

Abused Immigrants: Violence Against Women Act

The Violence Against Women Act (VAWA)¹ which was enacted in 1994 and amended in 1996, 2000, and 2006, addresses a widespread problem: abused immigrants stay in an abusive relationship long after they know they should leave because the spouse, who is abusing them is also sponsoring them for legal permanent residency in the United States.

United States immigration law allows a U.S. citizen or legal permanent resident to petition for lawful status for specified relatives through a process known as a family visa petition. A noncitizen who does not have legal immigration status can be deported at any time and does not have permission to work in the U.S.

Often, the abusive spouse uses the family visa process to control and manipulate the immigrant spouse. Some abusive spouses refuse to file the petition for their family member unless or until the family member/spouse acts in a specific manner for a specific time period. Other threaten to withdraw the petition or threaten to call immigration authorities to deport a spouse if she objects to his conduct, leaves or call the police to report the abusers conduct. In short, the abusive spouse uses U.S. immigration laws as a weapon to control and further abuse the family member.

PURPOSE OF VAWA

VAWA was created to help victims of spousal abuse gain lawful status on their own. They do not have to depend upon the abusive spouse or family member to begin the petition process or to complete the petition process. The goal of VAWA is to help the victims of domestic violence to free themselves and their children from an abusive spouse and to ensure their health and safety.

Under VAWA's provisions, 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.

Under VAWA special rules also make it easier for an abused spouse or child of a USC or LPR to qualify for cancellation of removal if they are in deportation proceedings in immigration court.

¹ While husbands and fathers can be the victims of domestic violence, the majority of the abusers in domestic violence situations are men. While we generally attempt to avoid gender specific language, in relation to domestic abuse a female pronoun is used to indicate the victim and male pronoun is used to indicate the abuser.

Eligible Spouses (or Former Spouses) Protected by the Act

There are certain eligibility requirements outlined by the Violence Against Women Act, in order to be able to apply for Adjustment of Status without the need of a sponsoring US resident. The basic eligibility requirements are as follows:

1. The self-petitioner's spouse abused the self-petitioner(or her child) during the marriage. Please note: the self-petitioner does not have to be married to the abuser at the time the petition is filed.
2. The self-petitioner was subject to battery or extreme cruelty by the USC or LPR spouse or parent or the USC son or daughter.

Battery or extreme cruelty includes but is not limited to the following types of behavior:

- a. Threatening to beat or terrorize her
- b. Hitting, punching, slapping, kicking, or hurting her in any way
- c. Emotionally abusing her, such as insulting her at home and in public, cutting her off from her friends and family, controlling who she can have as a friend
- d. Forcing her to have sex when she does not want to
- e. Threatening to take her children away or hurt them
- f. Threatening to have her deported or turn her over to immigration authorities
- g. Controlling where she goes, what she can do, and who she can see
- h. Forcibly detaining her

Please note: If a self-petitioning spouse or child qualifies, then her children listed on her self-petition also qualify, even if they have not suffered any abuse directly. When the child of a self-petitioner turns 21, he or she will not lose VAWA benefits, including eligibility to apply for an immigrant visa.

If any of the above criteria are met, the abused partner can apply for adjustment of status independently of their partner.

Protection from Deportation or Removal

For spouses facing a removal proceeding, there may be an option to terminate the proceeding under VAWA. Eligible spouses can apply for a "suspension of deportation", or "cancellation of deportation". If either of these are granted, the deportation will be cancelled and the applicant will be granted lawful permanent residence.

New "U" Visa for Abused Immigrants

A new type of visa was created by the VAWA. The "U" visa is a non-immigrant visa category created for victims of abusive relationships or marriages. Specifically, the applicant must show that he or she has suffered "substantial physical or mental abuse" stemming from domestic violence or other crimes.

Additionally, the applicant must provide law enforcement with information about the crime to assist them in investigating and prosecuting it. The USCIS limits the number of "U" visas granted to 10,000 annually. Holders of a U visa are granted employment authorization and are eligible to apply for lawful permanent residence.

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 the race, religion, nationality, political opinion, or membership in a particular social group.

T visas for Victims of Human Trafficking

Some abused noncitizens may be eligible for the "T" visa which was created in 2000. This visa category was created for victims of both human sex trafficking and labor-related trafficking.

The VAWA provides a great many new options for abused spouses, beyond the scope of this introductory guide. Always consult with an immigration lawyer for advice concerning any immigration law issues.