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Preparing the VAWA Self-Petition and Applying for Residence[12]

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Introduction

This chapter provides practical tips for filing a self-petition under the Violence Against Women Act of 1994 (VAWA) as revised in 2005.[3] Under VAWA 2005, the VAWA self-petitions now cover a broader range of victim applicants. Attorneys and advocates unfamiliar with the complex changes that have occurred with VAWA in recent years should seek further assistance before helping victims file a self-

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[2] In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (United States v. Windsor, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

[3] For more information on this topic, visit http://niwaplibrary.wcl.american.edu/vawa-confidentiality.

petition.[4] This chapter is not an exhaustive list of recommendations,[5] but rather a guide to filing a VAWA self-petition. Before filing a self-petition, review the "VAWA Red-Flags" listed at the beginning of this manual. If your client has any one of the inadmissibility red-flags, contact an immigration attorney or technical assistance provider with significant experience representing immigrant victims in VAWA cases.

This guide provides information on the following VAWA self-petition topics listed below.

- Eligibility Requirements for Filing a Self-Petition
- General Filing Procedures and Practice Pointers
- The Self-Petitioner's Affidavit
- Affidavits from Witnesses and Advocates
- Checklist of Suggested Evidentiary Documents
- Obtaining Lawful Permanent Residence under VAWA

Collaboration between immigration attorneys and domestic violence/sexual assault advocates is vital to a successful VAWA self-petition.[6] Advocates can assist victims in collecting and organizing documentation that will help immigration officials understand the type and extent of battery or extreme cruelty that gave rise to the VAWA self-petition.

This chapter is geared towards advocates and attorneys with little or no immigration law experience. Immigration attorneys looking for more information should contact the National Immigrant Women's Advocacy Project at 202-274-4457 or Advanced Special Immigrant Survivors Technical Assistance (ASISTA) by phone at (617) 227-9727 or visit their website at www.asistaonline.org.

HISTORY OF THE VIOLENCE AGAINST WOMEN ACT AND SELF-PETITIONING

VAWA, which was enacted as part of the Violent Crime Control Act of 1994, was the first piece of federal legislation in the United States specifically designed to help curb domestic violence.[7] In enacting VAWA, Congress' clear, overarching intent was to strengthen the protections available to battered women, as well as to expand collaboration and cooperation between battered women's support services and the criminal and civil justice systems.

VAWA recognized that immigration laws were being used as tools of power and control over immigrant victims of domestic violence. It also included special protections for immigrants abused by U.S. citizen or lawful permanent resident spouses or parents. In many cases, the legal immigration status of non-citizen victims depends upon their relationships to their U.S. citizen or lawful permanent resident abusers.[8] Abuse often includes various forms of sexual assault. For example: rape, forced or coerced sexual contact, molestation, child abuse. Abusers use their power over their spouse's, children's, or parent's (of an over 21-year old US citizen) immigration status to control, threaten, isolate, harass, and coerce the immigrant victims. The battered spouse, child, or elderly parent would likely be deterred from taking action to protect herself (such as seeking a civil protection order, filing criminal charges, or calling the police) because of the threat or fear of deportation by the immigration officials.[9] Sexual assault within a marriage is a crime in every state in the United States.[10] Victims of marital sexual assault who come from other countries may

[4] Reading the statutes and regulations is not enough. Statues have overturned regulations, some new regulations are still pending, and policy directives fill in important gaps.
[5] New attorneys and advocates are strongly encouraged to seek additional information on self-petitions from the National Immigrant Women's Advocacy Project (info@niwap.org) or the Advanced Special Immigrant Survivors Technical Assistance (ASISTA) project (questions@asistaonline.org). Expert referrals are available through NIWAP at (202) 274-4457 or niwap@wcl.american.edu.
[6] Pendleton and Block, *Applications for Immigration Status Under the Violence Against Women Act; from the* IMMIGRATION AND NATIONALITY LAW HANDBOOK (Randy P. Auerbach ed., 2001-02).
[7] Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40001-702, 108 Stat. 1796, 1902-55 (1994).
[8] H.R. REP. NO. 103-395 at 26-27 (1993).
[9] *Id.*
[10] National Clearinghouse on Marital and Date Rape, State Law Chart (2005), http://www.ncmdr.org/state_law_chart.html (last visited Feb. 14, 2008).

not know that this is criminal behavior in the United States.[11] Abusers may play upon this ignorance to isolate, further abuse, and prevent the victim (or her family) from seeking help from the authorities.

VAWA contains provisions that limit the ability of an abuser to misuse United States immigration laws, immigration officials, and law enforcement agencies to threaten and control his or her immigrant spouse or child. Specifically, VAWA remedies this situation by enabling battered immigrants to attain *lawful permanent residence* (a "green card") without the cooperation of their abusive spouse or parent. In providing for relief, VAWA has provisions by which to obtain lawful permanent residence including VAWA self-petitions and VAWA cancellation of removal (formerly called "suspension of deportation"). These provisions ensure that immigrant victims of domestic violence have access to lawful immigration status without having to depend upon the cooperation or participation of their batterer.

VAWA also has provisions designed to restore and expand access to a variety of legal protections for battered immigrants by addressing immigration law obstacles still standing in the path of battered immigrants seeking to free themselves from abusive relationships after the first VAWA. For example, VAWA self-petitioning includes adults who are abused by their U.S. citizen children.[12] Likewise, it ensures that children who were abused do not lose their chance to self-petition as they grow older (they now have until age 25 to file).[13] VAWA 2005 ensures that a survivor who files a VAWA self-petition, or receives any other form of VAWA immigration relief, cannot later file for immigration relief on the abuser's behalf. It also includes increased confidentiality protections for those who self-petition.[14] The following section provides a brief overview the VAWA self-petition. [15]

VAWA Self-Petitions

Certain immigrants may obtain lawful permanent resident status (a green card) without the participation or cooperation of their United States citizen or legal permanent resident abusive spouse, parent, or over 21 year old U.S. citizen child by filing a VAWA self-petition. Use the VAWA Self-petitioning flow charts (adult and child) in the appendix to this chapter to help you determine your client's and her children's eligibility for a self-petition. Self-petitions were created by Congress as an alternate safe route to lawful permanent residence, for victims of violence who were eligible for a green card but would have to rely on an abusive U.S. citizen or lawful permanent resident family member to file the application with DHS. VAWA created a route to lawful permanent residency for victims, which was safe and confidential, that they could pursue without their abusive family member's knowledge or cooperation. Attaining lawful permanent residency through a VAWA self-petition is a two-step process. First, an eligible applicant must file a VAWA self-petition, which must be approved by the Department of Homeland Security (DHS) formerly known as the Immigration and Naturalization Service (INS). Second, the applicant must apply for lawful permanent residence either through the "adjustment of status" process in the United States or at a consulate abroad.

WHO IS ELIGIBLE TO FILE A VAWA SELF-PETITION?

Under the Violence Against Women Act, certain abused spouses, children, parents abused by their over 21-year old U.S. citizen children, or parents of abused children can file their own petitions to obtain lawful permanent resident status. These victims can file in a way that is confidential and without the abuser's cooperation if the abuser is a U.S. citizen or lawful permanent resident. Examples of individuals covered by VAWA include:

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[11] United Nations Development Programme, Gender and Legislation in Latin America and the Caribbean (not dated), http://www.undp.org/rblac/gender/legislation/violence.htm.
[12] Immigration and Nationality Act of 1952 § 204(a)(1)(A)(vii) [hereinafter INA], 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).
[13] INA § 204(a)(1)(D)(v), 8 U.S.C. § 1154(a)(1)(D)(v) (2000).
[14] 8 U.S.C. § 1367(a)-(d) (2000). The VAWA confidentiality statute is not part of the Immigration and Nationality Act.
[15] For more information on the battered immigrant provisions of VAWA 2000 see LEGAL MOMENTUM, SECTION BY SECTION CHART OF THE BATTERED IMMIGRANT PROVISIONS OF VAWA 2000 (2000). Copies are available from NIWAP. Contact NIWAP by phone at (202) 274-4457, or by email at niwap@wcl.american.edu.

- Abused spouses or former spouses of U.S. citizens or lawful permanent residents may file a VAWA self-petition. They may also include their children, even if the children are not abused or are not related to the U.S. citizen or the lawful permanent resident.[16]

- Abused children of a U.S. citizen or lawful permanent resident may file a VAWA self-petition.[17]

- Spouses or former spouses (whether abused or not) whose children are abused by their U.S. citizen or lawful permanent resident spouse may apply for themselves.[18]

- Parents who are victims of elder abuse by a U.S. citizen son or daughter are eligible.[19]

- Battered spouse waiver applicants,

- VAWA Cuban adjustment applicants,[20]

- VAWA HRIFA (Haitian) applicants,[21] and

- VAWA NACARA applicants (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners, under VAWA 2005[22]

WHAT ARE THE REQUIREMENTS FOR ESTABLISHING ELIGIBILITY FOR A VAWA SELF-PETITION?[23]

A self-petitioning spouse must satisfy **seven requirements** to establish eligibility for a VAWA self-petition.

1. Relationship to the abuser: Generally, self-petitioning spouses can demonstrate the existence of a marital relationship with a valid marriage certificate. A self-petitioning child must prove that s/he is the natural child, stepchild, or adopted child of a citizen or lawful permanent resident.[24] A self-petitioning parent must prove a parental relationship to their U.S. citizen son or daughter.[25]

If the self-petitioner is currently not married to the abuser by reason of the abuser's bigamy, death, or divorce, the self-petitioner may still qualify if she can prove that:

- She believed that she has legally married the abuser, but the marriage was invalid due to her abuser's bigamy. Abused spouses who did not know they married a bigamist need to provide evidence that their marriage ceremony was actually performed.[26]

- She was the spouse of a U.S. citizen who died within the past two years. The self-petitioner must prove that she was the spouse of an abusive citizen and that her spouse died within the past two

[16] INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii) (2000). Children included in their parent's VAWA self-petition are known as derivative children. To be included in the parent's self-petition, derivative children must be under twenty one at the time of filing. These children are "derivatives" or "derivative beneficiaries" because they derive a benefit from the parent's application for legal immigration status.
[17] INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000). A self-petitioning child must prove he or she is the child (natural, step, or adopted) of a citizen or lawful permanent resident. Self-petitioning stepchildren must file while the mother and father are still married.
[18] INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii) (2000).
[19] See "Introduction to Immigration Relief" in this manual for more information.
[20] See "Introduction to Immigration Relief" in this manual for more information.
[21] See "Introduction to Immigration Relief" in this manual for more information.
[22] See "Introduction to Immigration Relief" in this manual for more information.
[23] For more information on evidence to prove VAWA cases, please consult the reading, VAWA DOCUMENTARY EVIDENCE MEMO. Copies may be obtained by contacting NIWAP by phone at (202) 274-4457 or by e-mail at niwap@wcl.american.edu.
[24] INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000).
[25] INA § 204(a)(1)(A)(vii), 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).
[26] H.R. CONF. REP. NO. 106-939, at 112-13 (2000) (Conf. Rep.).

years.

- She was divorced from the abuser within the past two years. The self-petitioner must demonstrate that she was divorced from the abuser within the past two years, and that there was a connection between the divorce and the battery or extreme cruelty by the abusive spouse. [27]

In the case of a self-petitioning child, the applicant must prove that s/he is the natural child, stepchild, or adopted child of a citizen or lawful permanent resident.[28] Further, a self-petitioning parent must prove a parental relationship to their U.S. citizen son or daughter.[29]

2. The abusive spouse or parent is a U.S. citizen or Lawful Permanent Resident: A self-petitioner must prove that his or her spouse or parent is a U.S. citizen or lawful permanent resident.

- Loss of citizenship or lawful permanent resident status: In cases where the abuser has lost or renounced his immigration or citizenship status within the past two years, the self-petitioner must demonstrate that the loss of status (for example being found deportable under 237(a)(2)(E) or renunciation of citizenship is related to an incident of domestic violence.[30]

3. Residence within the United States: Generally, self-petitioners must currently reside in the United States at the time of application. Some self-petitioners may file from abroad if they meet one of three requirements:

- The abusive spouse or parent is an employee of the U.S. government;[31]
- The abusive spouse or parent is a member of the uniformed services;[32]or
- The abusive spouse or parent has subjected the immigrant spouse to battery or extreme cruelty while physically present in the United States.

4. Residence with the abuser: A self-petitioner does not have to reside with the abuser at the time of filing, but must still prove that she at one time resided with the abuser. Self-petitioners **DO NOT** have to separate from the abuser in order to file a self-petition.[33]

5. Battery or extreme cruelty:[34] The Department of Homeland Security will consider any credible evidence, including civil protection orders, police and court records, medical reports, and affidavits of school officials, social workers, and shelter workers. Examples of "battery" or "extreme cruelty" include:

- Any act or threatened act of violence (including forceful detention) which results or threatens to result in physical or mental injury
- Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution

[27] Id. at § 1503(b)(1).
[28] INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000).
[29] INA § 204(a)(1)(A)(vii); 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).
[30] H.R. CONF. REP. NO. 106-939 § 1503(b)(1) (2000) (Conf. Rep.).
[31] The abuse can occur in the United States or abroad.
[32] The abuse can occur in the United States or abroad.
[33] Self-petitioners planning to remain with the abuser should have a safe address not accessible to the abuser where the Department of Homeland Security can reach them.
[34] It is recognized that abuse is a pattern. (8 C.F.R. 204.2(c) (1) (i) (H) (vi); Hernandez v. Ashcroft, 345 F.3d 824 (9th Cir. 2003) Some portion of the pattern of abuse must have occurred while in one of the following relationships: *In marriage based petitions:* some portion of the abuse must have occurred during the time a couple was married. *In parent to child relationship based petitions:* some portion of the abuse must have occurred during the parental relationship; however, termination of parental rights does not end the relationship for VAWA immigration relief. *In step-parent to child based petitions*: Some portion of the abuse must have occurred while the marriage creating the step-parent relationship existed. Other abusive actions may also be acts of violence under this rule. For example, individual acts or threatened acts that may not initially appear violent may be part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi) (2007).

According to VAWA regulations, **sexual assault is a form of battery and extreme cruelty.**[35] The Department of Justice defines sexual assault, including sexual assault in a marriage or family relationship, as any type of non-consensual sexual contact or behavior.[36] This includes forced sexual intercourse, sodomy, child molestation, incest, fondling, and attempted rape. Other examples of sexual assault include[37]:

- Unwanted vaginal, anal, or oral penetration with any object
- Forcing an individual to perform or receive oral sex
- Forcing an individual to masturbate, or to masturbate someone else
- Forcing an individual to look at sexually explicit material or forcing an individual to pose for sexually explicit pictures
- Touching, fondling, kissing, and any other unwanted sexual contact with an individual's body
- Exposure and/or flashing of sexual body parts

The Department of Justice website says that in general, state law presumes there is no consent if a person is forced, threatened, unconscious, drugged, a minor, developmentally disabled, chronically mentally ill, or believes he/she is undergoing a medical procedure.[38]

The website notes that perpetrators could be anyone - strangers, friends, acquaintances, or family members. Perpetrators commit sexual assault using violence, threats, coercion, manipulation, pressure, or tricks.[39] In extreme cases, sexual assault may involve the use of force, including but not limited to[40]:

- Physical violence
- Use or display of a weapon
- Immobilization of victim

As the Department of Justice notes, sexual assault more often involves psychological coercion – "taking advantage of an individual who is incapacitated or under duress and, therefore, is incapable of making a decision on his or her own."[41]

6. Good moral character: "Good moral character," as described below, is a term of art in immigration law. To show good moral character, a self-petitioner should submit a local police clearance or state-issued criminal background check from each locality or state, within or outside the United States, in which she has lived for six or more months during the three years immediately preceding the filing of the self-petition.

7. Marriage in good faith: Self-petitioners, whose petition is based on a marriage relationship,[42] need to demonstrate that they married or intended to marry (in cases of bigamy) in "good faith," and not for the purpose of evading immigration laws. Note that self-petitioning elder parents do not need to satisfy this requirement to be eligible to receive a VAWA self-petition. Step-children will have to satisfy this requirement.

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[35] 8 C.F.R. §204.2(c)(1)(vi) (2007).
[36] U.S. Dep't of Justice, http://www.usdoj.gov/ovw/sexassault.htm (last visited February 15, 2008).
[37] *Id.*
[38] *Id.*
[39] U.S. Dep't of Justice, http://www.usdoj.gov/ovw/sexassault.htm (last visited February 15, 2008).
[40] *Id.*
[41] *Id.*
[42] These include those: 1) between a husband and wife in a marriage, 2) between a child and a step-parent, 3) between an intended spouse and a bigamist U.S. citizen or legal permanent resident spouse, where the marriage ceremony was actually performed (INA 204(a)(1)(A)(iii) codified at 8 USC 1154).

Divorce & VAWA Self-Petitioners

Prior to October 2000, battered immigrants who were divorced from their abusers could not file VAWA self-petitions. VAWA 2000 enabled divorced immigrants who had been battered during marriage to file VAWA self-petitions "if the marriage was legally terminated during the two-year period immediately preceding the filing of the self-petition for a reason connected to the battering or extreme mental cruelty."[43] This change is effective for all VAWA self-petitions pending or filed on or after October 28, 2000. [44]

The VAWA applicant must provide evidence that the battering or extreme mental cruelty, which can include sexual assault, led to or caused the divorce. The evidence submitted must demonstrate that the abuse occurred during the marriage, that the abuser was a citizen or permanent resident when the abuse occurred, and that the divorce took place within the two-year period immediately preceding the filing of the VAWA self-petition. [45] The divorce decree does not have to state specifically that the marriage was terminated due to domestic violence. [46]

When an immigrant victim seeks help after a divorce has become final, the advocate or attorney should gather pre-divorce evidence demonstrating domestic violence. Such evidence may include protection orders, police reports, medical records, and affidavits of advocates, neighbors, family members, shelter workers or social workers who have knowledge about the domestic violence and its connection to the divorce. In some cases, when the immigrant victim flees or goes into hiding, the abuser may obtain a divorce by publication in her absence. In such cases, although the decree will not state that the divorce is domestic violence-related, counsel for the victim can demonstrate that the divorce was part of the ongoing pattern of battery and extreme cruelty.

If a battered immigrant seeks help after the abuser files for divorce but before the divorce decree is final, advocates and attorneys working with the immigrant victim should, if possible, file the VAWA self-petition before the divorce becomes final. This is the safest approach for immigrant victims and eliminates the need to establish that the divorce was causally related to the battery or extreme cruelty. Also, if the divorce action is ongoing, counsel for the victim can use discovery in the divorce case to obtain information and documentation that can be submitted in support of the self-petition.

"Good Moral Character"

At the time of the filing of the initial VAWA self-petition, a petitioner (or a child self-petitioner who is fourteen years of age or older) must demonstrate that she or he is a person of "good moral character."[47] The most significant factor that can undermine an immigrant victim's ability to prove good moral character is a criminal history. Battered immigrant victims can end up as defendants in criminal cases for a variety of reasons. Examples include:

- The police made a dual arrest rather than determining who was the predominant perpetrator;
- The perpetrator spoke English with the police and the police could not or did not communicate with the victim when the police arrived and the abuser convinced the police to arrest her;
- The victim was forced into criminal behavior by her abuser;
- The victim shoplifted essential survival items while escaping abuse.

When a potential VAWA applicant is a defendant in a criminal case that could lead to a finding of bad moral character, consult with an immigration expert <u>immediately</u>. Without appropriate counsel,

[43] U.S. DEP'T OF JUSTICE, IMMIGRATION & NATURALIZATION SERV. MEMORANDUM HQADN/70/8, ELIGIBILITY TO SELF-PETITION AS A BATTERED SPOUSE OF A U.S. CITIZEN OR LAWFUL PERMANENT RESIDENT WITHIN TWO YEARS OF DIVORCE (2002), *available at* http://www.uscis.gov/files/pressrelease/VAWA82102_pub.pdf.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] 8 C.F.R. § 204.2(c)(1)(i)(F) (2007).

the victim may plead guilty to charges that will render her ineligible for VAWA relief, and could lead to her deportation.[48]

While there is no statutory definition of good moral character, the Immigration and Naturalization Act (INA) lists actions which presumptively bar an individual from demonstrating good moral character.[49] It is not always easy to determine whether a specific crime established a lack of good moral character. Convictions for many crimes are statutory bars to good moral character, but other crimes, such as involuntary manslaughter or lesser offenses such as simple possession of a controlled substance, driving under the influence, or petty theft do not always bar a showing of good moral character. A prior removal order, in and of itself, does not constitute a bar to establishing good moral character.[50]

PROVING GOOD MORAL CHARACTER

Moral character is evaluated by the government on a case-by-case basis, taking into consideration the standards to which the average citizen in the community is held. The petitioner must prove that she has maintained good moral character throughout the three-year period immediately preceding the filing of a self-petition.[51] Prior conduct may also be examined to determine good moral character at the discretion of DHS.[52] Self-petitioners must submit a police clearances letter from any state or locality where they have resided for at six months during the past three years. If they have been arrested during that time, they must submit copies of the arrest records and court dispositions.

Petitioners should always state in their affidavits if they have ever been arrested, and submit records of any previous arrests or convictions, or information concerning any other bad conduct (such as fraud). Before obtaining lawful permanent residence based on the self-petition, battered immigrants with approved self-petitions will need to be fingerprinted and the DHS will use these fingerprints to run a criminal records search. This search will reveal all prior arrests in the United States, regardless of when they occurred. A battered immigrant with a criminal history should consult an immigration lawyer before filing the self-petition to determine whether she is barred from showing good moral character. Keep in mind that the victim may meet the requirements for one of the domestic violence-related exceptions or waivers for criminal convictions or other ineligibility grounds.[53] It is better to reveal criminal or other behavior at the onset of a VAWA case, rather than to wait for DHS to discover it at a later stage. Failure to disclose an arrest can undermine a person's credibility and may lead to denial of the self-petitioner's application for permanent residence or revocation of the approved self-petition.[54] There are DHS officers who may discover a criminal record at a later step in the proceedings even if it is not brought up during the first steps of an application. Regardless, the staff members of the VAWA Unit of the DHS Vermont Service Center are trained in domestic violence and are better able to assess whether there is a connection between the domestic violence and any criminal activity and evaluating conduct within the context of the domestic violence.

STATUTORY BARS TO GOOD MORAL CHARACTER

[48] Attorneys and advocates with self-petitioners in this situation should contact NIWAP by phone at (202) 274-4457 or by email at info@niwap.org; or ASISTA at (515) 244-2469; questions@asistahelp.org.
[49] INA § 101(f), 8 U.S.C. § 1101(f) (2000). The list of acts barring findings of good moral character is discussed later in this chapter.
[50] INA § 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A) (2000).
[51] 8 C.F.R. § 204.2(c)(2)(v) (2007).
[52] NAT'L IMMIGRATION PROJECT OF THE NAT'L LAWYERS GUILD, 1 IMMIGR. LAW & DEF. § 8:32 (3d ed. 2004); s*ee also* In re Sanchez-Linn, 20 I. & N. Dec. 362, 365 (B.I.A. 1991) (holding that past conduct is relevant in determining good moral character).
[53] A waivable criminal conviction or act under the immigration law will not bar a finding of good moral character for a VAWA self-petitioner if the crime or act is connected to the abuse. INA § 204(a)(1)(C); 8 U.S.C. § 1154(a)(1)(C) (2000). For more information on waivers, read the discussion on obtaining lawful permanent residence later in this section.
[54] *See* INA § 205; 8 U.S.C. § 1155 (2000). *See also* 8 C.F.R. § 205.2 (2007). An immigration or consular officer may return the petition to the Vermont Service Center for revocation if the petition was mistakenly approved.

If the conduct of the self-petitioner falls under one of the statutory bars listed in INA Section 101(f), the DHS generally is not permitted to waive this mandatory finding of a lack of good moral character.[55] An exception may exist for VAWA self-petitioners if they can establish a connection between the conduct and the domestic violence.[56] According to INA section 101(f), a person engaging in any of the acts listed below during the requisite period presumptively lacks good moral character.

- Habitual drunkenness;
- Prostitution within ten years of the date of application for a visa, admission, or adjustment of status;
- Smuggling a person into the United States;
- Polygamy;
- Conviction of or admission to an act constituting a crime relating to a controlled substance (excluding a single offense for simple possession of thirty grams or less of marijuana);[57]
- Conviction of or admission to a crime of moral turpitude (excluding petty or juvenile offenses);
- Conviction of two or more offenses resulting in a total imposed sentence of five or more years;
- Trafficking or assisting with the trafficking of any illicit substance:
- Conviction of two or more gambling offenses or deriving their principal income source from illegal gambling;
- Giving false testimony to obtain immigration benefits;
- Detention in a penal institution for an aggregate period of 180 days or more; or
- Convicted of an aggravated felony.

In many cases there will be a connection between conduct that would preclude the establishment of good moral character and the abusive relationship. For example, a self-petitioner may be found to be a person of good moral character, despite her conviction on numerous counts of petty theft, if it is revealed that she stole food for her children because her spouse would not give her enough food or money. Self-petitioners should also submit character-references and other evidence that may offset such negative factors. Any form of community involvement, such as volunteer work or participation in religious and school activities, can help counter the effects of past criminal behavior and other bad conduct.[58]

"Extreme Cruelty"

VAWA's immigration provisions define domestic violence more broadly than most state domestic violence statutes.[59] In addition to physical and sexual abuse, VAWA's definition includes "extreme cruelty," defined as:

> *being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of*

[55] CHARLES GORDON ET AL., 6 IMMIGR. LAW & PROC. § 74.07[5][d] at 74-86 n.132 (release 119, 2007) (citing Miller v. INS, 762 F.2d 21, 24 (3d Cir. 1985)).
[56] INA § 204(a)(1)(C); 8 U.S.C. § 1154(a)(1)(C) (2000).
[57] Drug offenses are never considered petty offenses under immigration law. *See* INA § 212(a)(2), 8 U.S.C. § 1182(a)(2) (2000). Any sale, however small, is considered trafficking under the Immigration and Nationality Act. *See id.* While some expunged drug convictions may be erased for immigration purposes, most expungements have no effect. *See* Murillo-Espinoza v. INS, 261 F.3d 771 (9th Cir. 2001); In re Roldan-Santoyo, Interim Decision 3377 (B.I.A. 1999), *vacated sub nom.* Lujan-Armendariz v. INS, 222 F.3d 728 (9th Cir. 2000) (finding In re Roldan inapplicable in certain state expungements of first-time drug offenses).
[58] For a complete list please see the VAWA Red Flags list at XXX insert link from library.
[59] Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 106 (2002); Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 870 (1993).

> *themselves, may not initially appear violent may be part of an overall pattern of violence*.[60]

Practice Pointer:
Some immigrant spouse abuse victims who report various forms of extreme cruelty, but no physical abuse may in addition of extreme cruelty be victims of sexual assault within the family. It is important, particularly in these cases to work with your client to determine whether she has also been a victim of sexual assault. Many immigrant victims of spousal abuse assume that their spouse has the right force sexual relations and may not raise this as part of the abuse. Sexual assault (including sexual assault in a marriage or family relationship) is battery, not extreme cruelty. Attorneys should ensure that immigration officials do not confuse acts of battery with acts of extreme cruelty. It is harder to show "extreme cruelty" than it is to show "battery."

Family law courts have held that many non-physical forms of abuse constitute extreme cruelty against the victim.[61] Courts have examined whether acts of cruelty are "of such nature and character as to destroy the peace of mind and happiness of the injured party,"[62] and whether the perpetrator intended to distress and humiliate the victim.[63] The victim's self-esteem, dependency on the abuser, and ability to communicate are also factors abusers use to inflict and perpetuate extreme cruelty.

THE IMPORTANCE OF DOCUMENTING EXTREME CRUELTY

In preparing a VAWA self-petitioning case, advocates and attorneys should document the existence of each of the above listed factors that constitute or contribute to extreme cruelty. These issues should be addressed whether or not the immigrant victim has also suffered battering. Describing the extreme cruelty in a relationship, in addition to the abuse, gives the adjudicator a more complete description of the abuse the victim has suffered and the impact on the victim and her children. The existence of extreme cruelty, in addition to physical abuse, may also enhance the victim's credibility and may contribute to an immigrant victim's success in proving other elements of a VAWA case, including good faith marriage and good moral character. For example, the concept of extreme cruelty may be particularly important for survivors of sexual assault in their self-petitions. While sexual assault is battery for a self-petition, a survivor will want to document all forms of domestic violence, in addition to sexual assault, in filing their petition. In this way a survivor of sexual assault will help those adjudicating the self-petition understand how sexual assault, which may have only occurred once, was part of a larger pattern of domestic violence.

FORMS OF ABUSE

Abusers use many tactics to establish and retain control over their victims. While in some cases only one instance of abuse will be sufficient to establish a case of extreme cruelty, other situations may require a victim to establish that many different acts, when examined collectively over a period of time, constitute extreme cruelty. Extreme cruelty can include the following conduct:

- Intimidation and degradation;
- Economic and employment-related abuse (such as forced labor or unemployment);
- Social Isolation;
- Sexual Abuse, which includes rape as well as other forms of sexual behavior;
- Immigration-related abuse;

[60] 8 C.F.R. § 204.2(c)(vi) (2007).
[61] *See, e.g.,* Keenan v. Keenan, 105 N.W.2d 54 (Mich. 1960) (holding that husband's disparaging statements to wife constituted extreme cruelty); Muhammad v. Muhammad, 622 So.2d 1239 (holding that husband's religiously-motivated harsh treatment of wife constituted extreme cruelty) (Miss. 1993); Ormachea v. Ormachea, 217 P.2d 355 (Nev. 1950) (holding that husband's indifferent and sometimes hostile treatment of wife constituted extreme cruelty); *but see* Carpenter v. Carpenter, 193 P.2d 196 (Kan. 1948) (holding that wife's refusal to live with husband did not constitute extreme cruelty).
[62] *See* Veach v. Veach, 392 P.2d 425, 429 (Idaho 1964); Pfalzgraf v. Pfalzgraf, No. 52-CA-80, 1981 WL 6119 (Ohio Ct. App. Feb. 11, 1981); Conner v. Conner, No. CA-1953, 1981 WL 6290 (Ohio Ct, App. June 4, 1981); Dickson v. Dickson, No. D-98306, 1982 WL 5380 (Ohio Ct. App. May 27, 1982).
[63] Wolf v. Wolf, 333 A.2d 138, 140 (R.I. 1975).

- Possessiveness and harassment.

INTIMIDATION AND DEGRADATION

Experts acknowledge that batterers commonly use a variety of tactics beyond violence to keep women in abusive relationships.[64] Abusers use threats to enhance a victim's dependence on him by creating fear, stress, and humiliation, if the victim tries to leave or if she does not comply with his demands. Abusers use different forms of threats including: standing too close to victims, clenching their fists, giving "warning" looks, or displaying weapons to their intimate partners.[65] In cases where the victim is also an immigrant, abusers often threaten to report them to the immigration authorities.[66] Threats, intimidation, and degradation trap victims in abusive relationships**,** and can often form the basis for proving extreme cruelty.

ECONOMIC AND EMPLOYMENT RELATED ABUSE

Lack of access to economic resources is the single largest barrier to a victim who seeks to leave an abusive relationship.[67] Victims may be prevented from participating in the labor market, or sabotaged at their workplaces.[68] Abusers are known to stalk or harass victims at work, and to send threatening e-mail or voice-mail messages that may cause the immigrant victim to be fired, or force her to leave her job for safety reasons. Furthermore, many illegal and undocumented immigrant victims are forced by their abusers to work illegally without being allowed to share in the monetary compensation associated with employment.

SOCIAL ISOLATION

Abusers may attempt to isolate their victims by prohibiting them from escaping, seeking help, and developing support systems, or maintaining the victim's existing support systems.[69] The abuser may restrict the victim from using the phone,[70] prohibit her from going to work or school,[71] make her depend on him for transportation, limit the victim's contact with family or friends,[72] or prevent her from attending social activities.

Battered immigrants may be even further susceptible to social isolation due to the fact that many are far from any supportive community of family and friends.[73] To ensure isolation, an abuser might prevent a

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[64] *See* K.J. WILSON, WHEN VIOLENCE BEGINS AT HOME 17-18 (2d ed. 2005) (listing various forms of economic, sexual, and emotional abuse, as well as the threats, intimidation, and isolation tactics used by batterers); *see also* JUDITH HERMAN, TRAUMA AND RECOVERY 77 (1997).

[65] Mary Ann Dutton, *Understanding Woman's Response to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1206 n.70 (1993).

[66] LETI VOLPP, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 6 (1995).

[67] Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L.& POL'Y 245, 295-96 (2000); *see generally* Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WM. & MARY J. WOMEN & L. 597, 617-21 (2001).

[68] A study of domestic violence survivors found that seventy four percent of employed battered women were harassed at work by their partner. FAMILY VIOLENCE PREVENTION FUND, THE WORKPLACE GUIDE FOR EMPLOYERS, UNIONS, AND ADVOCATES (1998), *available at* http://www.endabuse.org/resources/facts/Workplace.pdf. According to an earlier study, twenty percent of all employed battered women lose their jobs because of abuser harassment at the workplace. Susan Schechter & Lisa T. Gray, *A Framework for Understanding and Empowering Battered Women, in* ABUSE AND VICTIMIZATION ACROSS THE LIFE SPAN 242 (Martha Straus ed., 1988).

[69] *See, e.g.,* People v. Humphrey, 921 P.2d 1 (Cal. Rptr. 2d 1996); *see also* Ruth Jones, *Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser*, 88 GEO. L.J. 605 (2000).

[70] *See, e.g.*, Harshbarger v. Harshbarger, No. 92-CA-111, 1993 WL 221269 (Ohio Ct. App. June 11, 1993) (considering husband's prevention of wife from talking on the phone for more than twenty minutes a factor in finding that he had committed extreme cruelty).

[71] FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE IN CIVIL COURT CASES 23 (1992).

[72] *See* CHARLES EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AND LEGAL JUSTIFICATION 9-10 (1987). Nearly half of the women studied were forbidden by their batterers to have personal friends or have friends in the home. A husband's refusal to allow his wife to invite her relatives to visit constitutes extreme cruelty. *See, e.g.*, Gazzillo v. Gazzillo, 379 A.2d 288 (N.J. 1977); *Harshbarger*, 1993 WL 221269.

[73] Leslye E. Orloff et al., *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 314 (1995).

victim from learning English, or from having contact with people who speak English. A linguistic barrier minimizes a victim's ability to access health care, social services, domestic violence programs, immigrant rights agencies, law enforcement, and the courts.[74] Further, abusers often aggravated this sense of isolation by threatening to have their victims deported if they attempted to avail themselves of outside assistance or support.

SEXUAL ABUSE

Sexual abuse encompasses both the criminal legal definition of sexual assault, requiring elements of lack of consent, force or threat of force, and sexual penetration, as well as a broad range of behavior, including unwanted sexual conduct engendered through more subtle or implicit threats.[75]

Rape, sexual assault, and any unwanted sexual contact are crimes that constitute battery. In some VAWA self-petitioning cases, immigration attorneys, advocates, judges, and DHS adjudicators make the mistake of treating cases of emotional abuse, in which sexual abuse is also present, as extreme cruelty cases and not battery cases. When sexual abuse is present and can be proven through the victim's affidavit and other evidence, the VAWA petition can be based on battery and extreme cruelty.

IMMIGRATION-RELATED ABUSE

When immigration related abuse is present in a relationship it is a key indicator of extreme cruelty.[76] Abusers of immigrant women often threaten to report their victims to the immigration authorities.[77] When immigrant women are dependent on their partners for legal immigration status, are undocumented, or have a vulnerable non-permanent immigration status,[78] the power of immigration related abuse is accentuated.[79] Immigrant women are placed in the untenable position of having to choose between living with ongoing and escalating abuse or taking action to stop the abuse and risking deportation. Others believe that they will be turned away from help by social services, health care and the justice system because they are non-citizens.[80]

POSSESSIVENESS AND HARASSMENT

Possessiveness and harassment also provide important evidence of extreme cruelty. Possessiveness may or may not be apparent to those around the abuser and/or victim. An abuser may be jealous and possessive of the victim.[81] The abuser might accuse the victim of infidelity and of attempts to attract other men.[82] Courts have ruled in family law cases that such behaviors can, in certain circumstances, constitute extreme cruelty. An abuser may open the victim's mail;[83] call the victim frequently at home and at work or drive or loiter around the victim's home, work, or shelter; [84] constantly write letters to the victim;[85] contact the victim's friends, family, or employer;[86] interrogate children or other family members; stalk the victim or victim's

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[74] *Id.* at 317.
[75] Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 FLA. B.J. 24, 25 (1994).
[76] Giselle Aguilar Hass, Mary Ann Dutton & Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, *in* DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 105 (2000); *see also* Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 108 (2002).
[77] *See* Leti Volpp, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 6 (1995).
[78] Examples include student visas that can be violated by working, and work visas tied to a particular employer.
[79] Hass et al., *supra* note 72, at 105.
[80] *Id.*
[81] In a survey of 234 physically abused women, seventy-three percent experienced excessive jealousy and possessiveness. Diane R. Follingstad et al., *The Role of Emotional Abuse in Physically Abusive Relationships,* 5 J. FAM. VIOLENCE 101, 113 (1990).
[82] Courts dealing with divorce cases have recognized false accusations of infidelity as extreme cruelty. *See, e.g.,* Keenan v. Keenan, 105 N.W.2d 54 (Mich. 1960) (holding that grounds for divorce exist where a husband falsely accuses his wife of adultery); Mark v. Mark, 29 N.W. 2d 683 (Mich. 1947).
[83] Knuth v. Knuth, No. C1-92-482, 1992 WL 145387 (Minn. Ct. App. June 30, 1992).
[84] *See* Boniek v. Boniek, 443 N.W.2d 196, 198 (Minn. Ct. App. 1989).
[85] *See* State v. Sarlund, 407 N.W.2d 544, 546 (Wis. 1987).
[86] *Id.*

friends, family, and co-workers;[87] chase the victim's car;[88] or file frivolous legal actions against the victim.[89]

Like possessiveness, open harassment is destructive to a victim's peace of mind and security. Through open harassment, the abuser publicly demonstrates his control over the victim. Harassment can humiliate a victim by portraying her as weak and subordinate. Public humiliation may also be a culturally based form of extreme cruelty, particularly among cultural groups that highly value privacy.

General Filing Procedures and Practice Pointers

Self-petitioners must complete and file DHS Form I-360 (Petition for Amerasian, Widow or Special Immigrant) and include all supporting documentation. Forms are available at www.uscis.gov, in person at a DHS office, by phone at 1-800-870-3676, or by mail. For sample documents used in filing a VAWA self-petition, see the ASISTA website.[90]

Send self-petitions by certified return receipt mail to:

U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

Practice Pointer:

While there are no longer any filing fees for VAWA self-petitions, fees are required for work authorization and adjustment of status to lawful permanent residency applications.[91] Low income victims can apply for waivers of these fees and all fees associated with a VAWA self-petition.[92]

Self-petitioners should keep a copy of everything they submit to the DHS, including the application, accompanying documents, and the proof of mailing. **Do not send original birth certificates, legal documents, or photographs with the petition. Send copies.** Within a few weeks after mailing the application and fees, the self-petitioner should receive an acknowledgement or Notice of Receipt.

Practice Pointer:

Battered immigrant women often seek help at shelters. Therefore, shelter workers are in the best position to help battered immigrants begin gathering the necessary documents and information for their self-

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[87] States have recognized stalking as a ground for issuing a civil protection order. *See, e.g.,* N.J. STAT. ANN. §§ 2C:25-19 and 2C:12-10 (West 2005); N.M. STAT. ANN. § 40-13-2-C-9 (LexisNexis Supp. 1993); OKLA. STAT. ANN. TIT. 22, § 60.1 (West 2003); R.I. GEN. LAWS § 11-59-2 (2003). Stalking is generally defined as the intentional commission of more than one act which reasonably causes a victim to fear serious bodily injury. U.S. DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, STRENGTHENING ANTISTALKING STATUTES , NCJ 189192 (2002), *available at* http://www.ovc.gov/publications/bulletins/legalseries/bulletin1/ncj189192.pdf. Every state has passed an anti-stalking law criminalizing this behavior. *Id.* A 1996 study estimated that over one million women are stalked every year. PATRICIA TJADEN AND NACY THOENNES, STALKING IN AMERICA: NATIONAL VIOLENCE AGAINST WOMEN SURVEY (1998), *available at* http://www.ncvc.org/src/main.aspx?dbID=DB_NVAW587.

[88] *See* Christenson v. Christenson, 472 N.W.2d 279, 280 (Iowa 1991).

[89] *See* Johnson v. Cegielski, 393 N.W.2d 547 (Wis. Ct. App. 1986).

[90] http://www.asistaonline.org/vawa.asp.

[91] U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS SETS FINAL FEE SCHEDULE TO BUILD AN IMMIGRATION SERVICE FOR THE 21ST CENTURY (2007), http://www.uscis.gov/files/pressrelease/FinalFeeRulePressRelease052907.pdf (last visited Feb. 23, 2008).

[92] Section 201(d)(7) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 Public Law 110-457 (December 23, 2008) created fee waivers for all filings related to or arising in connection with a VAWA self-petition, VAWA cancellation, VAWA suspension of deportation, U visa or T visa case from filing through adjustment of status to lawful permanent residency. Removing mandatory non-waivable fees greatly increases access to immigration relief for immigrant victims of violence against women.

petition. Immigration attorneys helping clients with VAWA self-petitions should work with shelter workers or a domestic violence advocate. These advocates will help the attorney and client develop the case affidavit and properly document the full history of violence, controlling behavior, and emotional abuse. A shelter worker or domestic violence advocate can also help create a safety plan for your client. The plan may include providing a safe space for the collected information and documents to prevent the papers from being found and destroyed by the abuser.

An attorney working with a self-petitioner should make sure to:

- Collect all necessary details of the client's story by asking open-ended questions through a series of interviews. Advocates can collect this information for the attorney.

- Obtain the draft affidavit the advocate developed in collaboration with the client and organize it in a format that will be most effective for the adjudicator.

- Collect affidavits and other documents corroborating the existence of domestic violence and a good faith marriage.

- Index and summarize supporting documents by elements of proof so DHS examiners may easily understand which documents support which elements of proof and how.

- Include a cover letter providing a road map through the case, using bullets or a similar technique to maximize reader-friendliness.

The Self-Petitioner's Affidavit

The self-petitioner's personal affidavit is the most important piece of evidence; it is the first document that most VAWA adjudicators review, and should, if done well, support a finding that the applicant is credible.

The affidavit should provide as much detail as possible in the applicant's own words. The affidavit is essentially the story of the client's relationship with her spouse, and should explain why she is entitled to relief pursuant to the seven factors identified above. Likewise, the affidavit should be written in a personal, humanizing manner, thus better eliciting the reader's sympathy. The affidavit should address each element of proof. The attorney can recognize the affidavit and reword certain passages if they are unclear, but should not write the affidavit and should not use legal terminology. Attorneys and advocates should organize the victim's affidavit in chronological order, making it easier for the adjudicator to understand the development of the relationship and the history and patterns of abuse. This can be done while still keeping the story as much as possible in the victim's own words.

In addition to all the eligibility requirements, immigration officials look for consistency in the affidavit. It is important to include dates, places, and detailed descriptions of events only when the petitioner is certain that the information is correct. When inconsistencies arise between the affidavit and supporting documentation, the affidavit should address the inconsistency. For example, a victim might have denied to a hospital worker that her injuries were caused by domestic violence. The affidavit should acknowledge this inconsistency and explain why she did not reveal to the hospital staff the cause of her injuries. Immigration adjudicators are trained in recognizing domestic violence and should understand the legitimate safety-related reasons why a battered woman may not reveal the domestic violence to a health-care provider. However, failure to explain the inconsistency could call her credibility into question.

The affidavit should include:

- <u>The client's full name, place, and date of birth</u>

- Proof of good faith marriage: including details regarding how the client and her spouse met, how the relationship developed, why and when they decided to get married and details about the wedding. It should also provide a description about their daily lives (who paid the bills, who prepared meals, cleaned the house, took care of the children) and information about their social life together.
    - If the marriage was arranged, it should explain how the marriage was consistent with the practices of either the client's or her spouse's culture.

- Residence with the abusive spouse/parent: The affidavit should state when, where, and for how long the petitioner resided with the abuser, and the nature of the relationship while living together.

- Information about the self-petitioner's children: It should also state where and when the client had children, and any plans to have children with her husband, whether she has children from other relationships that she wants to include in her self-petition, and when and where these children were born.

- Citizenship or Lawful Permanent Resident status of abusive spouse or parent: It should also include any information she has about her abusive spouse's status, U.S. citizenship, or lawful permanent resident status. This may include a statement that she had seen his passport or green card, or information about his passport or Alien number; or statements made by the abusive spouse or parent to others about his citizenship or resident status.

- A description of how and when the physical and/or psychological abuse began, and the client's fears, hopes, and other feelings about it. Descriptions of the abuser's use of intimidation, economic abuse, isolation, immigration-related abuse, and sexual abuse to exert power and control over her and perpetuate extreme cruelty.

- A description of the incidents in which the spouse harmed the petitioner and/or her children and his tendencies to attempt to control her. Any threats should be described. So should attempts to get help and the results when she did, or her fear to ask for help. Also include observations, reactions, and physical and emotional injuries. Her fear of reporting the abuse to other people or to the police should be explained, including any attempts to seek help both through formal service providers (police, shelter, courts, hospitals, social service agencies) and informal methods (talking to friends, family members, community members, leaders, elders, or clergy).

- It should state the petitioner's relationship with his family and their role (if any) in the abuse, including whether they pressured the client not to report the abuse to the police.

- It should describe the petitioner's fears for her own personal safety, the safety of her children, or that of her family.

- Good Moral Character: A petitioner who has no arrests should clearly state this in her affidavit. She should also discuss her involvement in community, faith- based organizations, her children's school, and support groups. A petitioner with any arrests or convictions should immediately be referred to an immigration attorney with experience working on criminal law and domestic violence issues.

- At the end of the declaration, it is important to include the following phrase:

    "I affirm, under penalty of perjury, that all the foregoing statements are true to the best of my knowledge." (the Petitioner's signature and the date should follow the statement).

Affidavits from Witnesses and Advocates

1) Corroborating witness affidavits: if possible these should be obtained from:

a) Witnesses to the abuse or the effects of the abuse: The applicant should describe incidents where the witness:

- was present during the incident;
- saw or heard an assault, harassment, threat, act of humiliation, or other form of extreme cruelty;
- saw the battered immigrant's bruises or injuries; or
- was told by the battered immigrant about abusive incidents.

b) Domestic Violence Advocates, including shelter workers: Can attest to time spent in the shelter, involvement in programs or receipt of services for domestic violence victims and incidents of abuse disclosed by the woman to the advocate. Affidavits of this nature should include:

- the advocate's experience in the area of domestic violence and/or sexual assault (how long, in what capacity, how many clients served);
- what the petitioner told the advocate about the sexual assault/ domestic violence (including acts of psychological abuse);
- an assessment that the victim seemed credible to the advocate given her experience with victims of domestic violence/sexual assault;
- an explanation of why the treatment experienced by the victim amounts to domestic violence/sexual assault;
- any suggestions or recommendations the advocate provided to the petitioner (safety-planning measures, counseling resources, or any other information related to the domestic violence/ sexual assault she had experienced).

c) Psychologists, counselors or mental health workers: (if the applicant attended counseling) Can explain the abuse disclosed by the applicant, and assert that the woman's behavior follows patterns to be expected of someone who has been abused by a partner. Affidavits of this nature should include:

- the number of years the mental health worker has worked in the field;
- the number of battered women the mental health worker has treated or seen;
- the number of counseling visits by the self-petitioner.

d) Co-workers, religious leaders, neighbors, and friends: Can describe any abuse they witnessed and/or describe their observations about how the abuse has affected the victim and her children. Affidavits of this nature should include:

- the length of time they have known the self-petitioner;
- any knowledge they have about the marital relationship, including documentation of the courtship and/or marriage;
- the fact that the victim and abuser resided together;
- information about any abusive (both physical and emotional) incidents they witnessed;
- a description of any injuries sustained by the self-petitioner or her children that they are aware of as well as any other effects, psychological or emotional, of the abuse on the immigrant victim and her children;
- information about any help they offered the immigrant victim, and
- any concerns/fears for themselves, the victim or her children the witness may have.

e) Affidavits of Children: When children are self-petitioners, or have witnessed abuse, they can file their own affidavit in support of their mother's self-petition. While these affidavits can be useful to the case, preparing them can traumatize the children. It is therefore recommended that only older children

be asked to prepare affidavits. It is further recommended that children who have witnessed or experienced domestic violence be referred to counseling and treatment. Those involved in counseling can be assisted by their mental health treatment providers in preparing their affidavits.

Checklist of Suggested Supporting Documents

The regulations interpreting VAWA recommend the submission of certain types of documents with the self-petition.[93] However, DHS is required to consider "any credible evidence."[94] The suggested evidentiary documents provided in this section are meant to serve as a guide. These documents are not an exhaustive list of the types of evidence that may be offered to support a petition under VAWA. Petitioners do **NOT** need to provide all the documents listed below, these are examples of evidence an applicant may provide.

1) <u>What additional evidence should accompany the application</u>?

In addition to properly completing the self-petition, Form I-360, and preparing the victim's and witness' affidavits, the petitioner should prove each element of her VAWA case through accompanying documentation whenever possible. The types of additional evidence that can be submitted to support a VAWA self-petition include the following items, listed by element of proof:

a) <u>Marriage to the abuser</u>:

The following documents are acceptable as proof of marriage:

- a marriage certificate;
- self-petitioner's affidavit stating the fact of the marriage, when and where the ceremony occurred, and who performed the ceremony; and/or
- affidavits by persons with knowledge of the marriage.

i) <u>The self-petition must be filed within two years of divorce</u>: where the self-petitioner is divorced from the abuser, the petition must be filed within two years of the date the divorce became final. The following should be submitted:

- a divorce order establishing the date the divorce became final;
- an affidavit from the self-petitioner detailing the battery or extreme cruelty and its connection to the divorce;
- other evidence of battery and extreme cruelty, including any protection order issued for her or her children (including any court papers she filed seeking the protection order which outline the abuse in the relationship)[95] medical records, affidavits from health, mental health or domestic violence service providers documenting domestic violence in the marriage.

ii) <u>Marriage in case of bigamy, divorce or death</u>: If the self-petitioner is not legally married to the abuser because of the abuser's bigamy, she may still qualify if she can prove that she believed she legally married the abuser.[96] The following forms of evidence may be used:

- marriage certificate;
- marriage license application;

[93] *See* 8 C.F.R. § 204.2(c) (2007).
[94] *See* 8 C.F.R. § 204.4 (2007); INA § 204(a)(1)(H), 8 U.S.C. § 1154(a)(1)(H) (2000); *see also* U.S. CITIZENSHIP & IMMIGRATION SERVS. MEMORANDUM FROM PAUL VIRTUE, EXTREME HARDSHIP AND DOCUMENTARY REQUIREMENTS INVOLVING BATTERED SPOUSES AND CHILDREN (Oct. 16, 1998).
[95] Review all official documents submitted in support of the self-petition for consistency with the self-petitioner's affidavit. The self-petitioner should explain any inconsistencies with her affidavit in a cover letter prepared by an attorney.
[96] INA § 204(a)(1)(A)(iii)(II)(aa)(BB), 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(BB) (2000)(relating to U.S. citizens); INA § 204(a)(1)(B)(ii)(II)(aa)(BB), 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(BB) (2000)(relating to lawful permanent residents).

- photographs of the wedding ceremony;
- affidavits from persons attending the wedding ceremony; and/or
- an affidavit from self-petitioner stating facts supporting why she believed she legally married the abuser, and why she believed her marriage was valid.

iii) Widow of a U.S. citizen who died within the past two years: If the self-petitioner was the spouse of an abusive U.S. citizen (not permanent resident) who died within the past two years, the victim can still file a self-petition.[97] The following documents must be provided:

- marriage certificate;
- death certificate of the U.S. citizen spouse; and
- Proof of U.S. citizenship (including, U.S. passport, birth certificate, or naturalization certificate).

b) Children filing for VAWA:

i) A child who files a VAWA self-petition must prove that s/he is the natural child, stepchild, or adopted child of a U.S. citizen or permanent resident.[98] There is no longer a requirement that they reside with their abusive parent for 2 years for abused adopted children.[99] The relationship may be proven with:

- a birth certificate or other document establishing that the child is under 21 years of age listing the parents' names;
- the parents' marriage certificate;
- if the child was born out of wedlock, documents showing legitimation (legal acknowledgment or other evidence or proof that the country where the child was born does not distinguish between children born in and out of wedlock)[100]
- for adopted children, an adoption decree, or an affidavit of adoption and evidence of the abuser's legal custody.[101]

ii) Stepchild of the abuser: In case of an abusive stepparent, the abused child's relationship with the abusive stepparent may be proven by submitting:

- if either the child's natural parent or step-parent were previously married, evidence that prior marriage or marriages have been terminated;
- child's birth certificate proving the child's relationship with his/her natural parent;
- the marriage certificate of the natural parent and the stepparent.

iii) Children included in the self-petition: A self-petitioner who wants to include her child/children in the self-petition must prove her parent/child relationship with the children. The children must also be under the age of 21 to be included in the application. The following documentation must be included for each child:

- child's birth certificate, listing the names of the child's parents along with an English translation, where applicable;

[97] INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154 (a)(1)(B)(ii)(II)(aa)(BB) (2000).
[98] INA § 204 (a)(1)(A)(iv) and (B)(iii), 8 U.S.C. § 1154(a)(1)(A)(iv)and (B)(iii) (2000).
[99] This requirement appears in old versions of the Immigration and Nationality Act, but no longer applies. Adopted children can also apply for lawful permanent residency directly.
[100] These requirements vary depending on the laws of the country where the child was born. *See generally* INA § 101(b)(1)(C), 8 U.S.C. § 1101(b)(1)(C) (2000); In re Obando, 16 I. & N. Dec. 278 (B.I.A. 1977); In re Cabrera, 21 I. & N. Dec. 589 (B.I.A. 1996); In re Martinez, 21 I. & N. Dec. 1035, 1038 (B.I.A. 1997).
[101] Section 805(d) of the Violence Against Women Act of 2005 most recently modified the requirements for abused adopted children removing the two year custody and residency requirement for abused adopted children. § 101 (b) (1) (E) (i) of the INA; 8 U.S.C. 1101 (b) (1) (E) (i) (2008). PLEASE NOTE that this statutory language overrules the existing section of the Code of Federal Regulations on abused adopted children.

- if the self-petitioner is the child's father:
    - Marriage license or certificate documenting the child's parents were married;
    - Evidence of the child's legitimation; or
    - Evidence of a bona fide parent-child relationship (pictures, letters).

c) Good-faith marriage

A self-petitioner must be able to demonstrate that her marriage to an abusive spouse was entered into in good faith and not as a means to circumvent immigration laws. In addition to the evidence listed in the "Residence with the Abuser" section below, a victim may submit the following:

- description in the self-petitioner's affidavit of courtship, wedding (include pictures), shared residence, and shared experiences (one affidavit describing this and the abuse or other relevant information can be submitted);
- insurance policies listing her spouse, joint leases, jointly filed income tax returns, bank accounts, and other evidence of shared household and financial obligations;
- birth certificates of their children;
- photographs of the wedding;
- photographs of the self-petitioner with her spouse and other family members, preferably taken on different dates and at different locations;
- letters or cards exchanged with her spouse and between her family members and spouse;
- names, addresses and phone numbers of people who knew the abuser and the applicant as a married couple;
- photo IDs with the applicant's married name;
- letters from her employer or healthcare provider stating that she changed her name or listed the abuser as an emergency contact.

d) Residence with the abuser

A self-petitioner is not required to be residing with the abuser at the time of filing, but she must prove that she resided with the abuser at some point in time during the marriage. No specific length of residency with the abuser is required. Evidence may include:

- self-petitioner's affidavit describing residency with the abuser;
- joint auto, health or life insurance, tax returns or bank accounts, lease agreements, property deeds, or rent receipts with both names on them;
- employment or school records that list the names of both the applicant and the abuser at the same residence;
- letters or cards addressed to both the applicant and the abuser at the same residence;
- utility bills, medical records, credit card bills, magazine subscriptions in both names or to each spouse at the same address;
- an affidavit of the landlord, apartment manager or neighbors at the address where the couple lived attesting to their residence at that location.

e) Evidence demonstrating the abusive spouse or parent is a U.S. citizen or lawful permanent resident:

A self-petitioner must prove that her/his spouse or parent is a U.S. citizen or lawful permanent resident. The following is a list of documents that can be used to prove the abuser's U.S. citizenship or lawful permanent resident status:

- abuser's birth certificate indicating birth in the United States;
- abuser's naturalization certificate, green card, 'A' number, or any DHS document indicating immigration status;
- abuser's U.S. passport or passport number;

- a copy of the I-551 stamp in the abuser's passport, indicating lawful permanent resident status; or
- upon request, DHS will attempt to electronically verify abusers' citizenship or immigration status from their computerized records.[102]

f) Battery or extreme cruelty during the marriage

One of the most important elements of a VAWA self-petition is proof that battery or extreme cruelty took place. VAWA does not explicitly require any particular quantity of abuse. Proof of one incident of battery or extreme cruelty is legally sufficient.[103] Sexual Assault is battery and extreme cruelty under this definition.[104] It is strongly recommended, however, that advocates and attorneys work with immigrant victims to include as much of the history of battery and extreme cruelty in the victim's affidavit as possible. Advocates and attorneys should provide evidence for as many incidents as possible to establish a pattern of violence and extreme cruelty. Types of documentation to obtain are:

i) Affidavit of the battered woman telling her story: It is important to focus on the facts of the violence or cruelty, mentioning each incident separately, and in chronological order, listing when each incident occurred, and describing the applicant's fears and injuries (both physical and psychological), and the effect that each abusive incident had on any children.

The history of power, control, and extreme cruelty should also be described as part of the chronology. The effect that this pattern of power and control had on the self-petitioner and her children should be discussed. The affidavit should establish that the self-petitioner is credible, explain why she is entitled to relief, and elicit the reader's sympathy.

Types of evidence establishing abuse or extreme cruelty have occurred are:

- Restraining orders or civil protection orders that are obtained in any state, along with the pleadings (petition/affidavit) signed by the self-petitioner that were filed with the court in the civil protection order case.

- Police reports, records of phone calls to the police, or police visits to the couple's address. This may include phone calls to the police registering a complaint, a log of police runs made to the couple's address, and copies of all tapes of calls to the police for help.

- Photographs of the sustained injuries that have been taken by the police, family, advocate, victim's attorney, or the victim herself. If possible, for larger injuries, take a photo holding a ruler next to the injury so that the fact-finder can ascertain the size and scale of the injury. Include the woman's face within every photo, or take a full-body photo and then close ups. The local police station may also take photos. Include an affidavit of the person who took the photograph about their observations, including the time and date the photograph was taken, the fact that they took the photograph, and an attestation to the accuracy of the photograph compared to the photographer's in-person observations of the bruises. Take several extra photos to be sure you will end up with one of good quality that will be useful to the case.

- Photographs of damaged property If a batterer has damaged any property during a violent incident, such as ripping clothes, smashing sentimental objects, pulling phone cords out

[102] 8 C.F.R. § 204.1(g)(3) (2007). This can be useful if the abuser is a naturalized citizen, a lawful permanent resident, or a U.S. born citizen who previously filed an immigration case for the self-petitioner or a child.
[103] VAWA self-petitioners and VAWA cancellation of removal applicants need not prove any specific amount of abuse. In contrast, battered immigrants who can only file for U visas (crime victim visas) must prove that they suffered substantial physical or mental harm as a result of criminal activity. This is a much higher standard. Refer to Chapter 3.6 of this manual, "Alternative Forms of Relief for Battered Immigrants and Immigrant Victims of Crime: U Visas and Gender-Based Asylum", for more information on U visas.
[104] 8 C.F.R. §204.2(c)(1)(vi) (2007).

of the wall, etc., if possible. The damaged property should be photographed where it was damaged, and then the object should be collected and retained. The woman's affidavit should state that the applicant still has the object and that it can be inspected by the DHS.

- Corroborating witness affidavits for each incident of abuse where another person was present, or from witnesses who saw or heard an assault or threat, saw the victim with bruises or injuries, or was told by her about abusive incidents close to the time they occurred. Reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel are very helpful.

- Medical records If the account told by the victim to the health professional differs from her true story (e.g. the victim initially reported falling down the stairs rather than revealing the truth that she had been battered), the applicant's affidavit and the cover letter from the attorney or advocates to DHS must address and explain any inconsistencies between the two stories. Advocates and attorneys should develop a specific HIPPA compliant doctor/patient privilege-waiver form to obtain copies of her medical records and mental health treatment records. Such a waiver should limit the scope of release to obtaining medical documentation for use solely in a victim's VAWA self-petition. VAWA confidentiality provisions, in conjunction with a limited release waiver, protect against the records being used in any family or criminal court proceeding without the victim's consent.

- Criminal court records if a batterer was arrested or convicted for any act of violence or destruction of property relating to the applicant (certified copies if possible); a victim's own statements to police or prosecutors may be released to her by the prosecutor's office for this purpose.

- Domestic violence program or shelter records or affidavits attesting to the time the victim spent in the shelter, and the incidents of abuse disclosed to shelter workers. If the applicant attended counseling sessions, records indicating her attendance should also be added.

g) Good moral character

Convictions for certain crimes, as well as other actions, will bar a self-petitioner from establishing good moral character.[105] To demonstrate good moral character, the petitioner should present:

- information in her affidavit attesting to her own good moral character, lack of a criminal record, and involvement in her community, church, or her children's school;

- local police clearance or state-issued background checks from each locality or state in the United States in which the victim has resided for six months or more during the three years immediately preceding the petition date. A police clearance or "good conduct" letter can be obtained from the local or county police department in each locality where she lives or has lived. If the victim has moved, these letters can be requested in writing, normally with proof of identity and a small fee for the search. Further, it may be necessary to obtain similar clearance letters from foreign countries if the victim lived abroad during the requisite time period;

- an explanation of why police clearances or background checks cannot be safely obtained or are not available, submitted along with other evidence of good moral character with her

[105] INA § 101(f); 8 U.S.C. § 1101(f) (2000).

affidavit;

- affidavits from responsible persons who can knowledgeably attest to her good moral character and lack of criminal record may also be submitted; and/or

- **if the battered immigrant was arrested, accused or has committed a crime, it is absolutely essential to consult with an immigration lawyer prior to filing the self-petition in order to assure that the victim's affidavit and/or documentary submissions adequately address and mitigate the consequences such past criminal activity may have on a finding of good moral character. Failure to do so could place the victim at strong risk of deportation.**

h) <u>Petitioner's residence in the U.S. or abroad</u>:

To file a self-petition, victims must either reside in the United States, have been abused in the United States, or be the abused spouse of a U.S. government employee, or member of the military working or stationed abroad. Self-petitioners residing in the United States may provide proof of current U.S. residence through the following documents:

- employment or school records;
- a property deed with her name on it, rent or mortgage receipts, utility bills, insurance policies, hospital or medical records;
- birth certificates of children born in the United States and children's school records;
- cards or letters addressed to her address, affidavits by her neighbors, landlords, and friends attesting to her residence in the United States; and/or
- the self-petitioner's affidavit stating her residence in the United States. No specific length of the residence in the United States is required as long as the victim resides in the United States at the time of filing.

Some self-petitioners may file from abroad if the abusive spouse or parent falls into one of three categories:

1) Where the abusive spouse or parent is an employee of the U.S. government:[106] Evidence should include:

- spouse's or parent's employment records, pay stubs, employment identification card, and/or
- other documentation of the spouse's or parent's employment with the U.S. government;

2) Where the abusive spouse or parent is a member of the uniformed services[107]: Evidence should include:

- Spouse's or parent's military identification card,
- military orders, pay stubs,
- DD-214, or
- documentation that the self-petitioner is a dependent member of the U.S. military of uniformed services;

3) Victims subjected to battery or extreme cruelty in the United States who are currently residing abroad or filing from abroad should submit documentation showing the abuse occurred in the United States.

[106] The abuse can occur in the United States or abroad.
[107] The abuse can occur in the United States or abroad. Uniformed services include all branches of the United States military, the Coast Guard, and the Public Health Service.

i) Loss of citizenship or lawful permanent resident status:

In cases where the abuser lost or renounced his immigration or citizenship status within the past two years, the abuse victim can still file the self-petition if she demonstrates that the loss of status or renunciation of citizenship or lawful permanent resident status is related to the domestic violence.[108]

j) When an abuser has renounced his citizenship or given up his lawful permanent resident status:

Self-petitioners should submit evidence proving that the domestic violence predated the renunciation. This is particularly important in cases where lawful permanent resident abusers flee the country after the issuance of a protection order or a warrant in a criminal case.

Obtaining Lawful Permanent Residence Under VAWA

Obtaining lawful permanent residence status through VAWA involves two steps. First, DHS must approve the VAWA self-petition. Once approved, the applicant must apply for lawful permanent residence. There are two ways in which an applicant can obtain her green card, which is proof of lawful permanent residence. These are: 1) adjustment of status and 2) consular processing.

"Adjustment of status" is the procedure for obtaining a green card for applicants presently in the United States. Applicants submit their application for lawful permanent residence to local DHS District Offices and await an interview with DHS examiners.

"Consular processing" is the procedure for obtaining legal permanent resident status for those who are not in the United States, and those who do not qualify to adjust status (obtain lawful permanent residency) within the United States. Applicants who fall into this category must apply for immigrant visas abroad at a U.S. consulate in their home country.

Battered immigrants with approved self-petitions can obtain their green cards through adjustment of status. They are not required to leave the U.S. and apply for immigrant visas at U.S. consulates abroad.[109] Recent legislation enabled a battered immigrant to adjust her status while in the United States, provided that she has an approved self-petition, that she is not inadmissible,[110] and that she has a visa immediately available to her. This chapter provides basic information on adjustment of status as a means of obtaining lawful permanent residence for battered immigrants with approved VAWA self-petitions.

ELIGIBILITY FOR LAWFUL PERMANENT RESIDENCY

Being a permanent resident, also called having a 'green card,' means that a person has lawful permission to live and work in the United States. Permanent residents can petition for spouses and children to come to the United States. When someone has an approved VAWA Self-petition and they want to become a permanent resident they must apply to change their immigration status to that of a permanent resident, this is called "adjustment of status." Not everyone who has an approved self-petition is eligible to obtain lawful permanent resident status immediately following the approval of the petition. However, **VAWA self-petitioners who are married to, or are the minor unmarried children (under age 21) of U.S. citizens, are considered "immediate relatives"** and can file for lawful permanent residency as soon as their VAWA self-petitions are approved.

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[108] INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb), 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb) (2000) (relating to loss of U.S. citizenship); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154§ 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa)(2000) (relating to loss of lawful permanent resident status).

[109] All VAWA self-petitioners may adjust their status in the United States under INA §§ 245(a) and (c) without paying the $1000 fine. Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1506(a), 114 Stat. 1464, 1527 (2000).

[110] To enter the United States or be granted lawful permanent residence, an applicant must not fall within any of the inadmissibility grounds listed in INA section 212(a). *See* INA § 212(a), 8 U.S.C. § 1182(a) (2000).

VAWA self-petitioners who are married to (or the children of) **lawful permanent residents** are subject to a "visa quota" system. VAWA self-petitioners who are married to, or the children of **US citizens** do not fall into the visa quota system. The visa quota system is a limit on the number of people that can apply for and be granted permanent residency. The visa quota system limits the number of visas provided for relatives of lawful permanent residents and in some cases U.S. citizens. Since there are more people each year seeking to become lawful permanent residents than there are available visas, immigrants restricted by the visa quota system must wait for a visa to become available before they can adjust their status and become lawful permanent residents. This process can take up to seven years, and is dependent on the applicant's country of origin, and when they filed their self-petition with the DHS.[111]

HOW TO APPLY FOR LAWFUL PERMANENT RESIDENCY

Once a self-petitioner qualifies for to apply to become a lawful permanent resident she must submit the "application for adjustment of status"[112] and supporting documents, along with the filing fee (listed below) to the local DHS District Office with jurisdiction over the applicant's residence. The documents can be downloaded on the United States Citizenship and Immigration Services (USCIS) website at http://www.uscis.gov (go to Immigration Forms), or can be ordered by calling 1(800) 870-3676. The self-petitioner and any dependents will each need:

- Form I-485, Application for Adjustment of Status
- the filing fee of $315 ($215 if under 14 years of age), or fee waiver request for form I-485 (a sample fee waiver request is included as a appendix to this chapter);
- copy of birth certificate, along with an English translation **(translations of foreign documents must be certified by a competent translator)**;[113]
- Form G325A, biographic information;
- a copy of the Form I-797, Notice of Action (showing that the VAWA self-petition, Form I-360 was approved);
- Form I-693, Medical Examination of Aliens Seeking Adjustment of Status (plus supplemental vaccination form);
- 2 color photos taken within the last 30 days (see form I-485 instructions for more details);
- Form I-765 Application for Employment Authorization, if the self petitioner doesn't already have a work permit, along with a filing fee of $175 or fee waiver request;
- $50 for fingerprints for applicants 14 to 79 years of age;
- proof of entry into the U.S., if applicable (i.e. I-94 card and copy of passport).

Supplementary forms to include (depending on the circumstances) are:

- Form G-28, Notice of Entry as Appearance as Attorney or Accredited Representative, if the victim is represented
- Form I-131, Application for Travel Document, along with the filing fee of $165, if the petitioner needs to travel outside the United States while the application is processed**, but note that applicants who have been out of immigration status should generally not travel because they will be barred from returning to the United States and adjusting their status**.[114]
- Form I-601, Application for Waiver of Grounds of Excludability with filing fee of $250, if the applicant is inadmissible for one of the reasons described below.

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[111] If the abusive spouse previously filed a family-based I-130 petition for the immigrant victim, that petition date may be used to shorten the wait time.
[112] "Adjustment of Status" is the DHS legal phrase that means to apply for and attain legal permanent resident status.
[113] 8 CFR 204.1(f)(3) (2007).
[114] Before any applicant travels outside the United States, she must consult with an immigration attorney regarding the potential consequences. An applicant who has been out of status for more than six months can be barred from receiving any immigration benefits, including lawful permanent residence, for three years. If an applicant has been out of status for over one year, she will be barred from receiving any immigration benefits for ten years. INA § 212(a)(9)(B)(i), 8 U.S.C. 1182 (a)(9)(B)(i) (2000).

Each form has its own filing fee. The applicant will need to add up the total cost of the fees for each form and submit that total cost with her application package. If the applicant is unable to pay the filing fees, she can submit a fee waiver request along with her residency application. All fees can be waived except for the fingerprinting fee. After the I-485 Application for Adjustment of Status and supporting documents are filed, DHS will alert the applicant of the date, time and location of a personal interview with a DHS examiner. Battered immigrants should be fully prepared for their adjustment of status interviews by having all of the necessary documents available in order to avoid further delaying the adjustment process.[115] Items to bring to the interview:

- original birth certificate of each applicant;
- original marriage certificate;
- certified copy of Final Dissolution of Marriage (i.e. divorce decree) for all previous marriages, prior to marriage with the batterer, as well as the divorce decree if she is now divorced from the batterer within two years;
- original passport, if available;
- original I-94 card, if available;
- certified copies of arrest report and final court disposition (if applicable);
- copy of the approved self-petition – I-360;
- copy of DHS memorandum stating procedures that the local DHS office must follow if they have any questions about the self-petition;[116]
- evidence of the applicant's income and financial resources – tax returns, pay stubs, letter from employer, proof of receipt of child or spousal support, court orders for child support, etc.

The objective of the adjustment interview is for the DHS examiner to decide if the applicant is admissible as a lawful permanent resident. Whenever possible, the immigrant victim should consult with an immigration attorney before the adjustment interview to identify potential problems or grounds for inadmissibility. To determine admissibility, the immigration official will assess the application and ask the applicant questions relating to the required medical exam, any criminal history, or any grounds of inadmissibility that may apply, such as fraud, "public charge", or violations of the immigration laws. In addition, the interview serves as an opportunity for the applicant to update information on the application and correct any minor errors on the forms.

If the application for adjustment of status is approved, meaning the applicant is now a legal permanent resident, the Department of Homeland Security will mail a green card to the self-petitioner.

If the application to become a legal permanent resident is denied, the applicant may be placed in removal (deportation) proceedings before an Immigration Judge. The applicant may still be eligible to apply for adjustment of status again before an Immigration Judge.

GROUNDS OF INADMISSIBILITY

Grounds of inadmissibility are a list of reasons that render an applicant ineligible for permanent residence or admission to the United States (meaning the DHS or an Immigration Judge must generally deny the application for lawful permanent residence).[117] Examples of the grounds are listed in Section 212(a) of the Immigration and Nationality Act and include the following:

- Health-related grounds (including HIV and tuberculosis);
- Criminal and related grounds;
- Security and related grounds;

[115] The battered immigrant may be able to attend the interview without an attorney or other representative if there are no inadmissibility problems or other foreseeable complications. It is preferable, however, to have an attorney or accredited representative attend and help the battered immigrant prepare for the interview.
[116] A copy of this memo is included in the Appendix to this manual.
[117] Inadmissibility and excludability are synonymous. See INA § 212(a), 8 U.S.C. § 1182(a) (2000) (classes of aliens ineligible for visas or admission) for a complete listing of grounds for inadmissibility.

- Public charge grounds;
- Fraud/misrepresentation;
- Aliens previously removed (deported) from the United States
- Other immigration law violations;
- Communist/ totalitarian party membership;
- Terrorist activity.

WHEN IS INADMISSIBILITY DETERMINED?

Identify and assess possible grounds for inadmissibility as early as possible in the VAWA case. Battered immigrants may have committed disqualifying criminal acts or have used unlawful means to obtain immigration benefits in the past, such as entering the country with fraudulent documents or misrepresenting facts in a benefit application. Immigration attorneys working with battered immigrants should determine any questions of inadmissibility prior to filing the self-petition or adjustment of status application.[118] A trained immigration attorney or advocate should represent any self-petitioner in this situation. The attorney or advocate should also have experience assisting victims of domestic violence. With proper case development, battered immigrants may be able to obtain waivers for many inadmissibility grounds.

SPECIFIC GROUNDS OF INADMISSIBILITY

Immigrants may be inadmissible for a variety of reasons. This section will outline the more typical grounds identify the relevance to cases of battered immigrant women, and discuss in more detail the grounds most likely to affect battered immigrants when they apply for lawful permanent resident status: misrepresentation, health-related, and public charge. **Immigrants with criminal histories are also potentially subject to different criminal grounds of inadmissibility.** There are waivers available for many types of crimes, and VAWA self-petitioners can qualify for special waivers if there is a connection between the crime and the domestic violence. The criminal grounds of inadmissibility and available waivers are discussed separately in detail in Chapter 19 of this manual.

VIOLATIONS OF IMMIGRATION LAWS

Immigrants who have previously been removed or deported from the United States also face inadmissibility problems, and should be referred to an immigration attorney before applying for relief. An applicant who has been deported and then re-entered the United States illegally or who has been unlawfully present in the country for more than 180 days (and has left or now leaves the United States) will be inadmissible and ineligible for lawful permanent residence.[119] There are waivers available and exceptions if there is a connection between the immigration violation and the abuse, but a battered immigrant in this situation **should not apply for adjustment of status without first consulting with an attorney.**[120] For example, waivers are available for victims of sexual assault, domestic abuse, and trafficking from sanctions for failing to voluntarily depart.[121] Also, DHS can waive prior removal determinations for immigrant victims to help prevent the summary reinstatement of a prior removal order.[122]

MISREPRESENTATION[123]

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[118] If that is not possible, such as in instances where the self-petition must be filed before the abuser divorces the self-petitioner, or the abused immigrant fails to mention details that may make her inadmissible, the immigration attorney should use the time waiting for approval of the self-petition to assess admissibility issues.

[119] An applicant who has been out of status for more than six months and subsequently left the United States can be barred from reentering the United States and receiving any immigration benefits (including lawful permanent resident status), for three years. If an applicant has been out of status for over one year and leaves, she will be barred from receiving any immigration benefits for ten years. INA § 212(a)(9)(B)(i), 8 U.S.C. 1182 (a)(9)(B)(i) (2008).

[120] *See* INA §§ 212(a)(9)(B)(iii)(IV) and (v), 8 U.S.C. § 1182(a)(9)(B)(iii)(IV) and (v) (2000); INA § 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii) (2000).

[121] INA § 240A(b)(2), 8 U.S.C. 1229b

[122] INA §§ 240A(b)(4) and (5), 8 U.S.C. 1229b

[123] Adapted from American Bar Ass'n Comm'n on Domestic Violence, CHAPTER SEVEN: OBTAINING LAWFUL PERMANENT RESIDENCY, *in* DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000).

When an individual is seeking to obtain an immigration benefit such as permanent residence, any false statements made to an immigration official will have an impact on their immigration status.[124] Qualified battered immigrants can be barred from becoming lawful permanent residents due to misrepresentation and can even be removed (deported) from the United States.

Battered immigrants, who have, through fraud or willful misrepresentation made to an immigration official, sought to obtain admission into the United States, a visa, or any benefit under immigration laws, are inadmissible unless they acquire a waiver – referred to as a "212(i) waiver." [125] Battered immigrants who falsely represent themselves as U.S. citizens **to any government official** are also inadmissible. There was no waiver for this form of misrepresentation and, in certain circumstances, may be subject to criminal prosecution.[126] There is a waiver to inadmissibility for misrepresentation by a VAWA self-petitioner based on hardship to US citizen children. [127]

Adjustment and immigrant visa applications contain questions that the DHS examiner will ask and review at the interview. The questions asked can relate to how the petitioner entered the U.S. and where she lives and works. It is important for immigration attorneys and advocates to discuss any prior misrepresentation of facts with their battered immigrant clients to ensure that prior information has been consistently represented and does not lead to misrepresentations being made at the adjustment or visa interview.

The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996[128] (IIRAIRA) created a new ground for inadmissibility, preventing battered immigrants from adjustment of their status if they misrepresented themselves as U.S. citizens. The most common form of misrepresentation is when an immigrant signs an I-9 form for employment and checks a box indicating that he/she is a U.S. citizen. Those immigrants that falsely signed the form before September 30, 1996, are not inadmissible; however, those that signed after September 30, 1996, may be found to be inadmissible.[129] Advocates and attorneys should warn their clients not sign any forms or make statements that falsely identify themselves as U.S. citizens.

WHAT QUALIFIES AS A MISREPRESENTATION?

Immigration attorneys can best advise battered immigrant clients on whether an action constitutes "misrepresentation" or "fraud" as it has been defined in immigration law. In the context of immigration law, three issues need to be analyzed to determine whether a battered immigrant has committed fraud:

1. Was there misrepresentation?
2. If so, was it "willful?"
3. Did the misrepresentation involve a fact or issue "material" to the application or benefit being sought?

It is important to understand the context of the statements made, including: at what time in the immigration proceeding was the statement made; to whom it was it made; under what conditions was the statement

[124] INA § 212(a)(6)(C) covers two separate but related grounds of inadmissibility for immigrants who make or have made false claims in the past. These are separate from the criminal grounds for removal under INA § 237(a)(3) or the civil penalties for document fraud under INA § 274C. Carefully review all three sections.
[125] INA § 212(a)(6)(C)(i); 8 U.S.C. § 1182(a)(6)(C)(i) (2000).
[126] INA § 212(a)(6)(C)(ii); 8 U.S.C. § 1182(a)(6)(C)(ii) (2000).
[127] 212(a)(6)(C)(iii) authorizes a waiver to this under INA 212(i)(1), which says:
(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States Citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the aliens' United States citizen, lawful permanent resident, or qualified alien parent or child.
[128] Pub. L. No. 104-208 Div. C, 110 Stat. 3009-546 (1996) [hereinafter IIRIRA].
[129] This provision was added by IIRIRA § 344(a) and only applies to misrepresentations made on or after September 20, 1996.

made; and was the misrepresentation was made under oath. Advocates should work closely with battered immigrants to develop a trusting relationship so that advocates can learn whether battered immigrants have had any prior contact with DHS agents, and, if so, what information was provided at that time. If a battered immigrant has made prior false statements to DHS officials, her VAWA case could be complicated and may require an additional waiver application to be filed at the time of adjustment. Victims in this situation should be referred to an immigration attorney who can work with the advocate in preparing the victim's self-petition and subsequent adjustment application.

It is important to understand that battered immigrants may not remember making false claims, or may not consider their actions to be misrepresentation. It is, therefore, important for attorneys to ask comprehensive questions with regard to any interactions their client might have had with immigration authorities, and any forms they may have signed, or false documents they may have used. If the attorney has any doubts, the attorney should do a fingerprint check[130] or Freedom of Information Act (FOIA) Request.[131]

MISREPRESENTATION WAIVER

For battered immigrants, a 212(I) waiver of inadmissibility is available for some misrepresentations of material fact.[132] In order to qualify for this waiver in non-VAWA cases, the applicant must be married to – or be the son or daughter of – a United States citizen or lawful permanent resident. The DHS or State Department official must determine that the decision to refuse admission to the immigrant would cause "extreme hardship" to the U.S. citizen or lawful permanent resident spouse or parent involved.[133]

In a VAWA self-petitioning case, however, the petitioner must show that denying the waiver will cause extreme hardship to either the victim or U.S. citizen or lawful permanent resident parent or child. This standard, however, can be extremely difficult to meet.

HEALTH-RELATED GROUNDS

If an immigrant has a communicable disease that is significant to public health, including HIV and tuberculosis, they will not be eligible for admittance to the United States.[134] They will also be inadmissible if they do not prove that they received vaccinations for certain diseases.[135] Those immigrants with certain physical or mental disorders,[136] and substance abuse problems, can also be inadmissible.[137] Any immigrants in such a situation should be referred to an immigration attorney before they file any papers with immigration authorities. There is a waiver available for communicable diseases such as HIV and tuberculosis, and VAWA self-petitioners can apply for the waiver and do not need to have a U.S. citizen or permanent resident spouse, child, or parent "qualifying relative" (normally a requirement for waiver applicants).[138]

[130] Fingerprints can be taken at police stations or other accredited locations and sent to FBI CJIS Division, Attn: Special Correspondence Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306.
[131] To file a FOIA request, the battered immigrant's attorney should send DHS form G-639 to the local Department of Homeland Security (DHS) office. There is no fee. Go to the DHS website at www.dhs.gov for more information.
[132] *See* INA § 212(i), 8 U.S.C. § 1182(i) (2000). A false claim to United States citizenship makes an immigrant excludable. There is no waiver for this exclusion. *See id.*
[133] *See* INA § 212(i), 8 U.S.C. § 1182(i) (2000).
[134] These diseases include chancroid, granuloma inguinale, gonorrhea, syphilis, human immunodeficiency virus (HIV) infection, leprosy (infectious), lymphogranuloma venereum, and tuberculosis (active). 42 C.F.R. § 34.2-.3 (2007).
[135] These include mumps, measles, rubella, polio, tetanus, diphtheria toxoid, pertussis, influenza type B, and hepatitis B. *See* INA § 212(a)(1)(ii), 8 U.S.C. § 1182(a)(1)(ii) (2000).
[136] *See* INA § 212(a)(1)(iii), 8 U.S.C. § 1182(a)(1)(iii) (2000).
[137] *See* INA § 212(a)(1)(iv), 8 U.S.C. § 1182(a)(1)(iv) (2000).
[138] *See* INA § 212(g)(1), 8 U.S.C. § 1182(g)(1) (2000).

"PUBLIC CHARGE"[139]

Immigrants, including battered immigrants, are ineligible to become lawful permanent residents of the United States if they are likely to become "public charges."[140] Deciding whether an immigrant is likely to become a public charge relies, not on the prior receipt of public benefits, but rather the prospect of future reliance on public benefits if the victim were allowed to remain in the United States.[141]

An immigrant who is applying for lawful permanent residency under a family-based visa petition is required to file an affidavit of support from the immigrant's sponsor.[142] Sponsors must financially support the petitioner by maintaining him/her at an annual income of not less than 125 percent of the federal poverty guides. VAWA-approved self-petitioners, on the other hand, are not subject to the requirement of obtaining an affidavit of support. They must, however, demonstrate that they are not likely to become public charges. In order to prove this, **self-petitioners should demonstrate during the adjustment interview that they will be employed and are not receiving benefits and/or have other means to support themselves and their children.** While battered immigrants should be able to demonstrate employment, unlike other applicants for admission, they are not required to prove that their earnings plus any support place them at 125 percent of the poverty line.[143]

IIRAIRA granted access to public benefits to VAWA approved self-petitioners (See Chapter 5 regarding benefits and services available to battered immigrants). Battered immigrants should take advantage of this emergency economic option if needed, but should only rely on benefits for as short a period of time as possible. Once a battered immigrant's self-petition has been approved, her attorneys or advocate should assist her in obtaining employment authorization. Temporary receipt of public assistance should not result in an approved self-petitioner being denied lawful permanent residence as a public charge. This is particularly true when she has obtained work authorization and employment by the time of her scheduled adjustment interview. VAWA 2000 recognized the desperate need for battered immigrants to be able to earn a living and clarified that a VAWA self-petitioner's use of public benefits specifically made available under IIRAIRA did not make the immigrant a public charge, or jeopardize her eligibility to receive lawful permanent residence.[144]

After Becoming a Lawful Permanent Resident

Once the battered immigrant has obtained her green card, or lawful permanent residence card, she has the right to live and work in the United States. A lawful permanent resident is still subject to immigration laws. She should not, for example, stay out of the United States for more than six months, because she may be found to have "abandoned" her permanent resident status and be denied re-entry to the United States.[145] Certain criminal acts can also render a lawful permanent resident deportable. *See Chapter 19 of this manual for a discussion of these crimes.* It should be noted, however, that a lawful permanent resident has substantial due process rights associated with her ability to remain in the United States. For instance, the only person who can take away an individual's lawful permanent resident status is an Immigration Judge after a full and fair hearing. Threats from abusers to have the battered immigrant deported may continue once she has obtained her green card, but the battered immigrant should be informed that the threats carry no weight so long as she does not violate criminal or immigration laws.

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[139] INA §212(a) (4) (B); Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds; Proposed Rules and Notice, 64 Fed. Reg. 28676 (May 26, 1999); USCIS materials linked through:
http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=c215c9f3743ff010VgnVCM1000000ecd190aRCRD&vgnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD
[140] *See* INA § 212(a)(4)(A), 8 U.S.C. § 1182(a)(4)(A) (2000).
[141] *See* INA § 212(a)(4)(A), 8 U.S.C. § 1182(a)(4)(A) (2000).
[142] *See* INA §§ 212(a)(4) and 213A, 8 U.S.C. §§ 1182(a)(4) and 1183A (2000).
[143] INA § 212(a)(4)(C), 8 U.S.C. § 1182(a)(4)(C) (2000).
[144] Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464, 1526; INA § 212(p), 8 U.S.C. § 1182(p) (2000).
[145] *See* INA § 101(a)(13)(C), 8 U.S.C. § 1101(a)(13)(C) (2000).

Children in the United States who have been listed as dependents on the battered immigrant's I-360 can apply for adjustment to lawful permanent resident status along with their parent. A VAWA-approved lawful permanent resident's children living outside of the United States may file for an immigrant visa through a process referred to as "following to join." This will allow children (under the age of 21) to obtain an immigrant visa (lawful permanent residence) and join the VAWA self-petitioner in the United States. [146] The lawful permanent resident needs to file an I-824 petition with the DHS office that initially adjudicated her adjustment application. The immigration authorities will then contact the U.S. consulate where the children are living and provide the consulate with verification that the battered immigrant self-petitioner's status was adjusted. The lawful permanent resident should contact that consulate and inform them that they will be receiving verification of the adjustment from DHS and that the children will be applying for immigrant visas as "following to join" dependents. The consular officials will most likely grant "following to join" visas based upon proof of the parent-child relationship and should not question, questioner-open or otherwise disturb the underlying VAWA case in any way. The consulate will inform the lawful permanent resident as to what procedures must be followed in order for the children to receive their visas.

Conclusion

- Once DHS approves the VAWA self-petition, the self-petitioner can apply for lawful permanent resident status through adjustment of status and continue living in the United States.[147]
- A self-petitioner abused by a U.S. citizen can file immediately for adjustment to lawful permanent resident status.
- Victims abused by lawful permanent resident spouses or parents will have to wait (often up to 5 to 7 years) to adjust their status.
- During their wait for adjustment, battered immigrants with approved self-petitions receive "deferred action status," meaning that ICE agrees not to deport them and DHS provides them with work authorization.
- Those waiting for a status adjustment cannot travel abroad.
- It is extremely important to advise immigrants to follow all U.S. laws, including immigration, tax, and criminal laws, while waiting for a status adjustment.
- It is important for battered immigrants to disclose to advocates and attorneys information about previous encounters with ICE/DHS, any arrests or criminal convictions, and any false representations or claims of U.S. citizenship. If any of these issues exist, refer the battered immigrant to an immigration lawyer trained in VAWA immigration cases.
- Advocates should collaborate with immigration lawyers, particularly in cases where inadmissibility waivers are needed, to ensure that immigrant victims successfully obtain permanent resident status.

[146] *See* 8 C.F.R. § 40.1(a)(1) (2007).
[147] See INA §§ 245(a) and (c), 8 U.S.C. §§ 1255(a) and (c) (2000). Unlike other out-of-status immigrants, battered immigrants should not have to rely on INA § 245(i) or pay a $1000 penalty. *See id.*

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