CHAPTER 9

SELF-PETITIONS FOR ABUSED SPOUSES, CHILDREN AND PARENTS

Background

Domestic violence occurs in all ethnic communities and at all economic levels, and immigrant women and children are particularly vulnerable to it. Until recently, abusive U.S. citizens (USCs) and lawful permanent residents (LPRs) could use immigration as another means of controlling the victim, because only they could initiate the family immigration process. Thus, the abuser might refuse to file a visa petition for his or her spouse or might threaten to withdraw a visa petition if the victim reported the abuse or sought help. The abuser might also threaten to report undocumented victims to the immigration authorities or to separate the victim from the victim's children. This presented the victim with a Hobson's choice: either leave the abuser and abandon any legal right to remain in the United States, or remain in the abusive relationship in the hopes that such perseverance would eventually result in obtaining lawful immigration status.

With the Violence Against Women Act of 1994 (VAWA),[1] however, Congress recognized the plight of abused immigrants and their children. VAWA amended the Immigration and Nationality Act (INA) by adding two new means for abused immigrant spouses and children of USCs and LPRs to obtain permanent residence. The first provision allows the abused immigrant spouse or child to self-petition before U.S. Citizenship and Immigration Services (USCIS), rather than having to rely on the USC or LPR abusive spouse or parent to file the petition.[2] The second provision allows the abused immigrant to obtain residence by applying for cancellation of removal with the immigration court under relaxed requirements.[3] The applicant must have resided in the United States for three years, rather than for the 10 years required for regular cancellation of removal, and need show only extreme hardship to the applicant or qualifying relatives, rather than the stricter hardship standard applied in regular cancellation. VAWA also mandates the evidentiary standard to be used in evaluating applications for relief by requiring USCIS and immigration judges to consider "any credible evidence" relevant to the self-petition or cancellation application.[4]

Congress has expanded the protections for battered spouses and children in two subsequent pieces of legislation: the Battered Immigrant Women Protection Act of

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[1] Pub. L. No. 103-322, tit. IV, 108 Stat. 1796, 1902–55.

[2] INA §§204(a)(1)(A)(ii–vii), (B)(ii–v).

[3] INA §240A(b)(2).

[4] INA §§204(a)(1)(J); 240A(b)(2)(D).

2000[5] (part of the Violence Against Women Act of 2000 (VAWA 2000)), and the Violence Against Women Reauthorization Act of 2005 (VAWA 2005).[6] It is important to note that because USCIS has not yet issued regulations to implement the 2000 amendments, the existing regulations conflict at some points with current law. Additionally, although VAWA 2005 at §828 directs that regulations implementing both VAWA 2000 and VAWA 2005 be promulgated within six months of enactment (*i.e.*, by July 5, 2006), to date no regulations have been published.

This chapter will address the requirements and procedure for self-petitions by abused spouses, children and parents, and for obtaining immigrant visas based on those self-petitions.[7]

Self-Petitioning

Who Can Apply

VAWA amended the INA to allow certain abused spouses, children and parents to self-petition for permanent residency.[8] The following persons are eligible to self-petition under VAWA:

- Abused spouses of USCs or LPRs;
- Spouses of USCs or LPRs whose children have been abused by the USC or LPR spouse;
- Abused "intended spouses"[9] of USCs and LPRs;
- Abused children of USCs or LPRs; and
- Abused parents of USCs who qualify as immediate relatives.

Moreover, applicants in the first four of the foregoing categories may include their children as derivative beneficiaries, even if the children are not related to the abuser and even if the children have not been abused.[10]

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[5] Pub. L. No. 106-386, §§1501–13, 114 Stat. 1464, 1518–37.

[6] Pub. L. No. 109-162, §§3(a), 801–34, 119 Stat. 2960, 2964–71, 3053–77 (2006), as amended by Pub. L. No. 109-271, 120 Stat. 750 (2006).

[7] For more information on practice under VAWA, see E. Abriel & S. Kinoshita, *The VAWA Manual: Immigration Relief for Abused Immigrants* (5th Ed. 2008), a joint publication of the Catholic Legal Immigration Network, Inc. and the Immigrant Legal Resource Center, available for purchase at *www.ilrc.org*.

[8] INA §204(a)(1).

[9] The term "intended spouse" means an alien who believes that he or she has married a USC or LPR and for whom a marriage ceremony was actually performed, but whose marriage is not legitimate solely because of the USC's or LPR's bigamy. *See* INA §101(a)(50).

[10] 8 CFR §204.2(c)(4).

Basic Requirements

A self-petitioning spouse or intended spouse of a USC or LPR must demonstrate the following:

- Good moral character
- Marriage to the USC or LPR
- That the marriage or intended marriage was entered into in good faith
- That during the marriage, the alien spouse or his or her child has been battered by or been the subject of extreme cruelty committed by the USC or LPR spouse
- Residence, past or present, with the USC or LPR spouse, and
- Either (a) current residence in the United States or (b) if living abroad, that the abusing spouse is an employee of the U.S. government or a member of the uniformed services or subjected the alien or the alien's child to battery or extreme cruelty in the United States.[11]

Similarly, a self-petitioning alien child of an abusing USC or LPR must establish:

- Good moral character
- Parent-child relationship with the abusive USC or LPR
- Past or present residence with the USC or LPR parent
- That during that residence, the child has been battered by or been the subject of extreme cruelty committed by the USC or LPR parent, and
- Either (a) current residence in the United States or (b) if living abroad, that the abusing parent is an employee of the U.S. government or a member of the uniformed services or subjected the child to abuse in the United States.[12]

A self-petitioning parent of an abusive USC must establish:

- Good moral character
- Parentage of the abusive USC (including stepparents and adoptive parents)
- Eligibility to be classified as an immediate relative (indicating that the abusive USC must be at least 21 years of age)
- Residence or past residence with the USC daughter or son, and
- Having been subjected to battery or extreme cruelty by the USC daughter or son.[13]

A major element of the law as it existed prior to October 2000, the requirement that the self-petitioner show that removal would result in extreme hardship to the

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[11] INA §§204(a)(1)(A), (B).

[12] *Id.*

[13] INA §204(a)(1)(A)(vii); USCIS Policy Memorandum, "Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen; Revisions to Adjudicator's Field Manual (AFM) Chapter 21.15", (August 30, 2011)

self-petitioning spouse or his or her child, or to the self-petitioning child, was eliminated by section 1503 of the Battered Immigrant Women Protection Act of 2000.[14]

The statute and regulations provide the following details on how the self-petition provisions are to be interpreted:

Residence. Prior to the Battered Immigrant Women Protection Act of 2000, the statute required that self-petitioners presently reside in the United States and have resided with the abuser in the United States. These requirements were relaxed in the 2000 amendments. Regarding current residence, either the self-petitioner must currently reside in the United States, or, if the self-petitioner lives outside the United States, the abuser must be an employee of the U.S. government or a member of the uniformed services or must have subjected the alien or the alien's child to battery or extreme cruelty in the United States.[15] In addition, while the self-petitioner must have resided with the abuser, that residence need not have been in the United States. Most importantly, the law does not require that the self-petitioner be currently residing with the abuser. For children, "residence" includes any period of visitation in the United States.[16]

Good-faith marriage. The self-petitioning spouse must establish by a preponderance of the evidence that the marriage or intended marriage was entered into in good faith. For marriages entered into during removal proceedings, however, the standard is the stricter one of clear and convincing evidence.[17] The most important factor in establishing a good-faith marriage is whether the couple intended to establish a life together at the time of the marriage. Conduct after a couple is married—even separation shortly thereafter—is relevant only to establish intent at the time the marriage was entered into. A self-petition will not be denied just because the spouses are no longer living together and the marriage is no longer viable.[18]

Marital relationship. Prior to October 2000, the self-petitioning spouse had to be legally married to the abusing spouse at the time the self-petition was filed, although subsequent termination of the marriage did not affect the self-petition. The 2000 amendments provide that certain abused spouses whose marriage has been terminated within the past two years may still self-petition. Under those amendments, an alien who was a bona fide spouse of a USC or LPR within the past two years may self-petition if he or she demonstrates a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the USC or LPR spouse.[19] In addition, an alien who was a bona fide spouse of a USC within the

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[14] Pub. L. No. 106-386, §1503, 114 Stat. 1464, 1518–22.

[15] INA §§204(a)(1)(A)(v), (B)(iv).

[16] INA §§204(a)(1)(A)(iv), (B)(iii).

[17] INA §§204(g), 245(e).

[18] 8 CFR §204.2(c)(1)(ix).

[19] INA §§204(a)(1)(A)(iii)(II)(aa)(CC)(ccc), (B)(ii)(II)(aa)(CC)(bbb).

past two years and whose spouse died within the past two years may self-petition.[20] Similarly, changes in marital status and the death of the USC spouse after the filing of a VAWA petition do not preclude the granting of the self-petition or the self-petitioner's obtaining permanent residence.[21]

Marriage or remarriage of self-petitioners. The 2000 VAWA amendments provide that the remarriage of a former spouse whose self-petition has been approved or the marriage of a self-petitioning child whose petition has been approved will not serve as a basis for revocation of the approval of the self-petition.[22]

Parent-child relationship. The self-petitioning child must be unmarried and under 21 years of age when the self-petition is filed, with an exception to that filing deadline for children of USCs and LPRs, explained below.[23] He or she must also be the child of the abusive USC or LPR parent, but need not be the child of a self-petitioning spouse. The self-petitioning child does not have to be in the abuser's legal custody, nor will changes in parental rights or legal custody affect the status of the child's self-petition.[24]

Derivative children. The self-petitioner's children, including children of self-petitioning children, qualify for derivative status as long as they are under age 21 and unmarried when the self-petition is filed.[25] These derivative children are not required to have been the victims of abuse, nor do they have to have resided in the United States. Like self-petitioning children, derivative children are eligible for deferred action and work authorization. If the self-petitioner dies while the self-petition is pending, a child may remain eligible for derivative benefits if she or he was residing in the U.S. at the time of the self-petitioner's death and continues to reside in the U.S.[26]

Protection against aging out for VAWA self-petitioning and derivative children. VAWA includes several protections against aging out for children.

- First, VAWA 2005 amended the INA by expressly providing that the Child Status Protection Act[27] (CSPA) applies to VAWA self-petitioners and their derivatives. Thus, CSPA rules for determining who is an immediate relative now specifically apply to VAWA self-petitioners and their derivatives.[28] Similarly, CSPA rules for determining whether individuals are children for purposes of

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[20] INA §204(a)(1)(A)(vi).

[21] *Id*.

[22] INA §204(h).

[23] INA §204(a)(1)(D)(v).

[24] 8 CFR §204.2(e)(1)(ii).

[25] INA §§204(a)(1)(A)(iii), (B)(i)

[26] INA §204(l) as amended by §803 of the VAWA Reauthorization Act of 2013; See Chapter 1 for more detailed discussion of eligibility for 204(l) benefits for surviving relatives

[27] Pub. L. No. 107-208, 116 Stat. 927 (2002).

[28] INA §201(f)(4).

the second family preference also now specifically apply to self-petitioners and derivatives of self-petitioners.[29]

- Second, even where CSPA protection doesn't apply, a child whose self-petition is filed or approved before the child turns 21, will be considered, upon turning 21, a petitioner for preference under the family first, second, or third preferences, whichever is appropriate, with the same priority date assigned to the self-petition.[30] No new petition is required, and the self-petitioner is eligible for deferred action and work authorization while awaiting a current priority date and adjustment of status.[31]
- Third, the provision described above applies to derivative children of VAWA self-petitioners, who also are considered VAWA self-petitioners upon turning 21.[32]
- Fourth, the filing deadline for self-petitioning children has been extended to age 25 under certain circumstances. An individual who is 21 years old and who qualified to file a VAWA self-petition before age 21 as a child of a USC or as a child of an LPR, but who did not timely file the petition, may file the self-petition prior to age 25 if the abuse was at least one central reason for the filing delay.[33] A central reason is one that is caused by or incident to the battery or extreme cruelty, including situations where (1) the self-petitioner is subjected to abuse close in time to turning 21, so that there is insufficient time to submit an application before turning 2, and (2) the self-petitioner is so traumatized by abuse that she or he is unable to apply before turning 21.[34]

Citizenship or immigration status of abuser. Prior to the 2000 VAWA amendments, a requirement for self-petitioning for abused spouses or children was that the abusing spouse or parent must have been a USC or LPR at the time the self-petition was filed and approved, although subsequent changes in the abuser's citizenship or immigration status would not affect an approved self-petition. Under the 2000 amendments, however, abused spouses, children, and parents of USCs may self-petition within two years after the spouse, parent, or child's loss or renunciation of citizenship, if the loss or renunciation was related to an incident of domestic violence.[35] Similarly, abused spouses and children of LPRs may self-petition within two years after the spouse or parent's loss of status if it was due to an incident of domestic violence.[36] Changes in the abuser's citizenship status or loss of the abuser's per-

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[29] INA §203(h)(4).

[30] INA §204(a)(1)(D)(i)(I).

[31] INA §204(a)(1)(D)(i)(II).

[32] INA §204(a)(1)(D)(i)(III).

[33] INA §204(a)(1)(D)(v).

[34] USCIS Policy Memorandum, "Continued Eligibility to File for Child VAWA Self-Petitioners After Attaining Age 21; Revisions to Adjudicator's Field Manual (AFM) Chapter 21.14 (September 6, 2011)

[35] INA §204(a)(1)(A)(iii)(II)(aa)(CC)(bbb).

[36] INA §204(a)(1)(B)(ii)(II)(aa)(CC)(aaa).

manent residence after the filing of a self-petition do not preclude the granting of the self-petition or the self-petitioner's obtaining lawful permanent residence status.[37] Moreover, if the abuser naturalizes, the previously filed self-petition of his or her spouse or child is reclassified as a self-petition filed by the spouse or child of a USC, even if the naturalization occurs after divorce or termination of parental rights.[38]

Death of USC abuser. The spouse, child, or parent of a USC abuser may self-petition within two years after the death of the USC abuser.[39]

Definition of "abuse." To qualify as abuse under the statute, the spouse or child must show that he or she "has been battered or has been the subject of extreme cruelty"[40] perpetrated by his or her spouse or parent. Under the regulations implementing the self-petition provisions, abuse is "any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury." It includes psychological abuse, rape, incest, and forced prostitution.[41]

Good moral character. Although the statute does not specify any definite period during which good moral character must be established, the regulations require three years of good moral character preceding the filing of the self-petition.[42] Children under age 14 are presumed to be of good moral character. Legal bars to establishing good moral character are set forth in INA §101(f).

Even if a self-petitioner falls under one of the INA §101(f) statutory bars to good moral character, USCIS nonetheless may find the self-petitioner to be of good moral character if (1) the act or conviction is waivable for purposes of determining inadmissibility or deportability, and (2) the act or conviction was connected to the abuse suffered by the self-petitioner.[43]

In a memorandum dated January 19, 2005, USCIS gave guidance for determining good moral character despite a bar.[44] In regard to the first requirement, the memorandum provides that the adjudicator does not need to determine whether a waiver would be granted, but only whether one would be available for filing at the time the adjustment of status application or visa application is filed. In regard to the second requirement, the evidence must establish that the battering or extreme cruelty the self-petitioner experienced compelled or coerced the self-petitioner to commit the act

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[37] INA §204(a)(1)(B)(v)(I).

[38] INA §204(a)(1)(B)(v)(II).

[39] INA §§204(a)(1)(A)(iii), (vii).

[40] INA §§204(a)(1)(A)(iii)(bb) (spouse of USC); (iv) (child of USC); (B)(ii)(I)(bb) (spouse of LPR); (iii) (child of LPR).

[41] CFR §§204.2(c)(1)(vi), (e)(2)(vi).

[42] 8 CFR §204.2(c)(1)(vii).

[43] INA §204(a)(1)(C).

[44] USCIS Memorandum, W. Yates, "Determinations of Good Moral Character in VAWA-Based Self-Petitions" (Jan. 19, 2005), *published on* AILA InfoNet at Doc. No. 05012561 (*posted* Jan. 25, 2005).

or crime. In other words, the evidence should establish that the self-petitioner would not have committed the act or crime in the absence of the battering or extreme cruelty.[45] In making this determination of connection, the adjudicator officer should consider "the full history of the domestic violence in the case, including the need to escape an abusive relationship."[46] Finally, even if both requirements are met, the adjudicator must determine whether to exercise discretion favorably.

The memorandum makes special reference to criminal acts or convictions. For acts or convictions that involve a violent or dangerous crime, the memo instructs USCIS officers to consult 8 CFR §212.7(d). That provision states that discretion generally should not be exercised favorably in cases involving violent or dangerous crimes, except in extraordinary circumstances. Examples of such extraordinary circumstances include ones involving national security or foreign policy considerations, or where denial of the waiver would result in exceptional and extremely unusual hardship. In regard to aggravated felonies, if the adjudicator determines that the act or conviction is an aggravated felony as defined in INA §101(a)(43), the adjudicator should refer the case for issuance of a notice to appear for removal proceedings.

The memo applies to all self-petitions pending on or filed on or after October 28, 2000.

USCIS attached a chart, entitled "Waivable Conduct Contained in the Statutory Bars to Establishing Good Moral Character," to the memo. That chart is included as appendix 9 in this book.

The Contents of the Self-Petition Packet

USCIS will consider all credible evidence submitted with the petition before reaching a conclusion.[47] Nonetheless, primary evidence, such as medical, police, or court records, is generally more credible than secondary evidence such as affidavits, so advocates should make every effort to present primary evidence.

The self-petition packet should be paginated consecutively and should contain the forms and documents listed below. If the applicant cannot obtain any of the listed documents, then other credible evidence should be submitted in its place.

- **A detailed cover letter with an index**, listing each document contained in the application and the page at which it appears. The index should organize the contents according to the element that the particular document satisfies. For example, there should be an index subheading for "good moral character," and documents presented to show good moral character should be listed under that subheading.
- **A completed Form I-360**, Petition for Amerasian, Widow(er), or Special Immigrant. Note that the self-petitioner should give a safe address on the applica-

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46 *Id.*

47 INA §204(a)(10)(J).

tion, rather than the location where he or she is actually residing. This safe address could be the advocate's office or a friend or relative's address. There is no fee for the I-360 application.[48]

- **The applicant's detailed declaration**. This is the single most important part of the application. It is an opportunity to show how sympathetic the applicant's case is, as well as to establish credibility through a detailed description of events. The declaration should include the applicant's personal knowledge on each element of the claim. This would include the marriage or other qualifying relationship to the abuser, the abuser's status, battery or extreme cruelty, three years' continuous presence, extreme hardship, and good moral character. The applicant should be as involved as possible in drafting the declaration, and even where the advocate assists in the drafting, the declaration should "speak in the client's voice."

- **Evidence of the qualifying relationship to the abuser.**

  For an abused spouse, the marriage certificate and evidence of termination of all prior divorces by each spouse should be included. For an abused intended spouse whose marriage to the abuser is invalid solely because of the abuser's bigamy, the applicant's declaration should set out these facts, as well as the applicant's good faith in entering into the marriage.[49]

  For an abused common-law spouse, the applicant should present evidence to establish that the marriage meets the definition of common-law marriage under the law of the state where the marriage occurred.

  For a son or daughter abused by a USC or LPR mother, a copy of the birth certificate, showing the abuser as mother, should be submitted.[50]

  For a son or daughter born in wedlock who was abused by a USC or LPR father, a copy of the birth certificate and a copy of the parent's marriage certificate should be submitted.[51]

  For a son or daughter born out of wedlock who was abused by a USC or LPR father, the applicant should submit a copy of his or her birth certificate and documents to show either: (1) legitimation by the father before the son or daughter reached the age of 18 and while in the legitimating parent's custody, or (2) that the father had a bona fide parent-child relationship with the person. Examples of documents to show a bona fide parent-child relationship include statements from the self-petitioner, his or her mother, and other relatives or witnesses concerning the relationship between the father and child, evidence of payment of child support, evidence that the father and child exchanged gifts,

[48] 8 CFR §103.7.

[49] 8 CFR §204.2(c)(2)(ii).

[50] 8 CFR §204.2(e)(2)(ii).

[51] 8 CFR §204.2(e)(2)(ii)(B).

photographs, or other mementos, evidence that the father and child did things together, and evidence that the father held the child out as his own.[52]

For an adopted child, evidence should be submitted to establish that the child was adopted before reaching the age of 16 and that the child has been in the legal custody of and has resided with the adopting parent or parents for at least two years.[53] The two-year legal and physical custody requirement does not apply if the adopted child was abused by the adopting parent or a family member of the adopting parent residing in the same household.[54] Note that Hague convention rules and procedures apply to adoptions that occur on or after April 1, 2008. [55]

If the abuser is the applicant's stepparent, the applicant should submit his or her birth certificate, together with evidence to show that the marriage creating the relationship of stepparent and stepchild occurred before the stepchild turned 18.[56] For stepchildren, termination of the marriage between the parent and stepparent generally terminates the stepparent/stepchild relationship, unless the stepparent and stepchild continue their relationship after the termination.[57] It may be difficult to show that the relationship has continued in a case involving domestic abuse. However, the VAWA amendments of 2000, providing that divorce after filing a self-petition will not negatively affect eligibility to self-petition, may modify this general rule.

For the mother of an abusive USC, the applicant should submit a copy of the abuser's birth certificate to show the relationship between the abuser and the parent and to establish that the abuser is at least 21 years old, as well as evidence of any change of the abuser's or parent's name.

For the father of an abusive USC, the applicant should submit a copy of the abuser's birth certificate and evidence of any change of name. In addition, if the abuser was born in wedlock, the applicant should submit a copy of the certificate of marriage between the applicant and the abuser's mother. If the abuser was born out of wedlock, then the applicant should submit evidence of having legitimated the abuser or of a bona fide parent-child relationship between the abuser and the applicant.

Evidence of the abuser's USC or LPR status. If the abuser is a USC by birth, that status is proved by the abuser's birth certificate showing birth within the United States or its possessions. It could also be established by a certificate of

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[52] 8 CFR §204.2(e)(2)(ii)(D).

[53] 8 CFR §204.2(e)(2)(ii)(F).

[54] INA §101(b)(1)(E)(i).

[55] 8 CFR §204.301

[56] 8 CFR §204.2(e)(2)(ii)(E).

[57] *Matter of Pagnerre*, 13 I&N Dec. 688 (BIA 1971).

citizenship or a birth certificate showing birth abroad to two USC parents or to one USC who meets the residential requirements to convey citizenship on his or her children. The status of an abuser who is a naturalized USC is shown by the abuser's naturalization certificate.[58] The status of an abuser who is an LPR is shown by the abuser's permanent resident card.

This evidence very likely will be the most difficult for the applicant to obtain, as it is the evidence most completely under the abuser's control. Government records establishing immigration status generally will not be released to persons other than the party to whom they pertain. Applicants who are experiencing problems obtaining this evidence may want to request assistance from the USCIS Vermont Service Center (VSC). If the self-petitioner is unable to present primary or secondary evidence of the abuser's status, the advocate may ask the immigration authorities to attempt to verify the abuser's citizenship or immigration status from information contained in immigration computerized records and other records.[59]

Other evidence that might be sufficient to establish the abuser's status could be the abuser's employment records, such as the I-9 form and copies of the abuser's immigration documents maintained by the employer, although privacy requirements may make these difficult for the applicant to obtain.

If none of the above-mentioned documents is available, secondary evidence such as declarations from persons who know the abuser to be an LPR or USC may be presented.[60]

- **Evidence of the applicant's physical presence** in the United States *or* evidence that the abuse occurred in the United States *or* evidence that the abuser is an employee of the U.S. government or a member of the uniformed services.
- **Evidence of good moral character**. Self-petitioners who are 14 years of age or older must provide a copy of police clearance letters from jurisdictions (including other countries) where they have resided for six months or more during the three-year period preceding the filing of the self-petition.[61] When it was not possible to obtain police clearance letters, self-petitioners have submitted FBI rap sheets and state criminal record reports to satisfy this requirement.

  The applicant's own declaration is crucial in establishing good moral character. If there are no convictions or acts that would establish a statutory or discretionary bar to good moral character, then the applicant may state simply that he or she has never been arrested. A letter or statement from relatives, friends, clergy, or employers attesting to the applicant's good moral character is also

[58] 8 CFR §204.1(g)(1).

[59] 8 CFR §204.1(g)(3).

[60] 8 CFR §204.1(g)(2).

[61] 8 CFR §§204.2(c)(2)(v) (self-petitioning spouses), (e)(2)(v) (self-petitioning children).

important. If there is a discretionary bar to establishing good moral character, the applicant may use the declaration to explain the circumstances and the connection between the offense and the abuse.

If there is a statutory bar to good moral character, then the self-petitioner should submit evidence to establish that the act or conviction is waivable under INA §§212 or 237 and that there is a connection between the act or conviction and the abuse the self-petitioner suffered.

- **Evidence of good-faith marriage**. "Good faith" here means that the applicant married the abuser for the principal purpose of sharing a life together and not solely to obtain an immigration benefit.[62] Evidence could include one or more of the following:
  - The self-petitioner's own detailed declaration
  - Deeds to property or leases showing both spouses' names
  - Bank accounts in both spouses' names or showing one spouse as the beneficiary of the other
  - Vehicle registration in both spouses' names
  - Wills indicating that the parties are married
  - Credit card, utility, and other bills in both spouses' names
  - Jointly filed income tax returns
  - Insurance policies showing one spouse as the beneficiary of the other
  - Birth certificates of children born of the marriage
  - Evidence of courtship, such as letters and photographs of the couple
  - Evidence of the marriage ceremony, such as photographs and invitations
  - Declarations from relatives or friends
- **Evidence of battery or cruel treatment**.[63] The following are examples of evidence that may be submitted for this purpose:
  - The applicant's own detailed declaration
  - Copies of temporary and final protective orders
  - Shelter records and other evidence that the victim sought shelter or protection
  - Counseling records and reports
  - Medical records documenting the abuse

[62] 8 CFR §204.2(c)(2)(vii).

[63] 8 CFR §204.2(c)(2)(iv).

- Photographs of a visibly injured victim or property damage, supported by affidavits
- Police reports
- Declarations of witnesses to the abuse or to the results of violence
- Letters from clergy to whom the abuse was reported
- School records reflecting the abuse

- **Evidence of relationship between the self-petitioner and any derivative children**, through birth certificates and other documentation required to establish that the derivative is a "child" under INA §101(b).
- **Form G-28**, Notice of Appearance as Attorney or Representative.
- **Form I-765**, Application for Employment Authorization. This may be included with the self-petition application only if the applicant simultaneously is applying for adjustment of status and seeking employment authorization on this basis.

Intake Interview and Gathering Evidence

The intake interview lays the foundation for obtaining the above information. The following are suggestions for successful interviewing and for gathering corroborative evidence after the initial interview:

- Be aware that you are dealing with an individual who has suffered profound violence and be sensitive to the ways that different cultures deal with such issues.
- If you are doing a general intake interview and are not aware of the applicant's situation, do not overlook a general question that may enable the person to qualify for relief under VAWA. Use open-ended questions to encourage the applicant to disclose any abuse, moving towards increasingly more specific questions.
- Set aside enough time to interview the client. Domestic violence interviews will invariably be lengthy, due to such factors as trauma in reliving painful events, the need to establish a rapport with the client, and translation problems.
- Be aware of the domestic violence syndrome of power and control and the cycle of violence: tension building, explosion, and then the honeymoon phase.
- Frame particular questions. Rather than asking "did you suffer domestic violence?," ask, one at a time, "were you hit, punched, pushed, allowed to work, allowed to have friends, insulted, mistreated in front of friends, family, children?"
- It is very important to develop a partnership with the client's domestic violence counselor, who can be very helpful in gathering evidence with the client.
- Think of the battered immigrant's affidavit as similar to an asylum affidavit: it should be detailed, specific, and in the client's own words.
- Before you interview, familiarize yourself with country conditions so that you are aware of the treatment of women in the client's country of nationality. This

should enable you to interview the client more effectively. You may need to obtain information on country conditions and laws of the client's country concerning domestic abuse, particularly if some of the abuse the client suffered took place in his or her country. You may do this by reviewing country reports from the State Department, Human Rights Watch, Amnesty International, and the United Nations High Commissioner for Refugees. The Human Rights Documentation Exchange is another excellent source of information.

Procedure for Filing

The self-petition packet should be sent to the following address:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden St.
St. Albans, VT 05479

The application should be marked on the outside of the envelope, in large red letters: "VAWA Application. Do not open in mailroom." Applications for adjustment of status and for employment authorization should be marked "VAWA Adjustment Application" or "VAWA Employment Authorization Application" at the top in red. This will ensure that the application gets to the VAWA Unit.

Deferred Action and Employment Authorization

When the VSC approves a self-petition, it automatically considers the applicant for deferred action status.[64] Legacy Immigration and Naturalization Service issued a memo explaining that self-petitioners generally possess factors that warrant a grant of deferred action.[65] Initial assessments of deferred action will be valid for 15 months, and requests for extensions of deferred action will be granted in increments of 12 months.[66]

Once a self-petition is approved, the self-petitioner is eligible for employment authorization incident to status.[67] A self-petitioner is eligible for employment authorization upon approval of the VAWA self-petition, even when the self-petitioner is not yet eligible to adjust status to permanent residence. Self-petitioners granted deferred action are eligible for employment authorization on that basis as well, but note that this requires submitting additional evidence of economic necessity to work. Applica-

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[64] INS Memorandum, Paul Virtue, "Supplemental Guidance on Battered Aline Self-Petitioning Process and Related Issues" (May 6, 1997)

[65] *Id*.

[66] INS Memorandum, M. Cronin, "Deferred Action Determinations for Self-Petitioning Battered Spouses and Children" (Sept. 8, 2000), *published on* AILA InfoNet at Doc. No. 01081736 (*posted* Aug. 17, 2001).

[67] INA §204(a)(1)(K).

tions for employment authorization should be marked in red as "VAWA I-765," to ensure that they are sent to the correct department of the VSC.

Help Down the Road

Adjustment of Status, Inadmissibility Grounds

VAWA self-petitioners adjust under INA §§245(a) and (c). With the enactment of VAWA 2000, Congress amended INA §245(a) to provide that VAWA self-petitioners are exempt from the requirement of having been inspected and admitted or paroled into the United States. Under INA §245(c), the following statutory bars to adjustment of status do not apply to the adjustment of a self-petitioner: having been employed without authorization, failing to maintain lawful status, having entered as a crewman ("C" nonimmigrant status) or witness in a criminal proceedings ("S" nonimmigrant status), having entered under the visa waiver program, or being deportable as a terrorist. Self-petitioners are not required to pay any adjustment penalty fee. These changes to the adjustment of status provisions are effective for applications for adjustment pending on or after January 14, 1998. The term "VAWA self-petitioner" includes derivative children. [68]

A 2008 memorandum issued by USCIS to all its district offices confirmed that all approved self-petitioners qualify to use INA §245(a) to adjust status, regardless of manner of entry.[69] Prior to the issuance of this policy guidance, several USCIS district offices were taking the position that self-petitioners applying for adjustment still were subject to the inadmissibility ground of "entry without admission or parole" under INA §212(a)(6)(A), making many self-petitioner adjustment applicants who entered the United States without inspection ineligible to adjust status.

When and where to apply for adjustment of status. VAWA self-petitioners who are eligible to file for adjustment of status at the same time they submit their I-360 self-petition can file both together (a "one-step" filing) at the VSC. In this circumstance, the self-petitioner and adjustment of status applicant is eligible to seek employment authorization immediately, in the category of "adjustment applicant."

Applications for VAWA adjustment of status that are filed properly with the VSC should be marked "VAWA Adjustment" clearly in red on the outside of the envelope and on the Form I-485 itself, so that the application will be sent to the correct department of the VSC.

Inadmissibility grounds eased for self-petitioners. Statutory changes enacted in VAWA 2000, 2005 and 2013 have provided special exemptions from or waivers of certain inadmissibility grounds for individuals with approved VAWA self-petitions.

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[68] INA § 101(a)(51)

[69] USCIS Memorandum, M. Aytes, "Adjustment of Status for VAWA Self-Petitioner Who Is Present Without Inspection" (Apr. 11, 2008), *published on* AILA InfoNet at Doc. No. 08042161 (*posted* Apr. 21, 2008).

First, VAWA self-petitioners are eligible for a discretionary waiver of inadmissibility for misrepresentation (having procured or sought a visa or admission or other immigration benefit by fraud or willful misrepresentation of a material fact) if they demonstrate that removal would cause extreme hardship to themselves or to their USC, LPR, or "qualified alien" parent or child.[70] The term "qualified alien" is defined at 8 USC §1641(b), and includes LPRs, asylees, refugees, persons paroled into the country for at least one year, aliens granted withholding of deportation or removal, aliens granted conditional entry under INA §203(a)(7) as it existed prior to April 1, 1980, Cuban and Haitian entrants, VAWA self-petitioners, and abused aliens eligible for VAWA suspension of deportation or cancellation of removal.

Second, VAWA self-petitioners are eligible for a discretionary waiver of certain criminal inadmissibility grounds listed in INA §212(a)(2).[71] The major requirement is that the applicant qualifies as a VAWA self-petitioner; there is no requirement of extreme hardship or a qualifying USC or LPR relative. INA §212(h) allows for a discretionary waiver of inadmissibility for crimes of moral turpitude, multiple criminal convictions for which the aggregate sentences to confinement were five years or more, prostitution and commercialized vice, assertion of immunity from prosecution, and for a single offense of simple possession of 30 grams or less of marijuana. Applicants are ineligible for the §212(h) waiver if they have been convicted of or admitted committing murder, torture, or an attempt or conspiracy to commit those crimes.[72] Persons who were formerly LPRs have an additional requirement: they are ineligible for the §212(h) waivers if (1) they have been convicted of an aggravated felony, or (2) they have not resided lawfully and continuously in the United States for seven years prior to the initiation of removal proceedings.[73] *Third*, persons with approved VAWA self-petitions are eligible for a discretionary waiver of the inadmissibility ground of having a communicable disease of public health significance, including infection with the etiologic agent for acquired immune deficiency syndrome.[74]

Fourth, the inadmissibility ground arising from re-entering or attempting to re-enter the United States without admission after having been unlawfully present in the United States for more than one year or having been ordered removed[75] is waivable

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[70] INA §212(i).

[71] INA §212(h).

[72] *Id.*

[73] Four Circuits have held that these limitations do not apply to LPRs who adjusted status in the U.S. *Hanif v. Attorney General*, No. 11-2643 (3rd Cir. Sept. 2012); *Bracamontes v. Holder*, 2012 WL 1037479 (4th Cir. 2012); *Lanier v. Attorney General*, 631 F.3d 1363 (11th Cir. 2011); *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008). Outside of these circuits, these 212(h) limitations on LPR eligibility apply without regard to the manner in which LPR status was acquired. *Matter of E.W. Rodriguez*, 25 I&N Dec 784 (BIA 2012) reaffirming *Matter of Koljenovic*, 25 I&N Dec 219 (BIA 2010)

[74] INA §212(g), waiving application of INA §212(a)(1)(A)(i).

[75] INA §212(A)(9)(C)(i).

in the exercise of discretion for VAWA self-petitioners.[76] To be eligible for such a waiver, the self-petitioner must show that there is a connection between his or her having been battered or subjected to extreme cruelty and his or her removal, departure from the United States, re-entry or re-entries to the United States, or attempted re-entry into the United States.[77]

Fifth, there are two exceptions for VAWA self-petitioners to the inadmissibility ground of being present in the United States without authorization or parole.[78] Which of the two exceptions applies depends on when the self-petitioner entered the United States. If the self-petitioner first entered before April 1, 1997, he or she need show only status as a VAWA self-petitioner.[79] If the entry was on or after April 1, 1997, however, the VAWA self-petitioner must show also that there was a substantial connection between the entry without inspection and the abuse he or she suffered.[80]

Sixth, there is a VAWA exception to the three– and ten-year bars for unlawful presence. Under that exception, a VAWA self-petitioner is not subject to the bars if he or she can show a substantial connection between the violation of the person's nonimmigrant visa and the abuse he or she suffered.[81] Although the statutory language indicates that this exception only applies to person who accrued unlawful presence by overstaying a visa, CIS policy guidance issued in 2009 appears to apply this exception to all self-petitioners who can show a substantial connection between the abuse suffered, the unlawful presence and the departure from the U.S.[82] In addition, some advocates contend that self-petitioners who entered before April 1, 1997, are completely exempt from the three– and ten-year bars and need not show any connection between the visa overstay and the abuse.[83]

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[76] INA §212(A)(9)(C)(iii).

[77] *Id*.

[78] INA §212(a)(6)(A)(ii).

[79] Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, div. C, §301(c)(2), 110 Stat. 3009, 3009-579.

[80] INA §212(a)(6)(A)(ii).

[81] INA §212(a)(9)(B)(iii)(IV).

[82] AFM § 40.9.2(b)(2)(E)

[83] The exception at INA §212(a)(9)(B)(iii)(IV) is defined in terms of the VAWA exception to unlawful presence, found at INA §212(a)(6)(A)(ii). (The exception applies to "an alien who would be described in [INA §212(a)(6)(A)(ii)] if 'violation of the terms of the alien's nonimmigrant visa' were substituted for 'unlawful entry into the United States' in [INA §212(a)(6)(A)(ii)(III)].") As described above, INA §212(a)(6)(A)(ii) was included in the INA by IIRAIRA, which contained a special provision eliminating the "connection" requirement for persons arriving before its effective date, April 1, 1997. ("The requirements of [INA §§212(a)(6)(A)(ii)(II) and (III)], as inserted by [IIRAIRA §301(c)](1), shall not apply to an alien who demonstrates that the alien first arrived in the United States before [April 1, 1997].") Arguably then, INA §212(a)(9)(B)(iii)(IV) picks up the effective date of the INA §212(a)(6)(ii) exception and eliminates the connection requirement for unlawful presence based on a visa overstay if entry occurred before April 1, 1997.

Seventh, the public charge ground no longer applies to VAWA self-petitioners[84].

Domestic Violence Deportability Ground Eased for Abused Persons

The 2000 VAWA amendments also provide for abused persons a waiver of the deportability ground of having been convicted of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment, or having violated a protection order.[85] For such persons, the attorney general is not limited by the criminal court record and may waive those deportability grounds in the case of an alien:

- who has been battered or subjected to extreme cruelty,
- who is not and was not the primary perpetrator of violence in the relationship, and
- who was either acting in self-defense, or where the crime did not result in serious bodily injury and there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

In deciding these waiver applications, the attorney general must consider any credible evidence relevant to the application.[86]

The 2000 amendments also expand the waiver for the deportability ground, found at INA §237(a)(1), of having been inadmissible at the time of entry or adjustment of status, insofar as that inadmissibility results from fraud or misrepresentation under INA §212(a)(6)(C). Persons who have approved VAWA self-petitions are now eligible for that waiver.[87]

Applying for Adjustment Before the Immigration Court; Motions to Reopen

Where a self-petitioner is currently in removal or deportation proceedings or has a final order of removal, deportation, or exclusion that has not been effected by a departure from the United States, the self-petitioner may apply for adjustment of status only in the removal, deportation, or exclusion proceedings.[88]

If a final administrative order of removal or deportation has been issued, then the individual will need to file a motion to reopen the proceedings in order to apply for adjustment. The motion to reopen is filed with the last administrative body to have jurisdiction over the proceedings. This would be either the immigration court or, if the person appealed the immigration court's decision, the Board of Immigration Appeals (BIA).

There are limitations on the timing and number of motions to reopen filed with the immigration court and BIA, but those limitations are relaxed for VAWA self-

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[84] § 804 of the VAWA Reauthorization Act of 2013

[85] INA §237(a)(7).

[86] INA §237(a)(7)(B).

[87] INA §237(a)(1)(H).

[88] INA §240(a)(3).

petitioners.[89] In general, a motion to reopen must be filed within 90 days of the date of entry of a final administrative order of removal,[90] and an individual may file only one motion to reopen.[91]

There are special provisions for reopening proceedings to apply for VAWA adjustment or VAWA cancellation of removal. First, VAWA 2000 included a provision allowing motions to reopen for persons seeking to reopen in absentia removal proceedings in order to apply for VAWA adjustment or VAWA cancellation of removal.[92] Advocates believed that this was a drafting error and that Congress's intent had been to apply the special provisions for VAWA motions to reopen to all VAWA removal cases, not just in absentia proceedings. VAWA 2005 clarifies that the reopening provision applies to all removal cases.[93] The motion to reopen must be filed within one year after the final order of removal, except that this time limit may be waived for an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child.[94] VAWA 2005 adds the requirement that the alien be physically present in the United States at the time of filing of motion.[95] There is no deadline for filing motions to reopen deportation or exclusion proceedings to apply for VAWA adjustment or VAWA suspension of deportation.

Second, the filing of a motion to reopen and accompanying application for relief stays removal of a "qualified alien," pending final disposition of the motion, including exhaustion of all appeals.[96] A "qualified alien" is someone who has an approved VAWA self-petition, a pending self-petition setting forth a prima facie case for eligibility, an approved application for suspension of deportation or cancellation of removal, or a pending suspension or cancellation application that sets forth a prima facie case for eligibility.[97]

When preparing a motion to reopen, the advocate must comply with the format and content requirements set out in the BIA and immigration court regulations and in any local immigration court rules.

Other Relief for VAWA Self-Petitioners in Removal Proceedings

VAWA 2005 also introduced some additional protections for self-petitioners in removal proceedings. These are:

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[89] INA §240(c)(7)(C)(iv).

[90] INA §240(c)(7)(A).

[91] INA §240(c)(7)(C).

[92] Pub. L. No. 106-386, §1506(c)(1), 114 Stat. 1464, 1528.

[93] Pub. L. No. 109-162, §825(a), 119 Stat. 2960, 3063–64 (2006).

[94] INA §240(c)(7)(C)(iv)(III).

[95] INA §240(c)(7)(C)(iv)(IV).

[96] INA §240(c)(7)(C) (paragraph following (iv)(IV)).

[97] 8 USC §1641(c)(1)(B).

- *Amendment of definition of "exceptional circumstances" for purposes of reopening in absentia removal orders*. Persons removed in absentia who failed to appear for removal proceedings are ineligible for certain forms of relief, including adjustment of status and cancellation of removal, for 10 years after the date of the final order of removal, unless they can show that failure to appear was because of "exceptional circumstances." "Exceptional circumstances" now includes battery or extreme cruelty to the alien or any child or parent of the alien, as well as serious illness of the alien. The amendment applies to failures to appear occurring before, on, or after enactment of VAWA 2005.[98]
- *Encouragement to grant advance permission to reapply for admission*. Congress stated its sense that, in considering an application for advance permission to reapply for admission (Form I-212), the secretary of homeland security, the attorney general, and the secretary of state should consider exercising their discretionary authority particularly for VAWA self-petitioners, applicants for VAWA cancellation or suspension, and T and U nonimmigrants.[99]
- *Relief for VAWA self-petitioners who do not timely leave under voluntary departure*. In general, persons who fail to timely depart under an order of voluntary departure are ineligible for 10 years for certain forms of relief, including adjustment of status and cancellation of removal, and also incur civil penalties. Applicants for VAWA adjustment and VAWA cancellation of removal or suspension of deportation, however, will not incur the 10-year bar on relief and civil penalties for failure to timely depart if the abuse they suffered was at least one central reason for the overstay.[100]
- *Certification of compliance with IIRAIRA 384 on Notices to Appear*. Where an enforcement action leading to a removal proceeding was taken against an alien at certain locations, the Notice to Appear must include a statement that the provisions of IIRAIRA §384 have been complied with.[101] Section 384 contains two major requirements: (1) that immigration authorities keep information in VAWA (and now suspension, cancellation, and T) cases confidential, and (2) that Department of Justice (and now presumably Department of Homeland Security) employees make no adverse determination of admissibility or deportability regarding an alien using information furnished solely by an abuser of that alien.[102] The locations triggering the certification requirement are: domestic violence shelters, rape crisis centers, supervised visitation centers, family justice centers, victims services providers, and community based organizations, as well as courthouses if the alien appears in connection with a protection order

[98] INA §240(e)(1).

[99] Pub. L. No. 109-162, §813(b)(2), 119 Stat. 2960, 3058 (2006).

[100] INA §240B(d).

[101] INA §239(e)(1).

[102] Pub. L. No. 104-208, §384, 110 Stat. 3009, 3009-652 to 3009-653.

case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subjected to extreme cruelty or if the alien is a victim of trafficking or certain crimes.[103] The provision took effect 30 days after enactment of VAWA 2005 and applies to apprehensions occurring on or after that date.[104]

Naturalization

The 2000 VAWA amendments also eased naturalization requirements for persons who have obtained LPR status through a self-petition as an abused spouse or child of a USC.[105] Those persons may apply for naturalization after three years of residing continuously in the United States after being lawfully admitted for permanent residence. These amendments also removed the requirement that the naturalizing self-petitioner spouse have been living in marital union with the USC spouse. Conditional resident spouses who have been granted a waiver of the joint petition requirement due to having been battered or subjected to extreme cruelty by their USC spouse or parent are also eligible to adjust after three years without meeting the marital union requirement.[106]

Special Provisions for Derivative Spouses and Children of Applicants for Adjustment of Status Under the Cuban Adjustment Act, NACARA, and HRIFA,

Congress recognized that abused spouses and children of applicants for relief under the Nicaraguan and Central American Refugee Act (NACARA),[107] the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA),[108] and the Cuban Adjustment Act of 1966 (CAA)[109] may incur the same problems as abused spouses of LPRs and USCs—that is, they may be forced to decide whether to remain in an abusive marriage in order to obtain immigration benefits or to leave the marriage and seek safety. Thus, in VAWA 2000 and again in VAWA 2005, Congress provided remedies similar to VAWA self-petitions for this group of individuals.

- **Relief for spouses under the Cuban Adjustment Act**. A spouse of a Cuban eligible for relief under the CAA will continue to be treated as a spouse for two years after the later of the Cuban alien's death or the enactment of VAWA 2005, or for two years after the later of termination of the marriage of the enactment of VAWA 2005, if there is a connection between the termination of

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[103] INA §239(e)(2).

[104] Pub. L. No. 109-162, §825(c)(2), 119 Stat. 2960, 3065 (2006).

[105] INA §319(a).

[106] USCIS Memorandum, W. Yates, "Clarification of Classes of Applicants Eligible for Naturalization under Section 319(a) of the Immigration and Nationality Act (INA), as amended by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386" (Jan. 27, 2005), *published on* AILA InfoNet at Doc. No. 05020760 (*posted* Feb. 7, 2005).

[107] Pub. L. No. 105-100, tit. II, 111 Stat. 2160, 2193–201 (1997).

[108] Pub. L. No. 105-277, div. A, §101(h), tit. IX (secs. 901–04), 112 Stat. 2681, 2681-538 to 2681-542.

[109] Pub. L. No. 89-732, 80 Stat. 1161.

the marriage and the abuse. These abused derivative spouses and children need not show current residence with the principal applicant.[110]

- **Relief for HRIFA family members**. Abused spouses, children, and sons and daughters of persons who adjust to LPR status or who are eligible for classification under HRIFA may apply for HRIFA adjustment to LPR status. Thus, an abused spouse, child, or son or daughter may apply for HRIFA adjustment on his or her own even if the principal applicant did not actually adjust under that act. They do not have to comply with the requirement of having been physically present in the United States since December 1, 1995, as long as they are present at the time of application for adjustment.[111]
- **Relief for NACARA family members**. Abused Nicaraguan and Cuban spouses and children of persons who adjusted status under NACARA or who were eligible for such adjustment were eligible to apply for adjustment under NACARA §202(d)(1) on their own during the 18 months following the enactment of VAWA 2005.[112] Due to the passage of time, this relief is no longer available.

  Under NACARA §203,[113] nationals of El Salvador, Guatemala and former republics of the U.S.S.R. may apply for cancellation of removal or suspension of deportation upon showing continuous presence in the United States since a certain date and meeting other requirements. Dependent spouses, children, and unmarried sons and daughters also may apply for NACARA §203 benefits. VAWA 2000 provided relief for abused spouses and children of principal applicants by eliminating the requirement that the derivative be residing with the principal applicant.[114]
- **Motions to reopen**. The VAWA exceptions to time and number limits on motions to reopen also apply to motions for relief as an abused spouse or child under the CAA and HRIFA.[115]

Special Provisions for Derivative Spouses of Certain Nonimmigrants

VAWA 2005 amended the INA to provide eligibility for employment authorization to battered spouses of nonimmigrants admitted under subpargraph (A), (E)(iii),

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[110] Pub. L. No. 109-162, §823, 119 Stat. 2960, 3063 (2006).

[111] Pub. L. No. 109-162, §824, 119 Stat. 2960, 3063 (2006).

[112] Pub. L. No. 109-162, §815, 119 Stat. 2960, 3060 (2006).

[113] Pub. L. No. 105-100, §203, 111 Stat. 2160, 2196–200 (1997).

[114] Pub. L. No. 106-386, §1510(b), 114 Stat. 1464, 1531–32.

[115] Pub. L. No. 109-162, §814, 119 Stat. 2960, 3058–60 (2006).

(G) or (H) of the Act. [116] On December 12, 2012, CIS issued draft policy guidance as a first step in implementing this statutory provision.[117] Under the draft policy, requests for employment authorization will be adjudicated by the VSC and will only be granted for a period equal to the remainder of the applicant's authorized status. The draft policy is not in effect, and included a comment period until January 10, 2013.

[116] INA § 106

[117] Draft Policy Memorandum, "Eligibility for Employment Authorization upon Approval of a Violence Against Women Act (VAWA) Self-Petition; and, Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants" (Dec. 12, 2012)