

CHAPTER 1
INTRODUCTION

This chapter includes:

§ 1.1	Introduction to Immigration Relief for Abused Noncitizen Spouses and Certain Other Family Members.....	1-1
§ 1.2	How to Use This Manual.....	1-2
§ 1.3	Contents of the Manual	1-3
§ 1.4	Overview of Self-Petitioning under VAWA: Who Is Eligible.....	1-4
§ 1.5	Overview of Self-Petitioning: Self-Petitioning Requirements	1-5
§ 1.6	Overview of Self-Petitioning: Process and Benefits	1-6
§ 1.7	Other Forms of Immigration Relief for Abused Spouses.....	1-7

§ 1.1 Introduction to Immigration Relief for Abused Noncitizen Spouses and Certain Other Family Members

The Violence Against Women¹ Act (VAWA), enacted in 1994 and amended in 1996, 2000, 2006, and 2013 addresses a widespread problem: some abused noncitizens stay in abusive relationships because an abusive family member holds a vital key to their immigration status in the United States. United States (U.S.) immigration law permits U.S. citizens (USCs) and lawful permanent residents (LPRs) to *petition* for lawful status for certain relatives through a “family visa petition.” Until a noncitizen has legal immigration status, she can be deported at any time and cannot get permission to work legally. Undocumented noncitizens are ineligible for some important types of government aid like Temporary Assistance for Needy Family (TANF) and food stamps, which are critically important to victims of domestic violence to free themselves and their children from an abusive spouse and to ensure their health and safety.

Too often, abusive spouses use the family visa process to control the undocumented spouse. Some refuse to file the family visa petition. Others threaten to withdraw the petition or even call immigration authorities to deport a spouse who leaves, objects, or calls the police to report the abuse. Congress did not want U.S. immigration laws to be used as a weapon in an abuser’s arsenal. So it created VAWA to permit victims in this situation to gain lawful status on their own without having to rely on abusive spouses to start and complete the process.

Under VAWA’s major immigration provision, an **abused spouse or child** of a USC or LPR or an **abused parent** of an adult USC son or daughter can *self-petition* for lawful immigration status in the United States. Once a self-petition is approved, the self-petitioner will have some protection

¹ Although husbands, fathers, and sons are sometimes the victims of domestic violence and may be eligible for benefits under the Violence Against Women Act (VAWA), the title of the Act reflects the gender of participants in the majority of domestic violence cases. This manual generally attempts to avoid gender-specific language, but where such language is used, it similarly sometimes uses female pronouns for victims, and conversely, male pronouns for abusers.

from deportation, will be qualified to work legally in the United States, and can receive pretty much the same government aid that lawful permanent residents do. Under an additional provision, special rules make it easier for an abused spouse or child of a USC or LPR to qualify while in removal proceedings for *cancellation of removal*. Cancellation of removal is only for people who are in immigration court and there is a danger that an immigration judge might remove (deport) them from the United States if they lose their case.

While VAWA can provide critically important benefits that may help many abused noncitizens escape abuse, unless potential beneficiaries hear about it, particularly from someone they trust, they cannot apply and get the benefits they need. Outreach to people who are victims of domestic violence, and who may not have immigration documents, may be very difficult. Staff of government agencies and nonprofits that work with immigrants can be extremely effective at identifying potential applicants, providing them with information and referrals, and helping them gather the documentation they need to apply. Although legislative changes to VAWA in 2000, 2006 and 2013 improved the immigration provisions from the original version, other future, legislative changes may not be as good, so now is a good time for potential applicants to consider applying.

However, it is also important to recognize that deciding whether to apply for relief under VAWA is completely up to the potential applicant. Some people who may qualify for immigration relief under VAWA may choose not to do so. Some people may feel that the application process is too complex and requires them to relive trauma they have experienced. Others may be concerned that applying under VAWA will cause their abusers to be arrested or deported, or that they will be criticized by their families or communities for going outside the family about the abuse. People's concerns are as varied as the effects of domestic violence. Although a friend, social worker or other advocate may feel that it is essential that an immigrant victim of domestic violence apply for relief under VAWA, that helper must respect the decision of the domestic violence victim herself.

§ 1.2 How to Use This Manual

This manual is designed for staff of non-profits and government agencies, shelters, law enforcement agencies, schools, social service agencies, and health care providers as well as immigration lawyers, pro bono attorneys, BIA accredited representatives and paralegals. This manual guides you through the entire process of handling an immigration case with an abused noncitizen from the first meeting with a potential VAWA applicant through the completion and filing of the appropriate application, the appeal (if necessary), and adjustment of status to lawful permanent residence.

Because clients' contributions are so essential to the success of a VAWA case, this manual is not simply a discussion of legal requirements and procedures. It also includes ideas about how to help clients understand the benefits available under VAWA, the legal requirements, and ways in which they can help make their cases as strong as possible. Please see particularly the discussion of working with clients in **Chapter 2**.

Partnering with domestic violence advocates is critical to the success of a VAWA case. Supporting a client's involvement in the preparation of her case, the domestic violence advocate can do more than just make the case more efficient for a legal worker. As a team, the domestic

violence advocate and the legal worker can educate and encourage their client to become an active participant in her case. The client's active and informed participation actually helps build a stronger case. As described in **Chapter 2**, the most important document in a VAWA case is the declaration of the applicant. A client who understands the requirements and process can create a more effective declaration. She can help identify people who can write supporting letters and declarations and communicate relevant information to them, including shelter workers, domestic violence counselors and acquaintances with knowledge of her circumstances. Finally, as described in depth in **Chapter 2**, it is vital that people who work with victims of domestic develop trusting relationships with them. It is therefore important to *not* keep clients in the dark about the rules and procedures that may have a profound impact on them and the considerations they should take into account in deciding whether to apply for VAWA relief.

Much of this manual is dedicated to presenting and discussing the basic legal requirements for VAWA relief. Some of the legal requirements are clear cut and probably inflexible. Others are murky, not clearly defined, and probably flexible. VAWA advocates report that staff of the U.S. Citizenship and Immigration Service (USCIS) service center in Vermont that handles VAWA self-petitioning cases is well trained and fair. However, some VAWA policy is set at other levels of USCIS, and local USCIS offices handle VAWA cases at later stages, and even the Vermont Service Center sometimes makes mistakes. We strongly encourage you to investigate challenging the USCIS' interpretation of any legal requirement that is not grounded in the Immigration and Nationality Act (INA).

Although we have thoroughly researched the legal requirements presented in this manual, you should not use it as a substitute for your own research and knowledge. Immigration law, policy, and procedure change constantly and can be complex. Further research must be done on new developments in the field and issues not discussed in this manual. Attached to this chapter at **Appendix 1-A** is a list of resources for technical assistance, list serves, updates, and materials. We strongly recommend that advocates regularly consult with these resources to find the latest developments on VAWA law and procedure.

§ 1.3 Contents of the Manual

This manual contains 11 chapters and an appendix at the end of each chapter. The following subjects are covered in detail:

- **Chapter 2** discusses issues involved in working with immigrant survivors of domestic abuse, and includes guidelines for explaining VAWA's requirements and process in terms understandable to clients.
- **Chapter 3** provides a detailed description of the legal requirements for self-petitioning under VAWA.
- **Chapter 4** describes the self-petitioning process, including the contents of the application packet and the self-petitioning timeline.
- **Chapter 5** describes "adjustment of status"—the process in the United States through which someone (like an approved VAWA self-petitioner) becomes an LPR.

- **Chapter 6** details the Immigration and Nationality Act’s “grounds of inadmissibility,” a list of conditions and conduct which can prevent an immigrant, including a VAWA self-petitioner, from getting LPR status
- **Chapter 7** covers waivers of the grounds of inadmissibility available to VAWA self-petitioners.
- **Chapter 8** describes “consular processing,” the process outside of the United States through which someone with an approved immigrant visa (like an approved VAWA self-petitioner) becomes an LPR.
- **Chapter 9** describes the process whereby a battered Conditional Resident (a person who has immigrated through a spouse within two years of having married that spouse) can have the conditions on that status removed without the cooperation of the abusive spouse.
- **Chapter 10** provides information about removal proceedings and motions to reopen for those who are required to appear for an immigration judge or who have already been ordered deported or removed in the past.
- **Chapter 11** details Cancellation of Removal, the procedure for domestic violence victims in removal proceedings to obtain LPR status.

The appendix at the end of each chapter includes many items an advocate may need to help a client submit an effective application for immigration relief, including application forms, model applications and documentation, copies of USCIS notices, statutes, and USCIS memoranda interpreting VAWA. (See the **Index of Appendices** at the end of each chapter).

§ 1.4 Overview of Self-Petitioning under VAWA: Who Is Eligible

The major limiting factor for VAWA self-petitioning is that the self-petitioner must have been abused by a USC or LPR (green card holder) spouse or parent or a USC son or daughter. This limitation is the result of Congress’s intent to remove an abuser’s power over immigration status—a power that undocumented abusers do not have. The following relatives of those abusers are eligible to self-petition (if they also meet the self-petitioning requirements described below in **§ 1.6**):

1. An abused spouse of a USC or LPR;²
2. An abused child of a USC or LPR (a “child” is generally defined as unmarried and under 21 years of age);³
3. A non-abused spouse of a USC or LPR whose child is abused by the USC or LPR spouse;⁴
4. An abused parent of a USC son or daughter (a “son” or “daughter” is defined as 21 years or older).⁵

² INA § 204(a)(1)(A)(iii) (spouse of USC) and INA § 204(a)(1)(B)(ii) (spouse of LPR).

³ INA § 204(a)(1)(A)(iv) (child of USC) and INA § 204 (a)(1)(B)(iii) (child of LPR).

⁴ INA § 204(a)(1)(A)(iii) (spouse of USC) and INA § 204(a)(1)(B)(ii) (spouse of LPR).

⁵ INA § 204(a)(1)(A)(vii).

Note: A non-abused child of an abused spouse or child qualifies for VAWA if she is listed on the abused spouse or child's self-petition.⁶

Someone who fits into one of these categories and hopes to self-petition under VAWA is called a "VAWA self-petitioner." See **Chapter 3** for an in-depth discussion of who qualifies for VAWA self-petitioning.

§ 1.5 Overview of Self-Petitioning: Self-Petitioning Requirements

A person who qualifies as a spouse, child or parent according to the definitions listed above in § 1.4 must also meet *all* of the following requirements. See **Chapter 3** for an in-depth discussion of the requirements for VAWA self-petitioning.

1. The self-petitioner's spouse abused the self-petitioner (or her child) during the marriage (in the case of a child or parent self-petitioner, the abuse could have happened at any time.)⁷ Note: The self-petitioner does not have to be married to the abuser at the time of filing the petition, if the marriage ended because of the abuse within the two years before she files the petition.⁸
2. The self-petitioner was subjected to battery or extreme cruelty by the USC or LPR spouse or parent or the USC son or daughter.⁹

Battery or extreme cruelty includes behavior such as the following:

- Threatening to beat or terrorize her
 - Hitting, punching, slapping, kicking, or hurting her in any way
 - Emotionally abusing her, such as insulting her at home or in public
 - Forcing her to have sex when she does not want to
 - Threatening to take her children away or hurt them
 - Threatening to deport her or turn her over immigration authorities, as part of a larger pattern of control and abuse
 - Controlling where she goes, what she can do, and who she can see
 - Forcibly detaining her
 - Engaging in a *pattern of behavior* that would not appear abusive if considered individually
3. The self-petitioner lived with the abuser at some time. They do not have to be living together now or when the self-petition is submitted.¹⁰
 4. With some exceptions, the self-petitioner must currently be living in the United States. If the self-petitioner is living abroad, she may still qualify if the abusing spouse is an

⁶ *Id.*; INA § 204(a)(1)(A)(iv) and INA § 204(a)(1)(B)(iii).

⁷ INA § 204(a)(1)(A)(iii)(II)(bb) (spouse of USC); INA § 204(a)(1)(B)(ii)(I)(bb) (spouse of LPR).

⁸ INA § 204(a)(1)(A)(iii)(ii)(aaa)(CC)(ccc) (spouse of USCs); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(ccc) (spouse of LPRs).

⁹ INA § 204(a)(1)(A)(iii)(I)(bb) (spouse and intended spouse of USC); INA § 204(a)(1)(A)(iv) (child of USC); INA § 204(a)(1)(B)(ii)(I)(bb) (spouse and intended spouse of LPR); INA § 204(a)(1)(B)(iii) (child of LPR).

¹⁰ INA § 204(a)(1)(A)(iii)(II)(dd) (spouse of USC); INA § 204(a)(1)(B)(ii)(II)(dd) (spouse of LPR).

- employee of the U.S. government or armed services, or the abuse occurred in the United States.¹¹
5. If the self-petitioner is an abused spouse, the self-petitioner must have gotten married in “good faith.”¹²
 6. The self-petitioner has good moral character. Basically, this means that she did not commit certain crimes or immigration offenses.¹³
 7. The abuser must be a USC or LPR. However, if the abuser was lost immigration status or U.S. citizenship due to an incident of domestic violence, the abused spouse or child may self-petition within two years of the loss of status or citizenship.¹⁴

Note: If a self-petitioning spouse or child qualifies, then her children (unmarried, under 21, including adopted and stepchildren) listed on her self-petition also qualify, even if they have not suffered any form of abuse.¹⁵ When the child of the self-petitioner turns 21, he will not lose VAWA benefits, including eligibility to apply for an immigrant visa. Instead, the USCIS will consider the derivative a self-petitioner in his or her own right and just change his visa category from that of an “unmarried child” to one for an “unmarried son or daughter.”¹⁶

§ 1.6 Overview of Self-Petitioning: Process and Benefits

Unlike most family-based immigration, an approved VAWA self-petitioner may be eligible for work authorization and certain public benefits, and protected from deportation during the waiting period before she obtains lawful permanent residence. The self-petitioning process, and the points at which an applicant is eligible for various types of relief, is briefly discussed below, and in more depth in **Chapter 4**. Self-petitions are adjudicated by the U.S. Citizenship and Immigration Services (USCIS) through its Vermont Service Center (VSC).

1. The self-petition is filed with a specially designated USCIS VAWA Unit at the Vermont Service Center (VSC), on Form I-360, with documentation to prove how the self-petitioner meets the self-petitioning requirements. USCIS can correspond with a self-petitioner’s designated representative instead of with the self-petitioner herself so her abuser will not find out that she filed a self-petition.
2. If the self-petition is apparently approvable, USCIS will send the self-petitioner (or her representative) a Notice of Prima Facie Eligibility within a few months. The self-petitioner may use this notice as evidence of “qualified alien” status to obtain government aid like Medicare and TANF (and with some additional requirements, Food Stamps, and other benefits). Some of these benefits vary by state.

¹¹ INA § 204(a)(1)(A)(v) (spouse and child of USC); INA § 204(a)(1)(B)(iv) (spouse and child of LPR).

¹² INA § 204(a)(1)(A)(iii)(I)(aa) (spouse of USC); INA § 204(a)(1)(B)(ii)(I)(aa) (spouse of LPR).

¹³ INA § 204(a)(1)(A)(iii)(II)(bb) (spouse of USC); INA § 204(a)(1)(B)(ii)(II)(bb) (spouse of LPR).

¹⁴ INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb) (USC abuser); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) (LPR abuser).

¹⁵ INA § 204(a)(1)(A)(iii) (child of abused spouse of USC); INA § 204(a)(1)(B)(i) (child of abused spouse of LPR).

¹⁶ INA § 204(a)(1)(D)(i).

3. If the USCIS approves the self-petition, the USCIS will send the self-petitioner an Approval Notice and a Notice of Deferred Action, if she requested it.¹⁷ Deferred Action means the immigration authorities know the self-petitioner is in the United States, and most likely it will not try to deport her. The self-petitioner can apply for work authorization from the USCIS as an approved VAWA self-petitioner or the Notice of Deferred Action.
4. The self-petitioner may “adjust status” or consular process to obtain LPR status when her immigrant visa becomes available. This may be immediately for spouses, children and parents of USC, or may take several years for spouses and children of LPRs.

§ 1.7 Other Forms of Immigration Relief for Abused Spouses

Some abused noncitizens who do not qualify for self-petitioning under VAWA may instead be eligible for other forms of immigration relief. Some of the other VAWA-specific options are discussed in more detail in **Chapters 9** and **11**. Briefly, they include:

Battered Spouse Waiver of Joint Petition for Removal of Conditional Residence. A noncitizen who is a conditional resident need not file a VAWA self-petition. Conditional residence means the person actually has conditional lawful resident status that lasts for two years. In conditional residence cases, the married couple must together file a petition (called a “joint petition”) to remove the conditions near the end of the two-year period. Instead of enduring the harmful relationship and hoping her spouse will help file the joint petition, the conditional resident may have the option of obtaining a special “battered spouse waiver” showing that she has been subjected to battery or extreme cruelty during the marriage to the USC or LPR. This is discussed in further detail in **Chapter 9** of this manual.

VAWA Cancellation of Removal. VAWA permits some abused noncitizens to apply for permanent residence status while in removal proceedings in front of a judge in immigration court in a process called cancellation of removal. The major requirements for VAWA cancellation of removal are:

- the non-citizen has been battered or subject to extreme cruelty by a spouse, former spouse, or parent who is or has been a USC or LPR;
- the non-citizen has resided continuously in the United States for at least three years;
- removal from the United States would cause extreme hardship to the non-citizen, or her child or parent.

This form of relief is discussed in further detail in **Chapter 11** of this manual.

U Visas for Victims of Crime. Abused noncitizens who are not married to their USC or LPR abusers, or are married to abusers who are not USCs or LPRs cannot file a VAWA self-petition. However, in 2000 a “U” visa category was created for victims of crimes, including domestic violence, who are willing to help in a criminal investigation or prosecution of perpetrators of

¹⁷ Adjudications times at USCIS services centers and district offices can vary from office and change over time. To find the processing times for the Vermont Service Center where all VAWA I-360s are adjudicated, go to <https://egov.uscis.gov/cris/processTimesDisplayInit.do> or go to the USCIS website at www.uscis.gov and search for “processing times.”

crime. This option is discussed in further detail in the ILRC's manual entitled *The U Visa: Obtaining Status for Immigrant Victims of Crime*, which can be purchased at www.ilrc.org/publications.

Special Immigrant Juvenile Status. Children who are in, or are eligible for, long-term foster care in dependency or are under the care of a state family, delinquency, or family court may self-petition for an immigrant visa as a Special Immigrant Juvenile (SIJS). Under this program, the immigration status of the child's parents is irrelevant. Furthermore, the child does not have to wait for a priority date to become current. However, the entire process needs to be completed while the child is still under a state court's jurisdiction. This is discussed in-depth in an ILRC publication on the topic entitled, *Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth*, which can be purchased at www.ilrc.org/publications.

T Visas for Victims of Human Trafficking. Some abused noncitizens may be eligible for the new "T" visa that was created in 2000. This visa category was created for victims of both human sex trafficking and labor-related trafficking. This is discussed in-depth in an ILRC publication on the topic entitled, *Representing Survivors of Human Trafficking: A Promising Practices Handbook*, which can be purchased at www.ilrc.org/publications.

Asylum for Domestic Violence. Some abused noncitizens may be eligible for asylum if they can show that they were persecuted, or have a well-founded fear of future persecution, based on their race, religion, nationality, political opinion, or membership in a particular social group. Recent cases and changes in USCIS rules on domestic violence cases have made asylum for some victims of domestic violence a stronger possibility for obtaining protection and legal status. For assistance with these cases, please consult the resources available from the Center for Gender and Refugee Studies at <http://cgrs.uchastings.edu/>.

CHAPTER 1

**REQUIREMENTS FOR SELF-PETITIONING UNDER THE VIOLENCE AGAINST
WOMEN ACT (VAWA)**

INDEX OF APPENDICES

Appendix 1-A Resources for Advocates Serving Survivors of Domestic Abuse,
Trafficking and Other Crimes

