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# Immigration for Abused Spouse

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U.S. citizens (USC) and Lawful Permanent Residents (LPRs) may file immigrant visa petitions with the U.S. Citizenship and Immigration Services (USCIS) on behalf of a spouse or child, so that these family members may immigrate to or remain in the United States. Sadly, certain cases exist where U.S. citizens and LPRs misuse their control of this process to abuse their family members. Consequently, most battered immigrants are fearful to report the abuse to the police or other authorities out of fear of losing their immigration benefits.

Under the Violence Against Women Act (VAWA) passed by Congress in 1994, the spouses and children of United States citizens or lawful permanent residents (LPR) may **self-petition** to obtain lawful permanent residency. The immigration provisions of VAWA allow certain battered immigrants to file for immigration benefits without the abuser's assistance or awareness, in order to seek safety and independence from the abuser. Please note, The Battered Immigrant Women Protection Act of 2000 (BIWPA) made significant amendments to section 204(a) of the INA. Rules published in the Federal Register explain the eligibility requirements and procedures for filing a self-petition under the VAWA provisions. These rules can be found in the Code of Federal Regulations at 8 CFR § 204.

Please note, victims of domestic violence should know that help is available to them through the **National Domestic Violence Hotline on 1-800-799-7233 or 1-800-787-3224 [TDD]** for information about shelters, mental health care, legal advice and other types of assistance, including information about self-petitioning for immigration status. If further advice is needed, you may contact the USCIS District Office near your home for a list of community-based, non-profit organizations that may be able to assist you in applying for an immigration benefit.

## Eligibility Requirements for Spouses, Parents and Children

To be eligible to file a self-petition through VAWA you must qualify under one of the following categories:

**A Self-Petitioning Spouse Must Have the Following Criteria:**

- You may self-petition if you are a battered spouse married to a U.S. citizen or lawful permanent resident. Unmarried children under the age of 21, who have not filed their own self-petition, may be included on your petition as *derivative beneficiaries*.
- Must be legally married to the U.S. citizen or lawful permanent resident batterer. A self-petition may be filed if the marriage was terminated by the abusive spouse's death within the two years prior to filing. A self-petition may also be filed if the marriage to the abusive spouse was terminated, within the two years prior to filing, by divorce related to the abuse.
- Must have been battered in the United States unless the abusive spouse is an employee of the United States government or a member of the uniformed services of the United States.
- Must have been battered or subjected to extreme cruelty during the marriage, or must be the parent of a child who was battered or subjected to extreme cruelty by the U.S. citizen or lawful permanent resident spouse during the marriage.
- Must be a person of good moral character.
- Must have entered into the marriage in good faith, not solely for the purpose of obtaining immigration benefits.

#### **A Self-Petitioning Parent Must Have the Following Criteria:**

- You may self-petition if you are the parent of a child who has been abused by your U.S. citizen or lawful permanent resident spouse. Your children (under 21 years of age and unmarried), including those who may not have been abused, may be included on your petition as derivative beneficiaries, if they have not filed their own self-petition.

#### **A Self-Petitioning Child Must Have the Following Criteria:**

- You may self-petition if you are a battered child (under 21 years of age and unmarried) who has been abused by your U.S. citizen or lawful permanent resident parent.
- Must qualify as the child of the abuser as "child" is defined in the INA for immigration purposes.
- Any relevant credible evidence that can prove the relationship with the parent will be considered.

### **Application Procedure**

To self-petition, you must complete and file USCIS Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) and include all supporting documentation. Self-petitions are filed with the Vermont Service Center. Sending the Form I-360 to any other USCIS office will delay your application. You should keep a copy of everything you submit, including the application and all accompanying documents, in addition to the proof of mailing. You should receive an acknowledgement or Notice of Receipt within a few weeks after mailing the application and fee to the USCIS.

#### **Note On Self-Petitioners and Unlawful Entry**

On April 11, 2008, USCIS issued a new memo regarding VAWA petitions. As of April 11, 2008 it is not requisite for a self-petitioner to show a "substantial connection" between the qualifying battery or extreme cruelty and the alien's unlawful entry into the United States. Thus, any self-

petitioner who is/has been abused by their United States citizen or permanent resident spouse, can apply to adjust their status to a lawful permanent resident, regardless of how the self-petitioner entered the U.S. See the following link for more details:

[http://www.uscis.gov/files/nativedocuments/VAWA\\_11Apr08.pdf](http://www.uscis.gov/files/nativedocuments/VAWA_11Apr08.pdf) [2]

## How VAWA Cases are Adjudicated?

Battered immigrants filing self-petitions who can establish a "prima facie" case are considered "qualified aliens" for the purpose of eligibility for public benefits (Section 501 of the Illegal Immigrant Responsibility and Immigration Reform Act (IIRIRA)). Prima facie means "on its first appearance", or "by first instance". The USCIS reviews each petition initially to determine if the self-petitioner has addressed each of the requirements listed above and has included some supporting evidence. This may be in the form of a statement that addresses each requirement. If the Service makes a prima facie determination, the self-petitioner will receive a Notice of Prima Facie Determination valid for 150 days. The notice may be presented to state and federal agencies that provide public benefits.

If the I-360 self-petition is approved, Service may exercise the administrative option of placing the self-petitioner in **deferred action**, if the self-petitioner does not have legal immigration status in the United States. **Deferred action** means that the Service will not initiate removal (deportation) proceedings against the self-petitioner. Deferred action decisions are made by the Vermont Service Center (VSC) and are granted in most cases. Deferred action validity is 27 months for those for whom a visa was available on the date that the self-petition was approved. All others have a validity of 24 months beyond the date a visa number becomes available. The VSC has the authority to grant appropriate extensions of deferred action beyond those time periods upon receipt of a request for extension from the self-petitioner.

**Employment Authorization:** Self-petitioners and their derivative children who have an approved Form I-360 and are placed in deferred action are also eligible for an Employment Authorization Card. To apply, USCIS Form I-765 (Application for Employment Authorization) should be filed with the Vermont Service Center. Applicants should indicate that they are seeking employment authorization pursuant to 8 CFR 274a.12(c) (14). The Form I-765 must be filed with a copy of the self-petitioner's USCIS Form I-360 approval notice.

**Adjustment to Permanent Resident Status:** Self-petitioners who qualify as immediate relatives of U.S. citizens (spouses and unmarried children under the age of 21) do not have to wait for an immigrant visa number to become available. They may file USCIS Form I-485 (Application To Register Permanent Residence or Adjust Status) with their local USCIS office. Self-petitioners who require a visa number to adjust must wait for a visa number to be available before filing the Form I-485. Please see our section regarding Adjustment of Status/I-485.

## What happens if my case is denied?

If your application is denied, the denial letter will tell you how to appeal. Generally, you may file a Notice of Appeal along with the required fee at the Vermont Service Center within 33 days of receiving the denial. Once the fee is collected and the form is processed at the Service Center, the appeal will be referred to the Administrative Appeals Office in Washington, D.C.

## Frequently Asked Questions

### **Q. Can a man file a self-petition under the Violence Against Women Act?**

**A.** Although the self-petitioning provisions for victims of domestic violence are contained in the Violence Against Women Act, they apply equally to victims of either sex.

### **Q. Must the self-petitioner remain married to the abusive spouse until the self-petition is approved?**

**A.** In many cases the self-petitioning spouse is still married at the time of filing. After the self-petition has been filed, legal termination of the marriage will not usually affect the self-petition. However, if you are already divorced, you may still be able to file for a VAWA self petition. Please note some restrictions apply, see 240A(b)(2) of the INA for more details. You must prove that your divorce occurred within the previous two years, that the abuse was related to the reason for the divorce, and that you have been physically present in the U.S. for 3 years immediately preceding the filing of the application for cancellation of removal.. The divorced self-petitioning spouse must still demonstrate the same criteria as married self-petitioners. A self-petition will also be denied if the self-petitioner re-marries before filing or after filing and before the self-petition is approved. Remarriage after the self-petition has been approved will not affect the validity of the approved I-360 self-petition.

### **Q. What if the abusive US citizen/LPR did file a Form I-130 petition on behalf of the battered spouse, which is, either still pending or was withdrawn?**

**A.** A self-petitioner who is the beneficiary of a Form I-130 petition filed by the abusive spouse will be able to transfer the priority date of the Form I-130 petition to the I-360 self-petition. This is extremely important for self-petitioners who must wait for a visa number as an earlier priority date will result in a shorter waiting time.

### **Green Card:**

[Green Card for Abused Spouse](#) [3]

[VAWA](#) [4]

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[2] [http://www.uscis.gov/files/nativedocuments/VAWA\\_11Apr08.pdf](http://www.uscis.gov/files/nativedocuments/VAWA_11Apr08.pdf)

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