



# VAWA: PROVISIONS FOR IMMIGRATION RELIEF

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## An overview of the Violence Against Women Act (VAWA):

- Enacted by the federal government in 1994
- Reauthorized in 2000, 2005, and 2013
- Provides immigration relief for some undocumented victims of crime, including domestic violence
- VAWA also addressed many other issues related to domestic violence that are not covered here, for more details see <http://nnedv.org/policy/issues/vawa.html>

*What follows are the provisions for immigration relief for victims of domestic violence and other crimes as outlined in the Act.*

## There are generally four classifications of individuals in U.S. immigration law:<sup>1</sup>

### U.S. Citizens (USC)

- An individual born in the United States
- An individual whose parent is a U.S. citizen (under certain conditions)
- A former alien who has been naturalized as a U.S. citizen
- An individual born in Puerto Rico, Guam, or the U.S. Virgin Islands

### Lawful Permanent Residents (LPR)

- Also known as immigrants
- Granted the right to reside permanently in the United States and to work without restrictions
- Are issued “green cards” that serve as evidence of LPR status

### Non-Immigrant Temporary Visa Holders

- Are granted the right to reside temporarily in the United States
- Usually visiting the U.S. for a limited time or purpose
- Includes foreign students, business travelers, diplomats, and others
- May or may not be able to be employed depending on visa type
- Non-immigrants have rules and guidelines which must be followed to remain “in status”
- A non-immigrant who falls “out-of-status” is deportable

### Undocumented

<sup>1</sup> <http://www.irs.gov/Individuals/International-Taxpayers/Immigration-Terms-and-Definitions-Involving-Aliens>

<sup>2</sup> <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u->

- Resides in the U.S. without any legal immigration status
- May have entered with legal status and later fell out of status
- Is deportable, however, in certain circumstances may qualify for immigration relief which will allow the person to remain in the U.S. with an authorized immigration status

Most of the information contained here applies to the undocumented immigrant classification.

### Immigration Relief under VAWA

- VAWA can provide a path to legal immigration status for victims of certain crimes
- There are various forms of immigration relief authorized under VAWA, including self-petitions, cancellation of removal, U visas, and T visas
- Most also provide a form of immigration relief for qualifying family members (i.e. children under 21 years old of a victim of domestic violence)
- The victim must meet certain criteria, which varies depending on the type of relief sought

### Immigration Relief Options under VAWA

- For victims married to a U.S. Citizen (USC) or Lawful Permanent Resident (LPR):
  - Self-petition
  - Cancellation of Removal (Suspension of Deportation)
- For victims of a crime:
  - U visa
- For victims of human trafficking:
  - T visa
- For more details on all the immigration relief options, see the sections below

### Self-Petitions

Summary: Allows an undocumented victim of domestic violence who is married to a USC or LPR to submit an application for citizenship without the consent or awareness of the abusive spouse. Children can also self-petition if an abusive parent is a USC or LPR.

- Overview:
  - Normally the spouse must submit the petition on behalf of the undocumented spouse
  - VAWA self-petitions allow the battered spouse to submit their own petition for citizenship or residency
  - Victim must have been subjected to extreme battery or cruelty
  - Includes psychological abuse, but not other crimes that do not fall into the category of domestic violence
  - Undocumented children who are abused may also apply
- Eligibility requirements:
  - Must be married to a U.S. citizen (USC) or Lawful Permanent Resident (LPR)
    - Common law marriages are valid if valid under family laws
  - Good moral character

- Usually demonstrated through a criminal records check
  - If applicant has a criminal record, it is important to explore whether these are waivable under other immigration provisions or related to domestic violence
- Good faith marriage
  - Marriage was not entered into solely to gain immigration status
- In the case of children:
  - The abusive parent must be an USC or LPR
  - Joint residence
  - Good moral character
  - May apply up to 25<sup>th</sup> birthday if late filing due to abuse
- Items that may constitute proof of extreme cruelty or battery:
  - Self-petitioner’s declaration of abuse
  - Others’ declaration (family, neighbors, faith communities, workplace, school)
  - Domestic violence service providers’ documentation
  - Protection orders
  - Criminal court records
  - Emails, notes, letters, voicemails
  - Photos: injuries, broken windows, furniture
  - Medical records: injuries, scars, PTSD, migraines, insomnia
  - Vet records
  - Documentation from counselors (marriage, religious, mental health)
  - Police reports
- Outcomes:
  - Results in lawful permanent residence and work authorization when successful
  - Also provides access to some public benefits

### Cancellation of Removal/Suspension of Deportation

- Similar to self-petitions
- Used to stop removal (deportation) proceedings
- Some additional requirements:
  - Three years’ presence in the U.S.
  - Must face extreme hardship if deported
  - Must be deportable or inadmissible

### U Visa & T Visa

Summary: the purpose of U and T visas is to provide legal status for victims of crime that are cooperating with law enforcement

- **U visa**: applies to victims of “certain crimes who have suffered mental or physical abuse”<sup>2</sup>
- **T visa**: applies to victims of human trafficking

<sup>2</sup> <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

- Created by the Victims of Trafficking and Violence Protection Act of 2000
- Both are non-immigrant visas
- May result in permanent legal status in some cases
- Applicant may also be granted a work permit or other benefits once approved
- The applicant does not need to be married to a USC or LPR

## U Visa

- Eligibility:
  - Must be a victim of crime, domestic violence (including emotional abuse) is included (see list below)
  - The victim must be cooperating with law enforcement
- Is a temporary visa that in some cases can become permanent
- According to the U.S. Citizenship and Immigration Services (USCIS), covered crimes include:
  - rape
  - torture
  - trafficking
  - incest
  - domestic violence
  - sexual assault
  - abusive sexual contact
  - prostitution
  - sexual exploitation
  - female genital mutilation
  - being held hostage
  - peonage
    - “Peonage, also called debt slavery or debt servitude, is a system where an employer compels a worker to pay off a debt with work.”<sup>3</sup>
  - involuntary servitude
  - slave trade
  - kidnapping
  - abduction
  - unlawful criminal restraint
  - false imprisonment
  - blackmail
  - extortion
  - manslaughter
  - murder
  - felonious assault
  - witness tampering
  - obstruction of justice
  - perjury
  - attempt, conspiracy, or solicitation to commit any of the above mentioned crimes<sup>4</sup>

<sup>3</sup> <http://www.pbs.org/tpt/slavery-by-another-name/themes/peonage/>

- Requires certification of the crime by a:
  - Police officer
  - Judge
  - Immigration officer
  - Other authority with responsibility for investigation or prosecution of criminal activity
- Applicants must not work without authorization during the application process, as doing so can harm their application if discovered
- Persons that qualify for a U visa receive work authorization, a visa with a duration of 4 years, and potential eligibility for a green card (LPR status) after 3 years

### T Visa

- Applies to victims of human trafficking
- Human trafficking ≠ human smuggling
  - In human trafficking, the person is held against their will
    - Similar to slavery
  - In human smuggling, a person is transported from one location to another (usually across a border) by another person who is paid to facilitate the smuggling
  - At times human smuggling can turn in to human trafficking
    1. Example: a woman is told that if she pays a *coyote* (smuggler) \$1,000, he will help her cross into the U.S. so that she can work in a grocery store owned by an associate of the smuggler.
    2. Upon arrival in the U.S., however, the smuggler tells her that she is going to work as a prostitute instead.
    3. He takes her passport and will not allow her to leave. He states that she must work off an additional debt of \$1,000.
  - The first bullet is an example of human smuggling, the second and third are examples of human trafficking.
- Eligibility:
  - Must be cooperating with law enforcement
  - Person would suffer extreme hardship involving unusual or severe harm upon removal
- Other important information:
  - The victim cannot be prosecuted for acts engaged in while being trafficked (i.e. prostitution)
  - Human trafficking is often over-looked in domestic violence settings

### Gender-Based Asylum

- Not a provision of VAWA; instead, it falls under U.S. asylum laws
- In the past, being a victim of domestic violence did not qualify a woman for asylum, even when her home country did not take any steps to protect her from the violence

<sup>4</sup> <https://www.law.cornell.edu/cfr/text/8/214.14>

- While female genital mutilation was first accepted as the basis for asylum in 1996, domestic violence asylum claims were disputed and delayed until August of 2014, when “the US Board of Immigration Appeals (BIA), the highest immigration tribunal in the country, conceded that women fleeing domestic violence could meet the refugee definition and qualify for protection.”<sup>5</sup>
- All asylum applicants must meet the following requirements:
  - “The individual has a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion if returned to the home country or country of last permanent residence.
  - The individual is not a security risk or perpetrator of persecution.
  - The individual has not committed certain categories of crimes.”<sup>6</sup>
  - The persecution also must have been carried out by the government (state actor) OR the by a private person and the government is unable or unwilling to protect against the persecution
- Must be able to show that the violence was gender-based (i.e. if involving a husband abusing his wife, the applicant must show that the abuse was directed toward her because she was a woman, or that she did not receive assistance due to her gender)
- It can be difficult to know who qualifies for asylum, as it requires certain country conditions, therefore, potential asylum applicants should be referred to a knowledgeable attorney
- Asylum applicants should apply within a year of arriving in the U.S., exceptions may be granted in rare cases
- Gender-based violence includes:<sup>7</sup>
  - domestic violence,
  - bride burning (the killing of a bride, often through burning, after her husband attempts to extract more dowry from her family; also called a dowry death),
  - female infanticide (the killing of female infants due to a preference for boys),
  - female genital mutilation (includes circumcision – removal of part of clitoris, removal of part or all of the clitoris along with the labia minora [the most common type], or infibulation, where the labia majora are also cut away and scar tissue is encouraged to form),
  - forced abortion,
  - forced marriage,
  - “honor” killings (the killing of a family member due to the believe that the woman has brought shame upon the family, i.e. for refusing an arranged marriage or because the woman was raped),
  - rape or other sexual violence,
  - slavery, and
  - trafficking
- If granted asylum, the applicant may:

<sup>5</sup> [http://cgrs.uchastings.edu/sites/default/files/Personal\\_Violence\\_Public\\_Matter.pdf](http://cgrs.uchastings.edu/sites/default/files/Personal_Violence_Public_Matter.pdf)

<sup>6</sup> [http://www.sji.gov/PDF/Immigration\\_Status\\_4-1-13.pdf](http://www.sji.gov/PDF/Immigration_Status_4-1-13.pdf)

<sup>7</sup> [http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees\\_&\\_Asylum/Asylum/AOBTCLessonPlans/Female-Asylum-Applicants-Gender-Related-Claims-31aug10.pdf](http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees_&_Asylum/Asylum/AOBTCLessonPlans/Female-Asylum-Applicants-Gender-Related-Claims-31aug10.pdf)

- Stay in the country until able to safely return home, commits a serious crime, becomes a security risk, or participates in persecution
- Apply for LPR status after one year

### What To Do?

- If you know an undocumented victim of domestic violence who might qualify for immigration relief, **do NOT** send them to ICE/Border Patrol.
- Instead, send them to an immigration attorney or a legal clinic (preferably one specializing in applications that fall under the provisions of VAWA)

### For Agencies:

- Suggestions for finding immigration representation for clients:
  - Establish MOUs (Memorandums of Understanding) with local attorneys to provide pro bono services
  - Hire an attorney to handle all your VAWA cases
  - Work with local attorneys to make sure they have the training necessary to handle VAWA cases
  - Identify programs that assist immigrants and refugees, especially those that provide legal services
  - If you frequently have clients who need immigration representation, have one of your staff members become an accredited representative
    - Accredited representatives are able to appear before immigration courts
    - Your agency must first become recognized as a qualified organization
    - [More information on recognition and accreditation](#)
- Other suggestions for agencies:
  - Have an advocate who is trained to assist with VAWA cases
  - The advocate can also help the client gather the required materials
  - Provide training to law enforcement and others who can provide U visa certifications
- What else can agencies do to help their clients?
  - Warn clients that traveling outside the U.S. while their case is pending may hurt their claim or they may be barred from re-entry
  - Falsely claiming citizenship can also cause problems, and may leave the client with the U visa as their only option

### Resources

- ASISTA (<http://www.asistahelp.org/>)
  - ASISTA's purpose is to centralize assistance for advocates and attorneys facing complex legal problems in advocating for immigrant survivors of domestic violence and sexual assault.
- Futures Without Violence (<http://www.futureswithoutviolence.org/workplace-safety-inequality/working-with-immigrant-women/>)
  - Futures Without Violence provides resources, tools, and tips for working with immigrant women.

- Legal Momentum (<http://www.legalmomentum.org/violence-against-women-act>)
  - Legal Momentum provides a number of resources related to VAWA.
- Encuentro Latino National Institute on Family Violence (<http://latinodv.org>)
  - Encuentro Latino provides resources and information related to Latinos and domestic violence in English and Spanish.
- Center for Gender and Refugee Studies (<http://cgrs.uchastings.edu/search-materials/search-our-resources>)
  - Offers many resources, including gender asylum guidelines, case litigation resources, asylum case outcomes

### Finding Attorneys

- American Immigration Lawyers Association (<http://www.aila.org/>)
  - National association of more than 14,000 attorneys and law professors who practice and teach immigration law.
- Executive Office of Immigration Review (EOIR) (<http://www.justice.gov/eoir/find-legal-representation>)
  - This page offers a number of resources, including information on the recognition and accreditation program, a list of free legal service providers, a list of attorneys who are ineligible to practice immigration law, and an informational handout titled “Read This Before You Take Legal Advice”
- Catholic Charities (<http://catholiccharitiesusa.org/our-impact/agency-spotlight/>)
  - Catholic Charities has offices across the U.S.
- Local Bar Associations

All links in this document are active as of May 30, 2015.