

Violence Against Women Act of 2000

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Introduction

VAWA 2000 is contained in the Victims of Trafficking and Violence Protection Act of 2000

It attempts to remove some of the obstacles that prevented some battered spouses and children from benefiting from the self-petitioning provisions

Topics to be covered

- Changes to self-petitioning eligibility requirements
- Changes affecting VAWA adjustment of status applications
- I-360 revocation procedure
- Confidentiality

Self-Petitioning Eligibility

Self-petitioning background

Some USCAs and LPRs use their control over the family-based petitioning process to coerce, control and intimidate family members

Self-petitioning removes control over this process from the USC/LPR spouse or parent and allows the battered spouse or child to submit his/her own petition to BCIS. This self-petition may be filed without the batterer's knowledge or consent

Who may apply?

- The spouse of a USC/LPR (a self-petitioner's child may be included on the petition as a derivative beneficiary)
- The child of a USC/LPR
- The spouse of a USC/LPR whose child has been battered or subjected to extreme cruelty. In such a case, a parent files the self-petition based on abuse of the child, but both parent and child benefit from the self-petition

Basic Self-Petitioning Eligibility Requirements

- Is or was married to USC or LPR
- Marriage was in good faith
- Subjected to battery or extreme cruelty during the marriage
- Residence with the abuser
- Good moral character

Basic Self-Petitioning Requirements for Children

- Is or was a child of USC/LPR parent
- Person of good moral character
- Resides or has resided in the past with USC/LPR parent
- Was battered or subjected to extreme cruelty by the USC/LPR parent

Is, was, or believed him/herself to be married to a USC or LPR

Battered immigrant spouses and children may file a self-petition if:

- US/LPR abuser *loses status* within the two years prior to filing the self-petition because of domestic violence
- The parties *divorce* within two years immediately preceding filing of self-petition and the divorce is “connected” to the domestic violence;
- USC/LPR abuser was a *bigamist* (as long as the marriage was entered into good faith); and
- USC abuser has *died* within two years immediately preceding filing of self-petition.

Who May File From Abroad?

Spouse/child of USC or LPR:

1. Whose USC/LPR abuser is a U.S. government employee;
2. Whose USC/LPR abuser is a member of the U.S. uniformed services; or
3. If the USC/LPR abused him/her in the United States.

After Approval of Self-Petition

- **Remarriage** of the VAWA self-petitioner *after approval of the self-petition* is not a ground for revocation of the approved self-petition
- **Marriage** of the VAWA self-petitioning child of a USC *after the approval of the self-petition* is not a ground for revocation of the approved self-petition

After Approval (cont.)

- Changes to the abuser's immigration status after filing a self-petition do not adversely affect the approval
- Where self-petition approved, change in abuser's status does not preclude classification as immediate relative or affect person's ability to adjust status

Adjustment of Status Issues

I. Application Issues

INA § 245 (a) & (c)

Certain battered spouses and children may apply for adjustment of status even if not inspected and admitted or paroled, or subject to a bar in 245(c)

Derivative beneficiaries

Children of self-petitioning children get beneficiary status (both those with immediate relative as well as preference immigrant status)

Application Issues (cont.)

Reclassification

ANY pending or approved VAWA self-petitions will be reclassified upon the acquisition of citizenship by the LPR spouse or parent, even if the acquisition occurs after the divorce or termination of parental rights

II. Waivers

VAWA 2000 expanded the following existing waivers of grounds of inadmissibility:

- Unlawful presence
- Fraud or misrepresentation
- Health-related
- Criminal
- Public charge

Unlawful Presence [212(a)(9)(C)(ii)]

- A discretionary waiver was added for the “permanent bar” based on accrual of 1 year unlawful presence followed by a departure and an attempted or successful illegal re-entry.
- The waiver provision requires a “connection” between the domestic violence suffered and the alien’s removal, departure, re-entry or attempted re-entry.

Misrepresentation [212(i)(1)]

Includes battered immigrants within the scope of a 212(i) waiver of inadmissibility based on misrepresentation; is discretionary

Alien must demonstrate that failure to grant the waiver would result in extreme hardship to the alien's USC, LPR or qualified alien parent or child rather than abusive spouse or parent

Health-Related [212(g)(1)]

Allows battered immigrants who otherwise qualify under VAWA self-petitioning provisions to file for a waiver of inadmissibility based on a communicable disease of public health significance (including HIV or TB); is discretionary.

Criminal Grounds [212(h)]

Extends discretionary waiver to VAWA-eligible battered immigrants who commit certain crimes including crimes of moral turpitude and multiple offenses, and offenses that are more than 15 years old.

Battered immigrants do not need to show extreme hardship.

Public Charge

Section 212 (p) was added to the INA prohibiting the consideration of any benefits VAWA applicants are authorized to accept under section 501 of IIRIRA in determining public charge.

Revocation of Self-Petitions

Revocation of Self-Petitions

- Self-petitions that field offices believe should be reviewed for possible revocation should be returned to the VSC accompanied by a memorandum of explanation
- Should be done when there is new information previously unavailable to the VSC at time of adjudication
- Officer must have reasonable belief that a self-petition should be revoked

Confidentiality provisions of IIRIRA § 384

Section 384 of IIRIRA

There are two confidentiality provisions in Section 384:

1. Prohibition Against Disclosure of Information
2. Limitation on Use of Information Provided by Abusive Family Members

Prohibition Against Disclosure

Section 384(a)(2):

In no case may any DOJ employee “permit use by or disclosure to anyone...of any information which relates to an alien who is the beneficiary of an application for relief” under the VAWA provisions

Prohibition Against Disclosure

- There are four exceptions
- **Violations are grounds for disciplinary action and/or fine**
- An adult may execute a waiver of non-disclosure

Limitation on Use of Information Provided by Family Members

Section 384(a)(1):

Prohibits an employee of DOJ from making an adverse determination of admissibility or removal of an alien using information furnished solely by certain family members.

Must obtain independent corroborative information from an unrelated person before taking any adverse action based upon that information

U Nonimmigrant Status

Eligibility Requirements

- Victim of a qualifying crime (listed at INA 101(a)(15)(U))
- Suffered substantial physical or mental abuse as a result of having been a victim of the crime
- Possesses information concerning the crime
- Has been/is being/is likely to be helpful to authorities in the investigation or prosecution of the crime (certification from official required)
- Crime occurred in the U.S. or violated U.S. laws

Benefits/Limitations

- EAD when granted status
- Can apply for adjustment after 3 years
- 10,000 statuses available per year
- Family members may qualify for status if show extreme hardship
- **No regulations yet; interim relief available**