <sup>35</sup>
How long approximately might it take to get an approval?	8-10 months to get a work permit; time to green card depends upon whether abuser is a USC or LPR, applicant's relationship to abuser, and applicant's country of origin [for a rough estimate of wait, see the visa bulletin for the current month]	2.5-3 years to get a work permit; add'l 50-60 months (2+ years) to get a U visa; eligible to apply for green card after 3 years in U nonimmigrant status	5-7 months to get a T visa (which provides work authorization as well); eligible to apply for green card after 3 years in T nonimmigrant status (or less if T visa recipient able to obtain letter from DOJ confirming compliance with & completion of criminal case)	Statutorily, SIJS must be decided within 180 days of filing; <sup>36</sup> time to green card depends on child's country of origin – currently 2+ years for children from Mexico, El Salvador, Honduras and Guatemala to get a green card and no wait for children from other countries	Eligible for work authorization once application has been pending 180 days; time to asylee status depends on whether seeking affirmatively vs. defensively, but can range from 6 months to 3 or more years; eligible to apply for green card after 1 year in asylee status
What family members of the applicant can also benefit?	Unmarried children under 21 years old	If applicant is under age 21—spouse, children, parents, and unmarried siblings under age 18. If applicant is 21 years old or older—spouse and children.	If applicant is under age 21—spouse, children, parents, and unmarried siblings under age 18. If applicant is 21 years old or older—spouse and children. <sup>37</sup>	None – parents of child who gets green card through SIJS can never get status through that child <sup>38</sup>	Spouses and children (under 21 and unmarried)

<sup>35</sup> *Id.*

<sup>36</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d)(2), 122 Stat. 5044, 5080 (2008).

<sup>37</sup> In addition, for applicant of any age, if present danger due to the trafficking or the survivor's cooperation with law enforcement, derivatives can include parents and unmarried siblings under age 18, as well as adult or minor children of derivatives.

<sup>38</sup> 8 USC § 1101(a)(27)(J)(iii)(II).

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Is there a limit on the number that can be approved per year?	Not for VAWA. For VAWA-based adjustment of status: If applicant is a spouse or unmarried child (under age 21) of a USC abuser, applicant is an “immediate relative,” for which there is no annual limit. If applicant is a spouse or child of an LPR abuser, or if applicant is a married and/or adult son or daughter of USC abuser, then applicant falls under one of the family preference categories, each of which has a different annual limit.	Yes, the limit is 10K and that limit is exceeded every year, leading to a long backlog and wait	Yes, the limit is 5K and historically there has never been a year when that limit has been met	Not for SIJS. For SIJS-based adjustment of status, visas for SIJS come from the employment-based 4 <sup>th</sup> preference category. There is currently a backlog of approximately 2 years for Mexico, El Salvador, Guatemala, and Honduras. <sup>39</sup>	No
Is there a time limit to apply?	If the abuser died, <sup>40</sup> lost immigration status or divorced – then must apply within two years <sup>41</sup>	Yes – within 6 months of the signature on the law enforcement certification	No	Yes – must file I-360 before child turns 21 to preserve eligibility	Yes – asylum application must be filed within one year of entry to the United States (exceptions exist) <sup>42</sup>

<sup>39</sup> For more information about the SIJS visa backlog, see ILRC, *Update on Special Immigrant Juvenile Status: What is Visa Availability?*, <https://www.ilrc.org/update-special-immigrant-juvenile-status-what-visa-availability>.

<sup>40</sup> Only applies when the abusive spouse is a USC and dies.

<sup>41</sup> INA § 204(a)(1)(A)(iii)(II)(aa)(CC) (for applicant whose USC abuser is or was her spouse and either died, lost immigration status, or divorced); INA § 204(a)(1)(B)(ii)(II)(aa)(CC) (for applicant whose LPR abuser is or was her spouse and either lost immigration status or divorced); INA § 204(a)(1)(A)(iv) (for applicant whose USC abuser parent lost immigration status); INA § 204(1)(B)(iii) (for applicant whose LPR abuser parent lost immigration status); INA § 204(a)(1)(A)(vii)(I) (for applicant whose USC abuser son or daughter lost immigration status or died).

<sup>42</sup> See INA § 208(a)(2)(B), (D), (E); 8 CFR § 208.4(a)(2)(ii), (4), (5); see also *Vahora v. Holder*, 641 F.3d 1038, 1042 (9th Cir. 2011) (“[A]n applicant has the burden of proving by clear and convincing evidence that he applied for asylum within one year of his arrival in the United States or, to the satisfaction of the IJ, that he qualifies for an exception to the one-year deadline for the existence of ‘changed circumstances.’”) (citing INA § 208(a)(2)(B); 8 CFR § 208.4).

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Is an interview required?	Yes, at the green card phase	No	No	Not in general, but USCIS retains discretion to schedule interviews for both SIJS and green card phases	Yes – if affirmative case, interview before asylum office; if defensive case, individual hearing in immigration court
Once approved, are there any limitations on travel?	<p>Yes, deferred action does not permit an individual to lawfully reenter the U.S., and traveling may trigger the inadmissibility ground of unlawful presence.</p> <p>May travel after adjustment to LPR.</p>	<p>Yes, avoid traveling unless it is absolutely necessary. If U-visa holder travels, he or she risks getting denied for a return visa, triggering new inadmissibility grounds such as unlawful presence, or becoming ineligible for adjustment of status because of long absences.</p> <p>May travel after adjustment to LPR.</p>	<p>Possible to travel on advance parole once T visa approved. However, T visa holder risks triggering unlawful presence grounds and may raise concern about T visa holder's hardship in home country (if traveling to home country).</p> <p>May travel after adjustment to LPR.</p>	<p>Prior to LPR status, can only travel if adjustment application is pending.</p> <p>May travel after adjustment to LPR status.</p>	<p>Asylees can travel with advance permission via a refugee travel document. However, risky to return to home country after grant of asylum, even once adjusted to LPR status.</p>