

VAWA

Provisions for Immigration Relief

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Violence Against Women Act

- Was enacted by the federal government in 1994
- Updated in 2000 and 2005, up for reauthorization in 2011

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



Immigration Relief 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



There are generally four classifications of individuals in U.S. Immigration Law:

UNDOCUMENTED - Resides in the U.S. without any legal status

- May have entered with legal status and later fell out of status


NON-IMMIGRANTS - 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 visitors, exchange visitors, diplomats, and others
- May or may not be able to be employed depending on visa type

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<http://www.irs.gov/businesses/small/international/article/0,,id=129236,00.html>







IMMIGRANTS – Permanent residents

- Granted the right to reside permanently in the United States and to work without restrictions
- Also known as a Lawful Permanent Resident (LPR)
- A “Green Card” is evidence of LPR status

U.S. CITIZENS –


- 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

<http://www.irs.gov/businesses/small/international/article/0,,id=129236,00.htm>

Self-Petition

- Allows victim of domestic violence to submit his or her own application for citizenship
 - If married to a U.S. citizen (USC) or Lawful Permanent Resident (LPR)
 - And victim of domestic violence
- Normally the spouse must submit the petition on behalf of the undocumented spouse
- Victim must have been subjected to extreme battery or cruelty
 - Includes psychological abuse





Proof of Extreme Cruelty or Battery

- Self-petitioner's declaration
- Others' declaration (family, neighbors, faith communities, workplace, school)
- Domestic violence service providers
- Protection orders
- Criminal court records

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Proof, cont'd

- Emails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Medical records: injuries, scars, PTSD, migraines, insomnia
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports



Self-Petition Requirements

- Must be married to a U.S. citizen (USC) or Lawful Permanent Resident (LPR)
- Good moral character
- Good faith marriage



- 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

- Created by the Victims of Trafficking and Violence Protection Act of 2000
- Purpose of U and T visas was to provide legal status for victims of crime that are cooperating with law enforcement
- **U visa:** applies to victims of a crime
- **T visa:** applies to victims of human trafficking



U visa & T visa, cont.

- 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
- Do not need to be married to a USC or LPR



U visas

- Must be a victim of crime, these include domestic violence
 - Includes physical or mental abuse
- Must be cooperating with law enforcement
- Is a temporary visa that in some cases can become permanent



U visa, cont.

- 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 illegally during the application process



T visas

- Applies to victims of human trafficking
- Human trafficking ≠ human smuggling
- In human trafficking, the person is held against their will
- Similar to slavery
- Cannot be prosecuted for acts engaged in while being trafficked



T visas, cont.

- Must be cooperating with law enforcement
- Person would suffer extreme hardship involving unusual or severe harm upon removal
- Often over-looked in domestic violence settings



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



For Agencies

Other Suggestions:

- 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



Gender-Based Asylum

- Not a provision of VAWA
- Falls under U.S. asylum laws
- In the past, being a victim of a gender-based crime, such as 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.
- This is currently being reconsidered.
- Must meet strict requirements.
- Must be able to show that the violence was gender-based.



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.



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