NATIONAL IMMIGRANT JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

PRO BONO ATTORNEY MANUAL ON LEGAL IMMIGRATION PROTECTIONS FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE NOVEMBER 2013

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ACKNOWLEDGEMENTS

This manual was developed by staff at the National Immigrant Justice Center (NIJC), a Heartland Alliance partner, who work directly with immigrant survivors of domestic violence and sexual assault who are seeking immigration relief. NIJC is very grateful to the following organizations for allowing us to adapt their materials for this manual: the Catholic Legal Immigration Network (CLINIC), the Family Violence Prevention Fund, and the National Organization of Women's Legal and Education Defense Fund (NOWLEDF).

We would also like to thank the National Network to End Violence Against Immigrant Women and the National Immigration Project of the National Lawyer's Guild for their tireless efforts to advocate for legislative and procedural changes and policies in favor of immigrant survivors.

Finally, we would like to thank our clients who demonstrate remarkable strength and courage in the face of hardship as immigrants and as survivors of abuse. Our clients inspire us everyday to continue the struggle for dignity and human rights.

Please Note: This manual is a brief guide to immigration relief under the Violence Against Women Act and does not purport to discuss all aspects of immigration practice with respect to immigrant survivors of domestic violence. Additional sources should be consulted when more complex questions regarding current law and procedure arise. Many of these resources are referenced in this manual. In addition, NIJC maintains an extensive library of immigration law materials, and *pro bono* attorneys are encouraged to consult these materials at any time.

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INFORMATION ON NIJC'S *PRO BONO* PROGRAM

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The National Immigrant Justice Center

The National Immigrant Justice Center (NIJC) is a partner of Heartland Alliance, a 501(c)(3) non-profit, non-governmental organization. Based in Chicago, Illinois, Heartland Alliance has been assisting immigrants since 1888. Each year, NIJC provides free or low-cost legal immigration services to more than 8,000 immigrants and asylum seekers from more than 95 countries. NIJC seeks to preserve the civil and human rights of immigrants, refugees and asylum seekers through its general immigration program, as well as its asylum, detention, human trafficking and citizenship projects. Established in September 2002, NIJC initiated a pro bono project designed to assist immigrant survivors of domestic violence and sexual assault pursuant to the Violence Against Women Act (VAWA).

Violence against women[1] poses serious risks to the health, safety and welfare of women and their families, and affects individuals from every cultural, regional and socioeconomic background. Violence against women violates women's fundamental human rights to bodily integrity, autonomy and self-determination. Immigrants who experience domestic violence face additional language and cultural barriers that often prevent or discourage them from accessing needed services. Abusers often use a survivor's lack of immigration status as a tool to exert power and control. An abuser may refuse or threaten to refuse to help an immigrant spouse to obtain legal status. Moreover, an abuser may actually contact immigration authorities to notify the U.S. Citizenship and Immigration Service (USCIS) (formerly the Immigration and Naturalization Service or INS) of an immigrant spouse's unlawful status. Real and/or perceived dependence on their abusive spouses can lead many immigrant women to remain trapped in abusive relationships.

Congress passed VAWA in 1994 to address the unique problems facing immigrant survivors of domestic violence. VAWA was amended in 2000 and again in January 2006, the Violence Against Women and Department of Justice Reauthorization Act (VAWA 2005), to enhance and improve legal protections for immigrant survivors. There are various immigration remedies available to undocumented immigrants who have been abused by a spouse or parent who is a lawful permanent resident (has a green card) or is a U.S. citizen. VAWA 2005 expanded immigrant benefits to parents who are abused by the U.S. citizen children. Immigrants (women, men and children) who have been physically, emotionally, and/or psychologically abused may qualify for special legal protections, including relief under VAWA.

NIJC's *pro bono* program relies almost entirely on volunteer attorneys, the great majority of whom have no previous experience in immigration law. NIJC assists its volunteers by providing training, materials, support services and consultation as needed. Largely as a result of the efforts of its volunteers, NIJC has helped thousands of non-citizens begin new lives in the United States and has become a national model for legal clinics providing immigration legal services.

[1] The Violence Against Women Act applies equally to females and males, however, we refer to VAWA applicants as "female" and abusers as "male" to reflect the reality that in 95% of cases involving domestic violence and sexual assault the survivors are female and the abusers are male.

About Our Clients

Our clients come from a wide range of different cultural, religious and socioeconomic backgrounds. NIJC's clients come from different countries around the world, including countries from Africa, the Middle East, Europe, Asia and Latin America. Our clients speak many different languages, and they have varying levels of English proficiency. Some clients have children and other family members in the United States, whereas others have no relatives in the United States. All of NIJC's clients are low income or impoverished.

For those of NIJC's clients who have suffered domestic violence by a spouse, partner, or other family member, the abuse may take various forms, including emotional, psychological, physical and sexual. Some of our clients have left their abuser, and they may reside in a domestic violence shelter or with family or friends. Others may continue to live with their abusers throughout the process of applying for legal immigration relief. In the process of trying to leave their abusers, some clients will leave and return again over a period of time. This latter scenario is common to many survivors of domestic violence. It takes an average of seven attempts to leave an abusive relationship before the relationship finally is terminated. Sometimes the relationship between the abuser and the survivor never permanently ends, particularly where there are children involved.

NIJC's VAWA clients are in various stages of obtaining lawful immigration status. Their abusive spouse or parent may or may not have filed an immigration petition for them, and may or may not have filed for adjustment of status. Thus, some clients are undocumented, meaning that they have no legal status, whereas others have adjustment applications pending. Additionally, some of our clients are involved in criminal proceedings as victims of domestic violence or sexual assault, and are weighing how best to manage various legal and other systems.

About this Manual

This manual is intended to provide an overview of issues facing immigrant survivors of domestic violence and the available immigration remedies. These materials are meant to provide attorneys and accredited representatives with the tools necessary to provide compassionate and comprehensive services to abused immigrants. Please note that this manual is **not** intended to substitute for experienced legal counsel and representation. Always consult an immigration expert when legal questions arise.

This manual also addresses some of the socioeconomic, cultural and legal issues facing abused immigrants. The materials cover many issues that may arise when assisting immigrant survivors of domestic violence. It is important for attorneys and accredited representatives to understand the dynamics of domestic violence in order to provide these individuals with quality representation. To adequately represent clients who are immigrant survivors of domestic violence, legal practitioners must consider not only the law, but also what it means to live in a cycle of abuse and what are the unique obstacles facing abused immigrants. When representing victims of gender-based violence who are also working within the criminal justice system, it is critical to understand the complex issues facing your client, and to consider that the prosecution or conviction of a perpetrator does not always leave your client feeling that justice has been served.

The manual includes materials about barriers facing abused immigrants, how the cycle of violence applies specifically to immigrants, advice on advocating for abused immigrants, and the importance of confidentiality. In addition, this manual includes information about legal immigration remedies available

under VAWA, including self-petitioning and VAWA cancellation of removal. Information is also provided on the "abused spouse waiver," a remedy available to immigrants who were granted "conditional" resident status and are applying for permanent resident status. Many immigrant survivors will qualify for certain public benefits, and the manual addresses which benefits your clients might qualify for, as well as the impact of securing public benefits to your client's immigration case.

The appendices include various materials used by NIJC staff in the provision of legal services to immigrant survivors of domestic violence and sexual assault. Also included are relevant memoranda issued by the U.S. Citizenship & Immigration Services.

What We Expect from Our Volunteer Attorneys

NIJC's clients often face considerable challenges not only with respect to their immigration status but also in terms of the economic, psychological and cultural barriers that must be overcome to break the cycle of violence. For that reason, we treat every case very seriously and ask that our volunteers do the same.

We request that NIJC volunteer attorneys agree to stay with a case until the client has been granted VAWA and/or lawful permanent resident status. We ask that volunteers not agree to take a case if they are not sure whether they will be able to remain with the case throughout the process. Some cases will take longer than others before an individual obtains legal status, and we understand that an attorney might not remain for the duration in such cases. If an attorney must withdraw from a case, we ask that he or she attempt to obtain substitute counsel. If that is not possible, please advise NIJC as soon as possible so that we can try to find new counsel.

Our clients are most successful when their legal representative has spent significant time preparing their VAWA self-petition. It is important to allocate enough time to your client to develop a relationship of trust. As a result, she will be more likely to open up to you regarding the painful details of her abuse, and you will be able to prepare a stronger application. The applicant's affidavit detailing the battery and/or extreme cruelty is one of the most important components of her self-petition, and after getting to know your client and her story, you can ensure that she paints a comprehensive picture of her experience for the VAWA self-petition.

On behalf of NIJC's staff, we would like to thank you for your interest in and commitment to assisting immigrant survivors of violence and sexual assault.

What Our Volunteer Attorneys Can Expect from NIJC

NIJC provides pro bono attorneys with training and information on how to assist your client with preparing various immigration applications, including: VAWA self-petitions, requests for employment authorization, and adjustment applications for lawful permanent residence. NIJC additionally provides other relevant materials, documentation and consultation with experienced practitioners.

NIJC does not simply refer out cases. It remains "of counsel" in every case. Volunteers are strongly encouraged to call project staff when they have any questions or simply want to discuss case theories or interview strategies. NIJC understands that many of our volunteers have no prior experience in immigration law, so we try to provide as much support and assistance as possible.

NIJC conducts basic VAWA training courses on a regular basis, and will schedule trainings upon request. The basic course is approximately two hours in length, and all training materials are provided. Also, NIJC carries comprehensive professional liability insurance, which specifically covers *pro bono* attorneys.

Finally, NIJC's volunteers can expect the experience of representing an immigrant victim of domestic violence or sexual assault to be very humbling and rewarding. Assisting an immigrant survivor of domestic violence to achieve legal status and to break free of the cycle of violence can be very satisfying both personally and professionally, and our clients are extremely appreciative of your efforts to assist them.

Obtaining a Case

Please contact NIJC's VAWA/U Visa Pro Bono Project Accredited Representative, Joe Gietl, at (312) 660-1362 or via email at jgietl@heartlandalliance.org to attend a training. After attending a training, you are welcome to select a case from the NIJC case list. Once a client has been assigned to you, NIJC will inform you where to obtain forms and/or provide you with the following:

1. A copy of the client's file; and
2. All necessary forms (Note: All USCIS forms may be downloaded from http://www.uscis.gov), including:
    a. Freedom of Information Act Request (FOIA) (Form G-639)
    b. Request for Fee Waiver (Form I-912)
    c. Notice of Entry of Appearance as Attorney or Representative (Form G-28)
    d. Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)
    e. Application for Employment Authorization (Form I-765)
    f. Application to Adjust to Lawful Permanent Resident (Form I-485)
    g. Biographic Information Form (G-325A)
    h. Affidavit of Support Waiver (I-864W)

UNDERSTANDING DOMESTIC VIOLENCE

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Understanding Transnational and Cultural Barriers Facing Immigrant Survivors of Domestic Violence

Gender based violence in its various forms is a pervasive problem around the world affecting women from all socioeconomic backgrounds.[2] Although violence against women is a global problem, how women experience violence and how communities respond to violence varies according to different cultural and legal traditions as well as political factors. It is important to keep in mind that immigrant victims of gender based violence continue to struggle with cultural, social and familial pressures stemming from their countries of origin while trying to adapt to the new culture and systems found in the United States.

Accounting for cultural differences among abused immigrants is necessary to provide appropriate and sensitive services. It is important to refrain from assuming that domestic violence occurs to a greater extent in non-Western cultures. As a social problem, domestic violence is not specific to any particular culture or society. While cultural differences must be considered when one looks at the problem of domestic violence in various ethnic communities, remember that violence is endemic in all cultures, including the United States. Assumptions should not be made about an abused immigrant women's culture, such as "in her culture, domestic violence is accepted as normal behavior" or "in her culture, women are passive." While domestic violence happens all over the world, it is not more a part of culture in any other country than it is in the United States.

Certain widely accepted beliefs among some immigrant or refugee communities may make it challenging for abused immigrants to obtain needed assistance. For example, there may be a common belief that the close-knit nature of the family prevents domestic violence from occurring, or that the family is the only appropriate forum for dealing with such problems. In some instances, outside interference is not encouraged or accepted. Some communities may resist acknowledging that domestic violence exists as a problem, that remedies can and should be sought, or that women have the right to seek alternatives independent of their abusive partners. In addition, women from countries and cultures are severely stigmatized when they are divorced, and even though they might be divorced in the United States, the stigma still attaches back home as well as within their communities in the United States.

We must remember to be sensitive to the challenges abused immigrant woman encounter when coming to the United States, and to understand that returning to her home country may not be a viable option. At the same time, she might view leaving the abusive relationship as a process that is fraught with seemingly insurmountable barriers. Leaving an abusive relationship often requires abandoning the only

[2]Though the majority of domestic violence victims throughout the world are female, men can be victims of gender-motivated violence as well. Men experience domestic violence in similar ways as women, but also face unique obstacles such as gender stereotypes and limited resources for support. Since most of NIJC's VAWA clients are female survivors of domestic violence, however, this manual will default to the feminine pronoun for its substantive text.

community she knows in the United States. It is especially important to be attuned to cultural barriers at this critical stage when an abused individual is thinking about leaving.

Of course, many of the same barriers and challenges apply to both immigrant and non-immigrant survivors of domestic violence alike. For example, victims of domestic violence and sexual assault experience similar issues such as psychological harm, finding employment and shelter, supporting their children and safety and other concerns. The dilemmas facing abused immigrant women are complex, and the solutions must be comprehensive. It is helpful for legal and social service providers to view immigrant women both as individuals and as members of a community with their own unique customs, strengths and pressures.

Stereotypes and Myths

Abused immigrant women face many barriers to accessing legal assistance and social services. Societal attitudes towards immigrants may inform how domestic violence and legal services are provided. Prejudices towards immigrants based on race and ethnicity are deeply entrenched in our society, and we must work to overcome this intolerance. Maintaining an awareness of the different assumptions we make about immigrants helps us to identify when those assumptions arise in the context of our work. It is important that the professionals helping abused immigrants make an effort to treat each individual as a unique person, rather then assuming certain character traits based on social categories including ethnicity and immigration status. The following are some assumptions that are commonly made with respect to immigrants generally and abused immigrants in particular.

Prevalent stereotypes include ideas that *all* immigrants:

- are undocumented or have no legal immigration documentation;
- are poor;
- are people of color;
- are of limited English proficiency;
- are heterosexual;
- have many children;
- cannot survive economically without immigration documentation;
- do not want to or will not use the legal system;
- have an immigrant status which cannot change; and/or
- come only from certain countries or regions of the world.

Other prevalent stereotypes include ideas that many immigrants:

- have no right to be in the United States;
- came here for welfare benefits;
- are passive;
- are childlike; and/or
- marry solely for immigration purposes.

Stereotypes about immigrants and domestic violence include the ideas that:

- abused immigrant women are only abused by other members of their immigrant community;
- abused immigrant women are only abused by members other than their immigrant community;

- abused immigrants are so-called "mail order brides;"
- abused women married solely for immigration purposes; and/or
- abused women can escape an abusive relationship by returning to their home country.

Stereotypes about all survivors of domestic violence include the ideas that:

- it is easy to leave an abusive situation;
- women return to an abusive relationship because they like the abuse, because they deserve to be abused, because they have psychological problems, or because they are co-dependent on their abusers;
- domestic violence only happens to women of color, or women who are poor or uneducated;
- domestic violence always involves physical abuse; and
- men cannot be victims of domestic violence.

Power and Control

Domestic violence involves an abuser's ongoing conduct of asserting power and control over a spouse, partner or child. Domestic violence includes both physical and non-physical forms of abuse. A number of tactics might be used by abusers to dominate a spouse, partner or child, and some of these methods are specific to abused immigrants. To complicate matters, many immigrants who experience domestic violence are unaware of various resources that may be available to them. An abuser's methods used to control an abused immigrant woman are reinforced where the woman lacks information about available legal, medical and social resources. Also, many women do not know that domestic violence is a crime, and lack information about how domestic violence and sexual assault are addressed in the United States. In some cases the abuse started while they were in their homelands whereas in other cases the abuse began upon their arrival in the United States.

Immigrant Power and Control Wheel

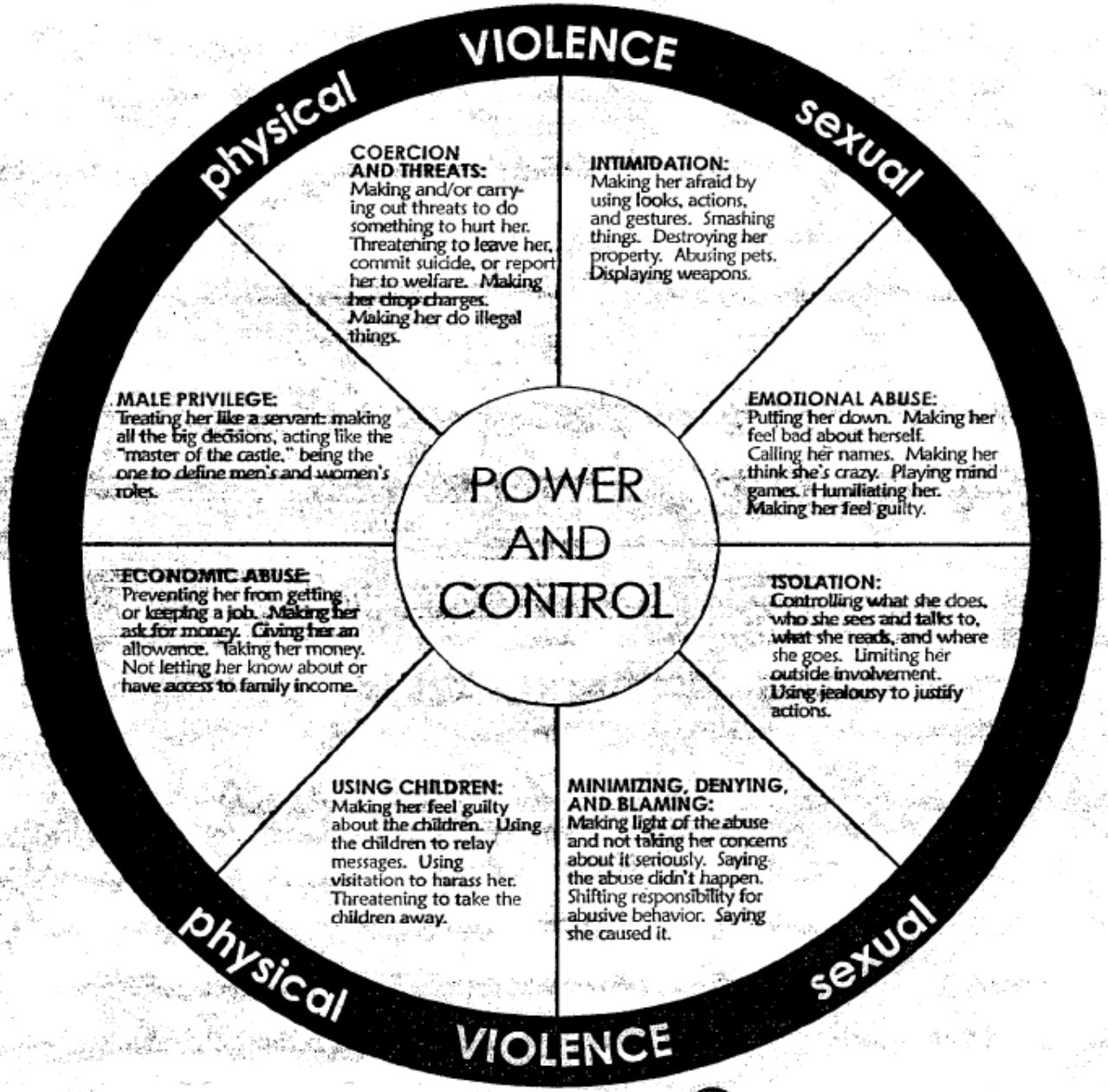
This version of the Power and Control wheel, adapted with permission from the Domestic Abuse Intervention Project in Duluth, Minnesota, focuses on some of the many ways battered immigrant women can be abused.

Rueda de Poder y Control Para Inmigrantes

General Power and Control Wheel

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



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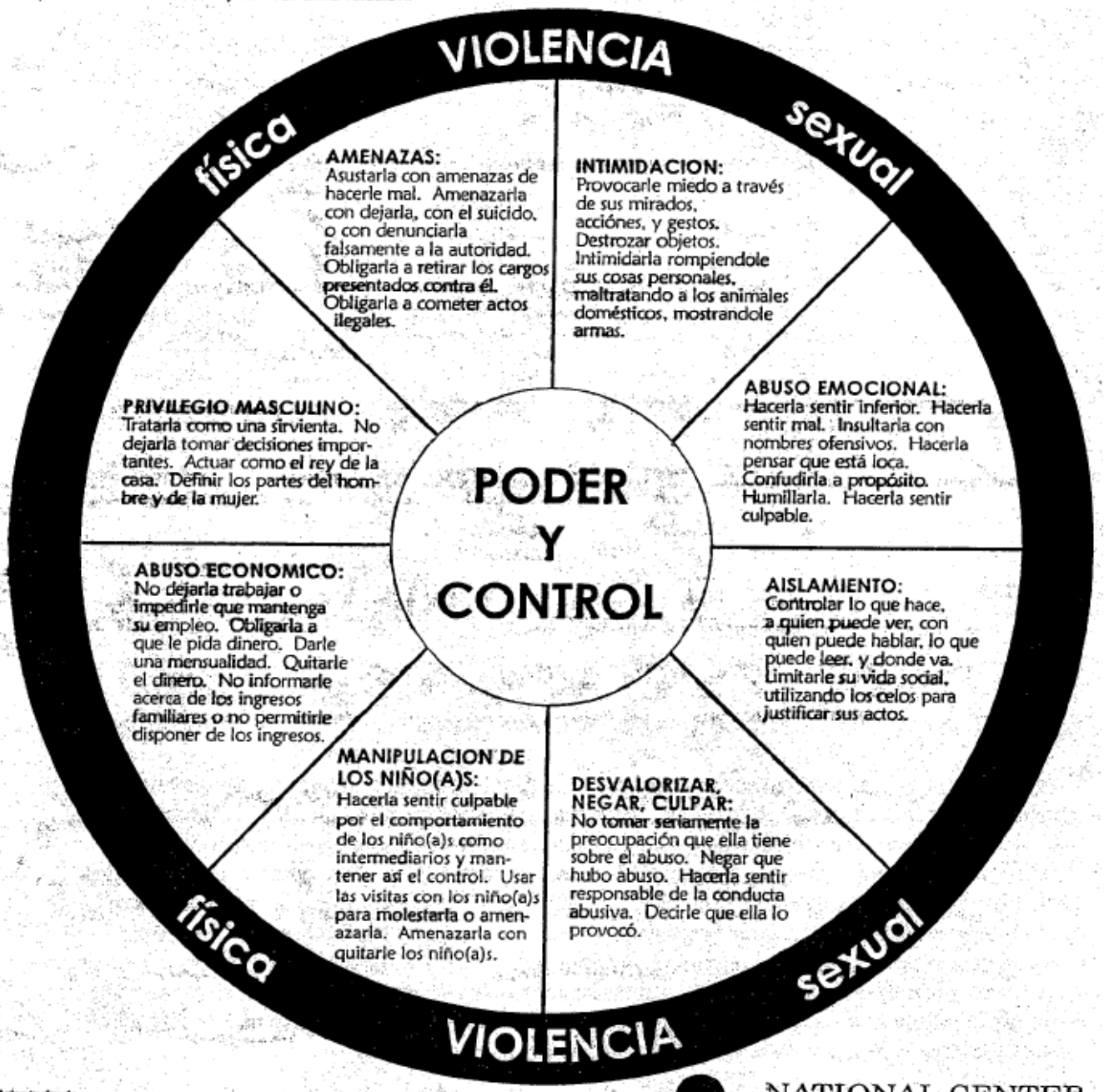
Rueda de Poder y Control

El abuso físico y sexual, o la amenaza de realizaelos, son las formas más evidentes de la violencia familiar. Y generalmente son las conductas que permiten a los demás tomar conciencia de que el problema existe. Sin embargo, el uso habitual de otras conductas abusivas por parte del golpeador, reforzadas por uno or varios actos de violencia física, constituyen un sistema de abuso aún mayor. Aunque los ataques físicos ocurrien sólo una vez u ocasionalmente, éstos establecen un precedente de futuras agresiones y permiten al golpeador controlar la vida de la mujer y su entorno.

El diagrama sobre poder y control es una herramienta particularmente útil para comprender el patrón general de las conductas abusivas y violentas que son usadas por el golpeador para establecer y mantener el control sobre su pareja. Frecuentemente, uno o más hechos violentos están acompañados por estos tipos de abuso. Estos últimos no son fácilmente identificables, a pesar de que establecen firmemente un patrón de intimidación y control en la relación.



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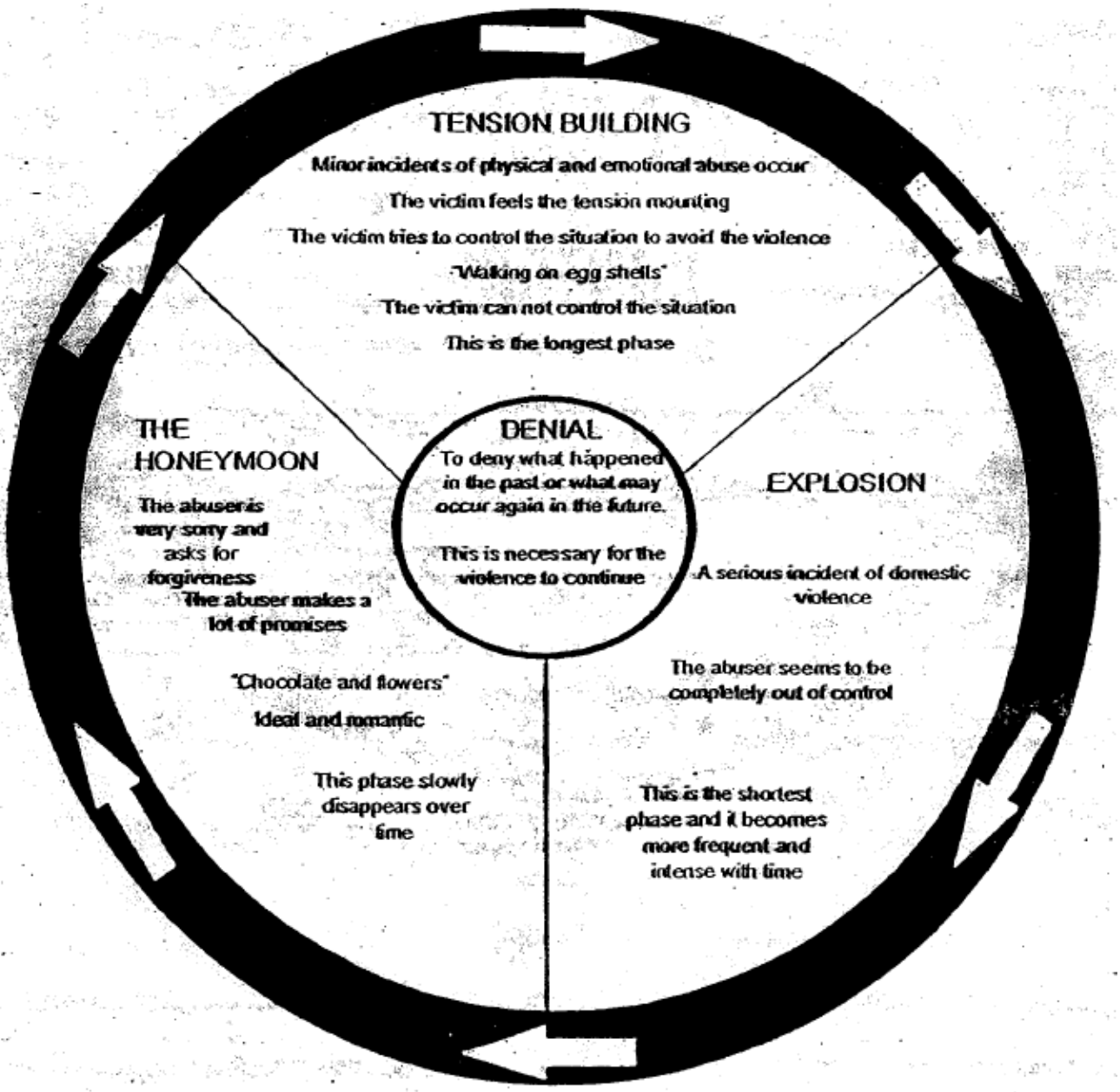
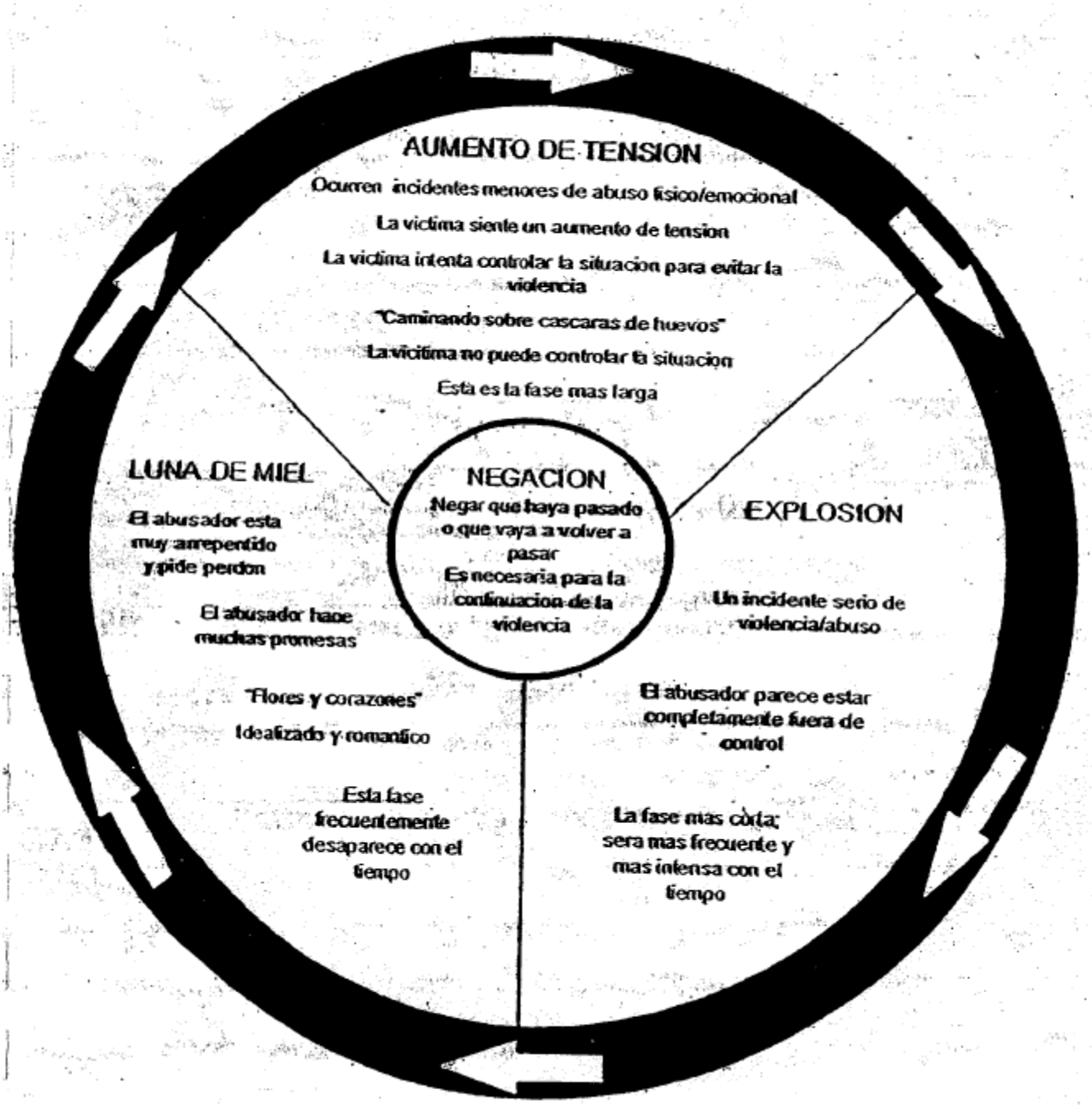
Cycle of Violence Wheel



El Ciclo de Violencia



Immigration Issues Facing Abused Immigrants

One of the most salient fears abused immigrant women experience is related to their immigration status. Some abused immigrant women may be reluctant to discuss their immigration status because they fear deportation for themselves, their children, or their abusive spouse. If an abused immigrant woman is removed to her home country, she may face a number of severe impediments. For example, she may lose custody of her children, she may return to poverty, famine, or political persecution, and may no longer be able to financially support her family. Moreover, her country of origin may lack legal protections for victims of domestic violence, and if her abuser follows her to her country she could face danger or even death. Finally, if a woman is removed to her home country she may be ostracized by friends and family because she may be viewed as someone who failed at her marriage. If she obtained legal assistance in the United States, such as seeking an order for protection, her abuser's family in her home country may seek retribution against her. In short, removing a victim of domestic violence to her home country may leave her and her children increasingly isolated and more likely to return to her abusive spouse and a dangerous situation.

Many abused immigrant women who have legal immigration status do not know that their abuser cannot take that status away. You should know that if an immigrant woman is a U.S. citizen, lawful permanent resident, or has a valid visa, she cannot be removed by immigration authorities unless she entered the United States using fraudulent documents, violated conditions of her visa, or has been convicted of certain crimes. Moreover, immigrants do have certain constitutional due process rights. Thus, an immigrant placed in removal proceedings in immigration court is entitled to a hearing before an immigration judge.

Overcoming Barriers in Working with Abused Immigrants

Discussing the Abuse

When helping an abused immigrant, be sensitive to the language you use. "Domestic violence" is not a phrase that is common in every culture. Thus, asking an immigrant woman whether she has been a victim of domestic violence may confuse her. Moreover, if a woman does not define her situation in terms of the abuse, she may feel threatened initially by attempts to frame her situation as one involving domestic violence.

Every person is unique with different comfort levels about discussing the abuse. Some will immediately open up to you, while others are initially very reluctant to talk. It is difficult to talk with victims of domestic violence and sexual assault about such intimate and sensitive issues. Victims are often embarrassed and ashamed for being victimized. It takes some time to develop a trusting relationship with your client. Avoid asking her to reveal all of the personal details of the abuse she suffered during your first meeting. Throughout your legal representation, your client will open up to your more and more. Language barriers may make it difficult for immigrants to communicate, especially if they are discussing sensitive issues such as abuse. The difficulty in telling one's story can be compounded when an immigrant woman tries to talk about sensitive information in English, which may not be her native language.

An effective strategy is to discuss what domestic violence is using the "power and control" wheels to avoid personalizing your initial discussion and making your client uncomfortable. You might tell her

that different forms of abuse are present in domestic violence relationships to varying degrees. For example, some women are subjected to physical abuse while others are not. Sexual abuse is a particularly sensitive issue. In much of the world, marital rape is not a crime and women might internalize the idea that sexual submission is a normal part of marriage. One way to approach this issue is to tell the woman that if she has ever been forced or coerced to do anything sexually against her will, then she has been subjected to sexual abuse. These issues can be tackled in the initial interview without asking the woman about it outright.

In most domestic abuse cases involving immigrant victims, abusers will use the immigrants' lack of immigration status as a tool of power and control. For example, the batterer may threaten to report the immigrant woman to the immigration authorities if she is undocumented, or he may hide her passport to try to prevent her from leaving the relationship. Although individual citizens are not authorized to remove an immigrant from the United States, anyone may contact the immigration authorities. Additionally, a person who has petitioned on behalf of an immigrant to obtain lawful immigration status may withdraw that petition at any time. Thus, an abuser's threats and intimidation based on their spouse's immigration status may have detrimental consequences.

Confidentiality and Immigration Status

Be sensitive to the fact that an abused immigrant may be reluctant to offer information about her immigration status. When obtaining information about an abused woman's immigration status, assure her that you do not intend to use the information in a negative manner, such as giving it to immigration authorities, but that you are asking for such information in an effort to better assist her. Only ask for enough information to allow you to make appropriate referrals. It is important for you to avoid frightening immigrant women when asking about their immigration status. In situations where you are required to report immigration status, you may choose not to ask about immigration status and to report that the immigration status of every person assisted is "unknown" (if your program permits you to do so).

Immigration applications filed on behalf of domestic violence victims are treated by the Department of Homeland Security (DHS), the Department of State (DOS), and the Department of Justice (DOJ) as confidential.[3] All employees of DHS, DOS, and DOJ are prohibited from disclosing information about a VAWA applicant to the perpetrator of the crime and/or abuse on which the VAWA application is based, or to an unauthorized third party. Moreover, adverse decisions about an immigrant's admissibility or removability cannot be made based solely on information provided by an abuser, and must be independently verified. Violators may be fined up to $5,000.

Safety Planning for Battered Immigrants

As *pro bono* attorneys it is important to consider safety planning when your clients are still living with an abuser. The time when a woman decides to leave her abuser can be the most dangerous for her and her children due to the fact that the abuser feels that he is losing control over the family. A crisis situation will make it difficult, if not impossible, to gather everything she will need after leaving an abusive relationship. Developing a safety plan involves accumulating things such as money and legal documents that a woman will need in case she must leave her home under crisis conditions. You can to your client about this when you meet with her to help her start thinking about how she would respond in

[3] 8 U.S.C. §1367; 8 C.F.R. § 214.14(e)

a crisis. Discuss with her that she might place her documents and other necessities in case of a crisis with a friend or even in your office.

The following is a list of important documents and other items your client might want to place outside of the home in the event of a crisis:

- Birth certificates (for herself and children)
- Passport
- I-94 entry/departure record
- Permanent resident card (green card)
- Social security card
- USCIS issued employment authorization
- All other immigration related documents, including receipt and other notices
- Orders of Protection and other court documents such as divorce
- Social security number of her spouse and the parent of her child(ren)
- Copy of most recent pay stub of her spouse and the parent of her child(ren)
- Copy of tax returns
- Copies of her spouse's birth certificate, social security card, green card, or naturalization certificate

Finally, please confirm that you have a safe mailing address and phone number to reach your client.

OVERVIEW OF FAMILY-BASED IMMIGRATION

Every year, thousands of people obtain permanent residency status in the United States through their relationships to U.S. citizens or lawful permanent residents (LPR). Family-based immigration allows for close relatives of U.S. citizens and lawful permanent residents to immigrate to the United States. These family members can immigrate either as immediate relatives of U.S. citizens or through the family preference system

Eligible Family Members

Immediate Relatives: Immediate relatives include the following:

1. Spouses of U.S. citizens
2. Unmarried minor children (under 21 years of age) of U.S. citizens
3. Parents of U.S. citizens, when the citizen is 21 years of age or older

There is no limit set on the number of people who can immigrate through the immediate relative category each year.

Family Preference System: The family preference system allows the following persons to immigrate:

1. Adult children (unmarried or married) of U.S. citizens
2. Brothers and sisters of U.S. citizens, when the citizen is 21 years of age or older
3. Spouses and unmarried children (minor or adult) of lawful permanent residents.

These preference categories are subject to annual numerical limitations which results in backlogs of several years. Within the family preference system, there are numeric categories outlining priority for certain relatives:

1st Preference: Unmarried son or daughter (21 years of age or older) of U.S. citizen parent

2nd Preference: 2A: spouses or unmarried children (under 21) of lawful permanent resident

2B: unmarried sons or daughters (21 years of age or older) of lawful permanent resident

3rd Preference: Married sons and daughters of U.S. citizens

4th Preference: Brothers and sisters of U.S. citizens, where the citizen is at least 21 years of age

For immigrants in the family preference, the U.S. citizen or lawful permanent resident must file a family-based visa petition for their immigrant relative. U.S. Citizenship and Immigration Services (USCIS) then assigns the immigrant a Priority Registration Date based on the date the petition is filed. The Priority Registration Date is similar to a ticket in a long line. USCIS will adjudicate and approve the petition; however, the beneficiary of an approved visa petition is not eligible to apply for lawful permanent resident status until their Priority Registration Date is current (when the beneficiary moves to the "front" of the line). The length of this process depends on whether the petitioner is a U.S. citizen or a lawful permanent resident and it is directly tied to the annual numerical limitations set by Congress for each preference category. The current priority dates are published monthly in the visa bulletin found at

http://travel.state.gov/visa/bulletin/bulletin_1360.html. As an example, the current waiting period for the 1st preference category (adult unmarried sons and daughters of U.S. citizens) for immigrants from Mexico is approximately 18 years.

Petitioning for a Family Member

The process of petitioning for a qualified family member consists of two parts.

Part 1. Family-Based Visa Petition

The petitioner is the U.S. citizen or lawful permanent resident who is filing an application with the immigration authorities to have their relative, the beneficiary, immigrate to the United States.

The U.S. citizen or lawful permanent resident, or petitioner, files a visa petition called the Petition for Alien Relative (Form I-130) with USCIS on behalf of the beneficiary. USCIS then confirms that the necessary family relationship exists between the petitioner and the beneficiary and that the petitioner has the required legal status of U.S. citizen or lawful permanent resident

If the I-130 is approved, the petitioner will receive an approval notice with a priority date. The approval notice does not give the beneficiary permission to live or work in the United States.

Part 2. Application for Lawful Permanent Residence

Immediate relatives generally are immediately eligible to file for lawful permanent residence and in some circumstances, can complete Part 1 and Part 2 together by filing both applications simultaneously. Seek legal counseling if you think this may apply to you.

Immigrants who fall with the Family Preference System, however, must wait for their priority date before filing an application for lawful permanent residence.

1. When the Priority Registration Date on the approved I-130 is current, the beneficiary becomes eligible to apply for permanent residence.

a. Certain beneficiaries who are already in the United States can file an Application to Register Permanent Residence or Adjust Status, or Form I-485, with the local immigration office.

b. If the beneficiary is not eligible to adjust status in the United States, or if the beneficiary resides abroad, the application for permanent residence is filed with the U.S. consulate in the beneficiary's home country.

Having an approved I-130 and a current Priority Registration Date only means that the beneficiary is eligible for permanent residency. The beneficiary still has to meet other eligibility requirements, such as demonstrating that she/he is not a substance abuser, that she/he does not have any disqualifying criminal convictions, and that she/he has the ability to support him/herself in the United States.

IMMIGRATION PROVISIONS UNDER THE VIOLENCE AGAINST WOMEN ACT

* * *

Background

President Clinton signed the Violence Against Women Act (VAWA) into law in 1994 as part of a larger crime bill. VAWA is a comprehensive bill to provide funding and technical support, as well as important legal protections, to victims of domestic violence, sexual assault and stalking. The immigrant provisions of VAWA provide legal remedies for victims of domestic violence to legalize their status independent of their abusers. VAWA was amended in 2000 and most recently in March 2013 with the passage of the Violence Against Women Reauthorization Act of 2013, P.L. 113-4, 127 Stat. 54 (VAWA 2013).

The two primary routes to legalizing status under VAWA include: 1) self-petitioning for permanent resident status, and 2) cancellation of removal for those in immigration court proceedings. These remedies are discussed in detail below.

The self-petitioning provisions of VAWA can help battered immigrants escape abusive situations and obtain legal immigration status, as well as medical and other supportive benefits they and their children need. However, in order to benefit from VAWA, people must first learn that this immigration remedy exists. Immigrant advocates and domestic violence service providers have an urgent task of informing potential self-petitioners and legal and social service providers about the availability of this relief.

VAWA Self-Petition

1. Qualifying Relationship

VAWA allows certain abused spouses, children, and parents to self-petition for permanent residency in the United States. The following persons are eligible to self-petition under VAWA:

- Abused spouse of U.S. citizen or LPR[4];
  - Abused spouse's unmarried children under the age of 21 may be derivatives, even if the children have not been abused and even if the children are not related to the abusive U.S. citizen or LPR;

- Non-abused spouse of U.S. citizen or LPR whose child is abused by the U.S. citizen or LPR spouse, even if the child is not related to the U.S. citizen or LPR abuser[5];

- Abused parents of U.S. citizen children (where the abusive child is 21 years of age or older)[6];

[4] INA §204(a)(1)(A)(iii), INA §204(a)(1)(B)(ii).
[5] INA §204(a)(1)(A)(iii)(I)(bb) and INA §204(a)(1)(B)(ii)(1)(bb).
[6] INA §204(a)(1)(A)(vii).

- Abused child of U.S. citizen or LPR parent[7]; or
  - For immigration purposes, a child is a person who is unmarried, under 21 years of age, and is the biological, step, or adopted child of the abuser.[8]
  - Abused child may petition until the age of 25 if he/she can demonstrate that abuse was at least one central reason for the filing delay.[9]
  - For step-children, the marriage creating the stepchild relationship must occur before the child reaches 18 years of age.[10]
  - For adopted children, generally, the child must be adopted while under the age of 16.[11]
  - The abused child's unmarried children under the age of 21 may be derivatives.

- Abused "intended spouses" of U.S. citizen or LPR.[12]
  - Abused intended spouse's unmarried children under the age of 21 may be derivatives, even if the children have not been abused and even if the children are not related to the U.S. citizen or LPR abuser
  - The term "intended spouse," means an individual who believes that she or he has married a U.S. citizen or LPR and for whom a marriage ceremony was actually performed, but whose marriage is not legitimate solely because of the U.S. citizen's or LPR's bigamy (i.e. previously married and did not legally terminate that marriage before entering into the current marriage).

Note: a child who was not abused may qualify as a derivative beneficiary of an abused parent's VAWA self-petition.

2. Abuser Must Be U.S. Citizen or LPR

A VAWA self-petitioner must demonstrate that the abuser is (or in some cases, was) a U.S. citizen or LPR.[13] The special rules for this requirement are:

- The abuse may have occurred before the abuser became a U.S. citizen or LPR.

- If the abuser loses or renounces his U.S. citizenship or LPR status and the loss or renunciation of U.S. citizenship or LPR status was related to an incident of domestic violence, the victim may still qualify to self-petition. That self-petition, however, must be filed within two years of the date the abuser loses or renounces his U.S. citizenship or LPR status.[14]

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[7] INA §204(a)(1)(A)(iv) [children of USC]; INA §204(a)(1)(B)(iii) [children of LPR].
[8] INA §101(b)
[9] INA § 204(a)(1)(D)(v).
[10] INA § 201(b)(1)(B).
[11] INA § 201(b)(1)(E).
[12] INA §204(a)(1)(A)(iii)(II)(aa)(BB) [intended spouse of USC]; INA §204(a)(1)(B)(ii)(II)(aa)(BB) [intended spouse of LPR].
[13] INA §204(a)(1)(A)(iii)(I)(aa) [spouse of USC]; INA §204 (a)(1)(B)(ii)(I)(aa) [spouse of LPR]; INA §204(a)(1)(A)(iv) [children of USC]; INA §204(a)(1)(B)(iii) [children of LPR].
[14] INA §204(a)(1)(A)(iii)(II)(aa)(CC)(bbb) [spouse of USC] and INA §204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) [spouse of LPR].

- If the abuser loses immigration status for any other reason *after the self-petition is filed*, that loss of status will not affect the self-petitioner's case for self-petitioning or adjustment of status.[15]

3. Legal Marriage and Good Faith Marriage

For spousal cases, the self-petitioner must establish that she is (or was) legally married to the U.S. citizen or LPR abuser; and the marriage that forms the basis of the self-petition was a "good faith" marriage, meaning that the self-petitioner married because she wanted to be married and not for immigration purposes.[16]

Legal Marriage

A marriage is considered legal for immigration purposes if it was valid in the state or country where it was performed or celebrated and if does not violate public policy.[17] For example, a few states still recognize common law marriage, including Iowa. If the self-petitioner resided in Iowa and had a common law marriage with her spouse, this marriage is valid for immigration purposes.

If the marriage was not valid because the abuser's prior or concurrent marriage was not legally terminated, but the self-petitioner believed the marriage was valid and can demonstrate that a marriage ceremony was performed, a self-petition may nevertheless be filed. This is referred to as an "intended marriage."

Good Faith Marriage

The self-petitioning spouse must establish that the marriage or "intended" marriage was entered into in good faith. This means that the self-petitioner must not have married his/her U.S. citizen or LPR spouse solely for the purpose of obtaining immigration status. The most important factor in establishing a good faith marriage is whether the couple intended to establish a life together at the time of the marriage. Conduct after a couple is married – even separation shortly after the marriage – is relevant only to establish intent at the time the marriage was entered into. A self-petition will not be denied simply because the spouses are no longer living together and the marriage is no longer viable.[18]

Termination of Marriage

Generally, the self-petitioner must file the VAWA self-petition before terminating her marriage. However, there is a special rule that allows self-petitioners to file within **two years of divorce** so long as she can demonstrate a "connection" between the divorce and domestic violence.[19]

A final divorce decree must be provided as evidence that the prior marriage was terminated. However, the immigration authorities will not require that the divorce decree specifically state that the termination

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[15] INA §204(a)(1)(A)(vi); INA §204(a)(1)(B)(v)(I).
[16] INA §204(a)(1)(A)(iii)(II)(aa)(CC); INA §204(a)(1)(B)(ii)(II)(aa)(CC).
[17] *See Matter of H.*, 9 I&N Dec. 640 (BIA 1962).
[18] 8 C.F.R. §204.2(c)(1)(ix).
[19] INA §204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) [spouse of USC]; INA §204(a)(1)(B)(ii)(II)(aa)(CC)(ccc) [spouse of LPR]. The above rule applies to cases pending on or filed after October 28, 2000. Cases denied prior to this date solely due to divorce may file a motion to reopen if the self-petitioner can show the divorce occurred on or after October 28, 1998.

of the marriage was due to domestic violence. Instead, the self-petitioner must "demonstrate that the battering or extreme cruelty led to or caused the divorce," and "evidence submitted to meet the core eligibility requirements may be sufficient to demonstrate a connection between the divorce and the battering or extreme mental cruelty."[20]

Once the VAWA self-petition is filed, the self-petitioner can divorce her spouse and this will not affect the self-petition.[21] However, the self-petitioner **cannot remarry** before approval of the self-petition. If she remarries before receiving an approval of the VAWA self-petition, the self-petition will be denied.[22]

Once the VAWA self-petition is approved, the self-petitioner can remarry and this will not affect the approval of the self-petition.[23]

There are also provisions that protect spouses of U.S. citizens when their spouse dies. If the abusive spouse is a U.S. citizen and dies, the self-petition can be filed within two years of his death. This provision does NOT apply to the spouses of abusive LPRs.[24] VAWA 2013 added protections at INA § 204(*l*)(2)(F) for derivative beneficiaries of a pending or approved VAWA self-petition or VAWA adjustment of status application filed by a now-deceased principal.

4. Battery and/or Extreme Cruelty

VAWA requires that the self-petitioner show that she and/or her child "has been battered or has been the subject of extreme cruelty" by a U.S. citizen or LPR spouse, parent, or child.[25] For spousal cases, this must occur during the marriage.[26] The federal regulations define abuse broadly to encompass physical, sexual, and psychological acts, as well as economic coercion.[27] Other acts that may constitute abuse include:

- Threats to beat or terrorize her;
- Verbal abuse such as calling her names and/or obscenities or putting her down;
- Hitting, punching, slapping, kicking, or hurting her in any way;
- Emotional abuse, such as insulting her at home or in public;
- Sexual abuse or exploitation, including molestation, rape, or forced prostitution;
- Threats to take her children away or hurt them;
- Threats to deport her or turn her into the immigration authorities;
- Controlling where she goes, what she can do, and whom she can see;
- Forcibly detaining her;
- Engaging in a pattern of acts that when considered alone would not normally constitute abuse; and/or

[20] Anderson, Executive Associate Commissioner, Office of Policy and Planning, INS Mem/HQADN/70/8, January 2, 2002, "Eligibility to Self-Petition as a Battered Spouse of a U.S. Citizen or Lawful Permanent Resident Within Two Years of Divorce."
[21] INA §204(a)(1)(A)(vi) [spouse of USC]; INA §204(a)(1)(B)(v)(I) [spouse of LPR].
[22] INA § 204.
[23] INA §204(a)(1)(h).
[24] INA §204(a)(1)(A)(iii)(II)(aa)(CC)(aaa).
[25] INA §204(a)(1)(A)(iii)(I)(bb) [spouse of USC]; INA §204(a)(1)(A)(iv) [children of USC]; INA §204(a)(1)(B)(ii)(I)(bb) [spouse of LPR]; INA §204(a)(1)(B)(iii) [children of LPR].
[26] INA §204(a)(1)(A)(iii), INA §204(a)(1)(B)(ii).
[27] 8 CFR §204.2(c)(1)(vi) [abused spouses]; 8 CFR §204.2(e).

- Threats or committed acts of violence against a third person or thing, such as animals or objects, in order to scare or pacify her.

Abusive acts that may not initially appear violent, but are part of an overall pattern of violence, are also part of the definition of abuse. A person who has suffered no physical abuse may still be eligible to self-petition. The abuse must rise to a certain level of severity, however, to constitute battery or extreme cruelty. There is no exhaustive list of acts that constitute "battery or extreme cruelty," and the definition of battery provided in the regulations is a flexible one that should be applied to claims of extreme cruelty as well as to claims of physical abuse.

Examples of non-physical abuse that may constitute extreme cruelty include:

- Social isolation of the victim;
- Accusations of infidelity;
- Incessantly calling, writing or contacting her;
- Interrogating her friends and family members;
- Threats;
- Economic abuse;
- Not allowing the victim to get a job;
- Controlling all money in the family; and/or
- Degrading the victim.

NOTE: Violence against another person or thing may be considered abuse if it can be established that the act was deliberately used to perpetrate extreme cruelty against the victim.

NOTE: The key to corroborating claims of extreme cruelty is to include evidence of the self-petitioner's subjective perception of the abuse. The self-petitioner must document in her self-petition not only the acts and behavior of her abuser, but also that she perceived those acts or behavior as extreme cruelty. This can be addressed in the self-petitioner's affidavit.

For further information on what constitutes domestic abuse, please contact the National Immigration Project of the National Lawyer's Guild (NIP/NLG) at (617) 227-9727, or click on the domestic violence option at the NIPNLG website, www.nationalimmigrationproject.org. NIP/NLG also has detailed training materials available on VAWA.

5. Residence with Abuser

Under current law, the self-petitioner must have resided with the abuser at some point, either inside or outside the United States.[28] There is no specified amount of time the self-petitioner must have lived with the abuser. Additionally, there is no requirement that the self-petitioner be residing currently with the abuser in the United States at the time the self-petition is filed. Thus, a self-petitioner can qualify for relief under VAWA even if she lived with the abuser for only a short time, or only in another country.

6. Current Residence in the United States

[28] INA §204(a)(1)(A)(iii)(II)(dd) [spouse of USC]; INA §204(a)(1)(A)(iv) [children of USC]; INA §204(a)(1)(B)(ii)(II)(dd) [spouse of LPR]; INA §204(a)(1)(B)(iii) [children of LPR]. INA §204(a)(1)(A)(iii)(II)(aa)(CC) and INA §204(a)(1)(B)(ii)(II)(aa)(CC).

The self-petitioner must establish that she is either:

1. residing in the United States, or
2. if living abroad, was subjected to abuse by the U.S. citizen or LPR in the United States, or
3. the abusive U.S. citizen or LPR is an employee of the U.S. government or armed forces.[29]

7. Good Moral Character

VAWA self-petitioners must establish that they possess good moral character.[30] Current immigration laws do not define "good moral character" per se. However, INA § 101(f) states that a person will be barred from showing good moral character if she:

- Is or was a habitual drunkard;
- Has engaged in prostitution within the last ten years before filing the application;
- Has engaged in any other commercial vice, whether or not related to prostitution;
- Is or was involved in smuggling people into the United States;
- Has been convicted of, or has admitted to, committing acts of moral turpitude, other than (1) purely political crimes and (2) petty offenses or crimes committed both when the alien was under 18 years of age and more than five years before applying for a visa for admission;
- Has been convicted of two or more offenses for which the aggregate sentences of confinement were five years or more;
- Has been convicted of, or has admitted to, violating laws relating to controlled substances (except for simple possession of 30 grams or less of marijuana);
- Has earned income derived principally from illegal gambling;
- Has been convicted of two or more gambling offenses;
- Has given false testimony for the purposes of obtaining an immigration benefit;
- Was incarcerated for an aggregate period of 180 days or more as a result of conviction;
- Has been convicted of an aggravated felony, as defined in INA § 101(a)(43), where the conviction was entered on or after November 29, 1990 (except for conviction of murder, which is bar to good moral character regardless of the date of conviction).

The self-petitioner must demonstrate good moral character for the past three years by showing that none of the bars to good moral character apply to her.

VAWA Exceptions to the Bars for Good Moral Character

A person who falls under one of the statutory bars normally cannot show good moral character. For VAWA self-petitioners, however, there is a special exception for the statutory bars to good moral character found in INA § 204(a)(1)(C). Under that exception, even if the self-petitioner has committed an act or has a conviction listed under INA § 101(f), that act or conviction does not bar the immigration authorities from finding that the self-petitioner is a person of good moral character if (1) the act or conviction is waivable with respect to the self-petitioner for purposes of determining whether the self-

[29] INA §204(a)(1)(A)(v) [spouse of USC]; INA §204(a)(1)(B)(iv) [spouse of LPR].
[30] INA §204(a)(1)(A)(iii)(II)(bb) [spouse of USC]; INA §204(a)(1)(B)(ii)(II)(bb) [spouse of LPR]; INA §204(a)(1)(A)(iv) [children of USC]; INA §204(a)(1)(B)(iii) [children of LPR].

petitioner is admissible or deportable, and (2) the Attorney General finds that the act or conviction was connected to the abuse suffered by the self-petitioner.

The good moral character exception for VAWA self-petitioners was added to the INA by VAWA 2000. The immigration authorities have not yet issued regulations to implement this provision, and there are still some questions as to how the exception will be interpreted. For example, we do not yet know how the immigration authorities will interpret the phrase "the act of conviction is waivable with respect to the petitioner" under the inadmissibility or deportability grounds.

The chart in Appendix E lists the good moral character statutory bars and the waivers of the INA §212 inadmissibility grounds and the INA §237 deportability grounds that may be available for purposes of the good moral character exception for VAWA self-petitioners. *This chart is a rough guide only*.

VAWA Adjustment of Status

Adjustment of status is the process for an immigrant to apply for lawful permanent residence in the United States. Certain VAWA self-petitioners are eligible to apply for adjustment of status simultaneously with the VAWA self-petition; others are not. It is essential to confirm eligibility before filing because if an applicant files for adjustment of status before being eligible, he or she may be placed in removal proceedings. *Please check with NIJC if you are unsure if your client qualifies for adjustment of status!*

An applicant for VAWA adjustment of status must establish that he/she:

- Is the beneficiary of an approved VAWA self-petition (or has a pending VAWA self-petition that if approved, would render the applicant eligible for adjustment of status);
- Has a current visa number;
- Is admissible; and
- Merits adjustment of status in the exercise of discretion.[31]

Approved VAWA Self-Petition

The applicant must submit a copy of the approval notice for the VAWA self-petition. Please note that a prima facie notice of eligibility for VAWA is not an approval notice.

Certain applicants for VAWA adjustment of status can file their applications at the same time as filing a VAWA self-petition assuming they meet all other eligibility requirements. The rule is that if the applicant will be eligible for adjustment of status immediately upon approval of the VAWA self-petition, the applicant can elect to file the application for adjustment of status at the same time as the VAWA self-petition. Many applicants choose to do so because upon filing an application for adjustment of status, the applicant qualifies to apply for employment authorization while the application for adjustment of status is pending. By contrast, a VAWA self-petitioner who only files the VAWA self-petition does not qualify for employment authorization until after the VAWA self-petition is approved. A more thorough discussion of employment authorization appears later in this manual.

Current Visa Number

[31] INA § 245(a).

The concept of the current visa number relates back to family-based immigration. Immediate relatives (spouses, parents, and minor, unmarried children) of U.S. citizens do not have a waiting period between filing the VAWA self-petition and being eligible for adjustment of status. Therefore, in most cases, immediate relatives can file their applications for adjustment of status simultaneously with the VAWA self-petition.

All other applicants must wait for their priority date to be current before filing for adjustment of status. USCIS will assign the self-petition a priority date upon receipt of the VAWA self-petition. Generally, this is the receipt date of the VAWA self-petition. However, if the abuser previously filed a family-based petition for the self-petitioner, the self-petitioner can request that the USCIS apply the old priority date to the current VAWA self-petition.

After approval of the VAWA self-petition, the self-petitioner will need to monitor her priority date to determine when she can apply for adjustment of status. The Department of States publishes the current priority dates at http://travel.state.gov/visa/bulletin/bulletin_1360.html. The bulletin summarizes the available visa numbers for the current month. Only individuals with a priority date earlier than the date on the visa bulletin are eligible to apply for adjustment of status.

The VAWA preference categories are the same as the general family-based preference categories mentioned earlier. The primary categories that will apply to VAWA self-petitioners are:

1st Preference: Unmarried son or daughter (21 years of age or older) of U.S. citizen parent

2nd Preference: 2A: spouses or unmarried children (under 21) of lawful permanent resident

2B: unmarried sons or daughters (21 years of age or older) of lawful permanent resident

A VAWA derivative is not always in the same preference category as the principal. For example, an abused spouse of a LPR who files a VAWA self-petition will receive a priority date in the 2A preference category. Assuming her children are under 21 when she files the VAWA self-petition, the children will be included as derivatives on the VAWA self-petition. However, if the children later turn 21 (after the filing of the VAWA self-petition), they will likely move to the 2B visa category which will drastically increase the amount of time that they will need to wait before applying for lawful permanent residence.

In some cases, pursuant to the Child Status Protection Act, a child who is now over 21 will still be considered to be under 21 for purposes of immigration. Please discuss your case with NIJC if you are working with a self-petitioner or any derivatives near the age of 21.

Admissible

A VAWA applicant for adjustment of status must demonstrate that she is admissible to the United States. The following list, while not exhaustive, provides common grounds of inadmissibility:

- Health-related grounds[32];
  - Communicable diseases of public health significance;
  - Failure to present documentation of having received vaccinations;

[32] INA § 212(a)(2)

- Physical or mental disorder that poses a threat to the property, safety or welfare of the applicant or others, or
- Drug abuser/addict;

- Criminal and related grounds[33];
  - Admission or conviction for a crime involving moral turpitude;
  - Admission or conviction for a controlled substance offense;
  - Conviction for 2 ore more offenses for which the aggregate sentences to confinement were 5 years or more;
  - Reason to believe is or has been a drug trafficker;
  - Engages in or has engaged in prostitution within 10 years of the application; or
  - Procures or attempts to procure for prostitution within 10 years of the application;

- Security and related grounds[34];
  - Seeks to engage in espionage or violate any law prohibiting the export of goods, technology, or sensitive information;
  - Engaged in or there is reason to believe will engage in terrorist activity; or
  - Is a member of a terrorist organization;

- Is or has been a member of the communist or any other totalitarian party[35];

- Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing[36];

- Misrepresentation[38]:
  - Seeks to procure or has procured admission by fraud or willfully misrepresenting a material fact; or
  - Any false claim to U.S. citizenship under Federal or State law;

- Smugglers[39];

- Previously removed (deported)[40];

- Unlawfully present in the United States[41];
  - Unlawfully present for more than 180 days but less than one year, voluntarily left the United States, and now seeks admission within 3 years of the date of last departure; or
  - Unlawfully present for one year or more and who seeks admission within 10 years from the date of the last departure;

- Unlawfully present after past immigration violations[42]:

[33] INA § 212(a)(2).
[34] INA § 212(a)(3)(A), (B).
[35] INA § 212(a)(3)(D).
[36] INA § 212(a)(3)(E).
[38] INA § 212(a)(6)(C).
[39] INA § 212(a)(6)(E).
[40] INA § 212(a)(9)(A).
[41] INA § 212(a)(9)(B).
[42] INA § 212(a)(9)(C).

- Unlawfully present for more than one year and who enters or attempts to enter without being admitted; or
- Has been ordered deported or removed and who enters or attempts to enter without being admitted;

Depending on the ground of inadmissibility, there may a waiver available for VAWA self-petitioners; however applying for a waiver is complicated and if denied, the VAWA self-petitioner may be placed in removal proceedings. NIJC does not currently place cases on the *pro bono* case list where waivers are necessary. However, there are circumstances where a client may not have fully disclosed all facts to NIJC in the beginning or where the client becomes inadmissible during the course of the *pro bono* representation. In these cases, please consult with NIJC immediately to determine how to proceed.

Discretion

The VAWA applicant for adjustment of status must demonstrate that she merits adjustment of status as a matter of discretion. In determining discretion, the adjudicator must weigh the positive and negative factors in each case. The Board held in *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1998) that adverse factors include:

- Nature and underlying circumstances of the exclusion ground at issue,
- Additional significant violations of immigration laws,
- Existence of criminal record and, if so, its nature, recency and seriousness and
- Other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country,

The Board further held that favorable factors include:

- Family ties in the United States,
- Residence of long duration in this country,
- Evidence of hardship to the immigrant and family if excluded and deported,
- Service in this country's Armed Forces,
- A history of stable employment,
- The existence of property or business ties,
- Evidence of value and service to the community,
- Evidence of genuine rehabilitation if a criminal record exists, and
- Other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)

In practice, most immigration officials do not request documentation on discretion.

Cancellation of Removal for Abused Immigrants

Only immigrants who are in immigration court proceedings may seek VAWA cancellation of removal or VAWA suspension of deportation. A grant by an Immigration Judge of cancellation of removal or suspension of deportation cancels the removal or deportation of an applicant and grants the applicant lawful permanent residence. To be eligible for VAWA suspension or VAWA cancellation, the applicant:

- must be the abused spouse or child, or non-abused parent of an abused child, of a U.S. citizen or LPR;
- must have been physically present in the United States for at least 3 years;
- must have exhibited good moral character during the last 3 years;
- must establish that the applicant or his or her LPR or U.S. citizen child or parent would suffer extreme hardship if the applicant had to leave the United States; and
- the case must warrant a favorable exercise of the Immigration Judge's discretion.

A Comparison of VAWA Self-Petitions and VAWA Suspension/Cancellation

Both VAWA self-petitions and applications for cancellation or suspension can lead to LPR status for an abused immigrant. In most cases, self-petitioners have less onerous requirements, because they do not have to meet the VAWA suspension/cancellation requirements of three years' continuous presence or establish that departure from the United States would cause extreme hardship. Some abused immigrants, however, will be eligible only for cancellation or suspension, and will not be eligible to self-petition. Here are some examples:

- Parents of abused children of U.S. citizens and LPRs who are not married to the abuser are not eligible to self-petition, but may be eligible for VAWA cancellation or suspension.
- Spouses of U.S. citizens and LPRs who were divorced more than two years ago, or whose U.S. citizen or LPR abusive spouse or parent lost status more than two years ago, are no longer eligible to self-petition, but can still apply for VAWA cancellation or removal.
- An individual who is eligible to self-petition or who has an approved self-petition, but who is placed in removal proceedings before his or her priority date becomes current may be eligible for VAWA cancellation or suspension. In such a case, an approved self-petition will lend credence to the cancellation or suspension claim, but will not allow the applicant to adjust status until the priority date becomes current.
- Abused sons and daughters of U.S. citizens or LPRs who do not file the self-petition before they turn 21 (please note that children who can demonstrate that abuse is the central reason for the delay in filing can file up to the age of 25) are no longer eligible to self-petition, but may be eligible for VAWA cancellation or suspension.

The Difference between VAWA Cancellation and VAWA Suspension

Suspension of deportation is a form of relief available under the Immigration and Nationality Act as it existed prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA"). Traditional, or non-VAWA, suspension provided relief for certain long-term residents in deportation proceedings who could demonstrate seven years continuous physical presence in the United States, good

moral character, and extreme hardship to themselves or their U.S. citizen or LPR immediate family members.

VAWA special rule suspension offered relief from deportation under a more generous standard for the abused spouses, sons, and daughters of U.S. citizens or LPRs and for the noncitizen parents of abused children of U.S. citizens or LPRs. While otherwise paralleling regular suspension, VAWA suspension requires that the applicant demonstrate only three years continuous physical presence, and the Immigration Judge can consider "any credible evidence" in determining eligibility.

IIRAIRA replaced suspension of deportation with "cancellation of removal," another form of relief from removal. Similarly, VAWA suspension of deportation was replaced with a special form of cancellation of removal for abused spouses and children of U.S. citizens and LPRs. For traditional cancellation of removal, an applicant must demonstrate ten years' continuous physical presence, good moral character, and "exceptional and extremely unusual" hardship to the applicant's U.S. citizen or LPR spouse, parent or child. For abused spouses and children, however, the requirements remain essentially the same as those required for VAWA suspension of deportation. That is, three years continuous physical presence, battery or extreme cruelty, extreme hardship, good moral character, no basis for inadmissibility under INA § 212, and no conviction for an aggravated felony.

Eligibility for VAWA Cancellation or VAWA Suspension

The following persons in Immigration Court proceedings may be eligible to apply for VAWA cancellation or suspension:

- Abused spouses of U.S. citizens and LPRs;
- Abused children of U.S. citizens and LPRs;
- Non-abused parents of abused children of U.S. citizens or LPRs, even if not married to the abuser, regardless of the child's status; and
- Abused "intended spouses" of U.S. citizens or LPRs. As previously explained, intended spouse is a person who believed that he or she married a U.S. citizen or LPR and went through a marriage ceremony, but whose marriage is not legitimate solely because of the U.S. citizen's or LPR's bigamy. (He/she was previously married and did not legally terminate that marriage before entering into the current marriage.)

An applicant for VAWA cancellation of removal must establish that he or she:

- Has been abused or has suffered extreme cruelty;
- Has been physically present in the United States for three years before applying;
- Would suffer extreme hardship, or his or her child or parent would suffer extreme hardship, if the applicant were removed from the United States;
- Has been a person of good moral character during the period of required physical presence;
- Is not inadmissible under INA §212(a)(2) [crimes] or (a)(3) [security and terrorism grounds] or deportable under INA §237(a)(1)(G) [marriage fraud], (2) [crimes], (3) [failure to register and falsification of documents], or (4) [security and terrorism grounds]; and
- Has not been convicted of an aggravated felony under INA §101(a)(43).

The requirements for VAWA suspension of deportation are essentially the same as those listed above for VAWA cancellation of removal.

No Derivative Beneficiaries for VAWA Suspension or Cancellation; Parole of Children and Parents

There are no "derivative beneficiaries" for purposes of cancellation of removal or suspension of deportation. This means that children cannot be included in a grant of cancellation or suspension of their parent. This is true even in the case of someone who applying as the parent of an abused child. A parent granted cancellation of removal can file a second-preference petition for the child, and eventually the child may become a permanent resident as a child of an LPR. A child granted cancellation of removal cannot file for her/his parent until the child is 21 and is a U.S. citizen. Under the VAWA 2000 amendments, however, the immigration authorities are required to parole the grantee's children and, for a child grantee, the grantee's parent, into the United States. The Parole status allows for employment authorization and will last until adjudication of the parolee's application for permanent residence.

The Effect of a Grant of VAWA Suspension or Cancellation

A grant of cancellation of removal by an Immigration Judge cancels the removal or deportation of the applicant and grants lawful permanent residence, provided that there are visas available under the 4,000 annual limit or "cap" on cancellation grants. After the cap has been reached in a given fiscal year, decisions to grant cancellation to applicants who meet the statutory eligibility requirements must be reserved until a grant becomes available under a subsequent year's cap. This means that applicants are placed on a sort of waiting list until a cancellation number is available for them. In order to reserve cancellation grants for persons who need them most, applications for cancellation will be denied if the applicant is granted another form of relief, such as asylum or adjustment of status.

By contrast, Congress exempted VAWA suspension applicants – those who received a charging document (Order to Show Cause) before April 1, 1997 – from the 4,000 cap. Because there is no annual cap for suspension applicants, a person granted suspension will be immediately considered a lawful permanent resident.

Conditional Permanent Residence for Abused Immigrants

General Overview

Conditional residency was created under the Immigration Marriage Fraud Amendments of 1986 in response to Congress' belief that many immigrants were marrying U.S. citizens for immigration purposes. Put another way, Congress was concerned that immigrants were marrying U.S. citizens to obtain green cards. People who immigrate through their spouses within two years of their marriage will be granted conditional resident status for a period of two years. Conditional resident status begins on the day an individual is lawfully admitted to the United States on an immigrant visa or is granted adjustment of status in the United States.

A conditional resident will be issued a conditional resident card that appears similar to the "green cards" issued to permanent residents. However, the cards differ in two important respects. First, to indicate the bearer's conditional resident status, the classification code on the front, or photo side, of the conditional resident's card is marked CR for "conditional resident," rather than "immediate relative." Second, the card is valid for two years rather than the ten years accorded LPRs with no conditions on their status.

Conditional status is also imposed on the immigrant's children if they obtained immigrant visas based on their parent's marriage to an U.S. citizen or legal permanent resident.

During the two-year conditional residency period, conditional residents have the same rights, privileges, and responsibilities as other permanent residents. However, conditional permanent residents must take additional steps before the conditional residency period expires in order to preserve permanent resident status.

Removing Conditions on Permanent Residence

An immigrant granted conditional resident status must file to remove the conditions on residence before the two years of conditional status expires. This is done with USCIS Form I-751, Petition to Remove the Conditions on Residence. A conditional resident could lose permanent resident status and be removed from the United States if this petition is not filed in a timely manner. A conditional resident may submit the I-751 jointly with her or his spouse or parent or, in certain circumstances, the conditional resident may apply for a waiver of the joint filing requirement. The four grounds on which a conditional resident can apply for a waiver are discussed below.

Whether filing the I-751 with or without her or his spouse, the conditional resident is required to establish that his or her marriage is bona fide. The best type of evidence shows that the noncitizen spouse truly intended to establish a life together with her or his U.S. citizen or LPR spouse. In addition to the documents suggested by the immigration authorities, the petitioners could include evidence such as:

- joint tax returns;
- evidence of joint bank accounts;
- insurance policies;
- health care plans;
- evidence of jointly purchased land or personal property;

- photographs of the wedding ceremony or of the couple together in different situations (i.e., vacation, holidays);
- joint check-cashing cards; and/or
- joint club membership cards.

Filing a Joint Form I-751

In cases where a couple removes the conditions on residence together, or jointly, they must file the I-751 petition within 90 days before the second anniversary of the date on which the person obtained conditional residence. When filing Form I-751 as a joint petition to remove the conditions, both spouses must declare under penalty of perjury that (1) they were married in accordance with the laws in the jurisdiction where the marriage took place; (2) they did not enter into the marriage to procure an immigration benefit; and (3) no fee was paid to anyone other than an attorney in return for filing the petition. Also, they must submit documents proving that they married in good faith as discussed above.

Filing a Form I-751 as a Waiver of the Joint Petition Requirement

A conditional resident may file Form I-751 to apply to remove the conditions on residence on the basis of a waiver if one of the following four situations arise: (1) the conditional resident has been abused or subjected to extreme mental cruelty by her/his spouse; (2) the marriage ended through divorce or annulment; (3) the conditional resident can prove extreme hardship; or (4) the USC spouse died. In such cases, the conditional resident may apply to remove the conditions on her/his permanent residence at any time after becoming a conditional resident, but before being removed from the country. The four grounds are not mutually exclusive, and the conditional resident should claim all applicable grounds.

(1) Abused Spouse Waiver

The joint petition requirement may be waived for victims of abuse if, during the marriage, the alien spouse or child was abused by or was the subject of extreme mental cruelty perpetrated by his or her USC or LPR spouse or parent. In other words, the conditional resident spouse may apply under this waiver if the conditional resident and/or the conditional resident's child has been abused by the USC or LPR spouse.

Immigration regulations clarify that the abused spouse waiver is available to conditional residents, regardless of their current marital status. In other words, the conditional resident may still be married and living with the abusive spouse, may be separated, may be divorced, or may be in the process of seeking a divorce. As a practical matter, only conditional residents who are not seeking divorce will probably file the abused spouse waiver. Spouses who are divorced or have filed for divorce would normally file for the "divorce or annulment" waiver due to its more relaxed proof requirements.

"Battery or extreme mental cruelty" is defined in the same manner for purposes of proving abuse for a VAWA self-petition and for the abused spouse waiver. (See "Abuse Issues" section on pages 32-33).

(2) Divorce/Annulment

The joint petition requirement can also be waived if the conditional resident demonstrates that the marriage has ended in either divorce or annulment and that it was entered into in good faith. Neither the statute nor the regulations require that the USC or LPR spouse have been at fault in the breakup of

the marriage or that the conditional resident have been free from all fault, nor is there any requirement that the conditional resident initiate the divorce or annulment proceedings.

The immigration authorities have allowed conditional residents to apply for this waiver if one of the parties has filed for dissolution, but the divorce is not yet final. In such cases, the immigration authorities have accepted the waiver petition, but delayed its adjudication until they received court documents indicating that the marriage has been officially dissolved.

(3) Extreme Hardship Waiver

The conditional resident spouse may also request a waiver of the joint petition requirement based on "extreme hardship." Although the statute is silent about who the extreme hardship must affect, the regulations state that the waiver may be based on hardship either to the conditional permanent resident herself or himself, to children of the marriage, or to a new spouse that is a USC or an LPR. The statute and regulations only allow the immigration authorities to consider hardship factors that arose after the individual's entry as a conditional resident.

The Board of Immigration Appeals ("BIA") does not specifically define "extreme hardship." Instead, the elements to establish extreme hardship depend on the facts and circumstances of each case. In general, extreme hardship means something more then the ordinary hardship one would suffer in being separated from a spouse, children, and other loved ones, or from a country and lifestyle to which one has become accustomed. Examples include a specific medical condition, loss of special educational opportunities, or inability to financially provide for oneself in one's home country.

(4) Death Of Spouse

A conditional resident submitting a waiver based on the death of his or her spouse should submit evidence of the spouse's death. The conditional resident must also submit documentary evidence establishing that the marriage was legitimate and entered into in good faith. In these cases where a spouse has died, the immigration authorities will usually grant the waiver without requiring an interview.

Filing a VAWA Self-Petition in Lieu of or in Addition to Proceeding with an Application for a Waiver of the Joint Petition Requirement

In general, a conditional resident in an abusive situation should not file a VAWA self-petition, but should instead continue with the conditional permanent residence process by filing an application for a waiver of the requirement of a joint petition to remove the conditions on residence as described previously. This is because continuing with the conditional residence process will allow the individual to maintain valid status and employment authorization, as well as to continue the accrual of continuous residence for purposes of naturalization. However, if the immigration authorities terminate the individual's conditional residence because of failure to file Form I-751, filing Form I-751 late, or denial of Form I-751, and/or if it does not appear that the petition will be successful on review, then filing a VAWA self-petition may be an option, if the individual is statutorily eligible.

NOTE: Advocates may see abused spouses in various immigration statuses. It is important to consult an attorney or a qualified immigration specialist with any specific immigration related questions.

REPRESENTING ON A VAWA SELF-PETITION

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Initial Client Interview

The initial interview provides you with an opportunity for you and your client to meet, to discuss her case including the VAWA self-petition process, to review her documents, and to identify next steps.

Every client is different and some will want to discuss their cases in detail, whereas others are more reluctant. It is important to remember that we are trying to empower our clients to reclaim their autonomy and independence. However each client will determine what is best for her, and regardless of our personal feelings we have to support our client's decisions. A client who was a victim of domestic violence might remain with her abuser, or she might return to him after leaving. Although it is fine to discuss these issues with your clients, refrain from giving advice on these matters and remind her that ultimately it is her choice and that you support her decision. If your client is not in counseling, this is a good time to make a referral to allow her to explore these and other issues in more depth with a qualified individual.

The initial interview with your client will take between 1.5 to 2 hours. However, if you are using an interpreter it may take longer due to the time it takes for translation. There is no particular "order" in which the various materials that need to be covered should be discussed – you should conduct the interview in a manner that feels comfortable and natural to you. The following are guidelines, and it is important to cover all of this information in the interview.

Initial Considerations

- **Client Documents:** When you set up the initial interview, ask the client to bring in all legal documents such as her identity documents (passport and birth certificate), marriage certificates, children's birth certificates, all immigration-related documents, police records, court dispositions, orders for protection, medical records, etc. (*see* Appendices K, L, M for Checklists of Supporting Documents). At the interview you can determine what additional documents you need after your review.

- **Safe Mailing Address:** Determine at the outset whether it is safe for you to send mail to and call your client at home. If not, set up an alternate address and phone number where you can reach the client, or arrange to have her call you on a specified date or time. (This information is usually obtained during the initial intake, but it is important to verify whether her situation has changed.)

- **Avoid using legalese.** Try to explain the legal process and other requirements in plain English to avoid confusing the client.

- **Confidentiality:** Explain to the client that everything you discuss will remain confidential, and that this information she provides to you will not be shared with unauthorized third parties. Tell her that your office has procedures in place to prevent her abuser from finding out that she has legal representation or that she is filing an application based on the victimization. This might also be an appropriate time to discuss the VAWA confidentiality provisions pursuant to INA § 384. You should explain that there will be times when you need to discuss parts of her case with other individuals, but that you will not do so without her permission. Have the client sign the "Release of Information" form, and explain its purpose. For example, you may need to obtain the client's permission before speaking to a specific individual, such as a friend, who can write her a letter of support. Explain that in order to assemble the application packet, you may need to talk to her counselor, or divorce lawyer or other individuals who might provide needed information about her case. Reassure her that you will notify her prior to providing or obtaining information from third parties.

- **Retainer:** Have the client sign a retainer with you and explain its provisions. Make sure that the client understands her rights and responsibilities, and give her an opportunity to ask questions.

Discussing Domestic Violence

It is not necessary at the initial interview to obtain a detailed understanding of the battery and/or extreme cruelty. In fact, we discourage too much discussion about the nature of the abuse at the first meeting since you and your client have yet to develop a trusting relationship, and she might feel uncomfortable. As your relationship develops, your client will open up more. On many occasions clients will divulge new facts either at the time of filing or once your receive a request for evidence, because she did not feel comfortable discussing them before. This is often the case with sexual abuse which is very difficult to talk about.

When you discuss the abuse, it is generally in the context of explaining the client affidavit. She will need to write an affidavit describing the battery and/or extreme cruelty. Initially, you can discuss the abuse in a way that distances the "issue" of domestic violence from your client's personal experience. Use the "Power and Control Wheel" and the "Cycle of Violence Wheel" to discuss what domestic violence is. Tell your client that if any of these forms of violence existed in her relationship, she should write about them in her affidavit.

Don't ask: Did your husband beat you?
Ask: Did your husband every slap you, punch you, kick you, shove you, bite you, choke you, poke his finger in your chest, raise his fist at you, grab you, pull your hair, throw things at you, destroy your property, threaten to use a weapon, threaten you with a weapon, etc.?

Don't ask: Did your husband ever rape you?
Ask: Did your husband ever force you to do anything sexually against your will?

Don't ask: Did your husband ever threaten you?
Ask: Did your husband tell you he would call the immigration authorities and have you deported, tell you he would hurt you physically, tell you he would take your children away from you, tell you he would hurt your family, etc.?

Procedural and Other Issues to Discuss

Explain the procedure for filing a VAWA self-petition and, if applicable, application for adjustment of status. Please refer to the NIJC flowcharts in the appendix to help explain the process. Explain the next steps such as receipt notices, prima facie notice, and employment authorization if applicable. Also, explain the current processing times so that the client knows how long it will take to receive a decision. You should also let her know what to expect upon approval of the VAWA self-petition and/or adjustment of status.

Make sure the client knows about the USCIS fees for filing the applications you will file. Also, explain to her that she may apply for a fee waiver for these applications if she cannot afford the fees. The Vermont Service Center routinely grants fee waiver requests, particularly for the initial filing.

Refer your client for domestic violence advocacy and counseling if needed, as well as for legal representation for divorce and/or custody matters.

Discuss the supporting documentation, whether she has sufficient evidence to prove each requirement and whether she needs additional evidence. Make copies of the materials she brought to the interview, and review the checklist with her to see what additional materials she might need. This is also a good time to assess whether your client needs to develop a safety plan and confirm that she has a place to keep important documents.

Give your client the opportunity to ask any questions that she may have. Make sure she understands what steps need to be taken next, such as writing her affidavit and collecting the supporting documents. Make sure you know how to contact her and vice versa.

Filing the VAWA Self-Petition

The burden of proof is on the applicant to demonstrate eligibility for the VAWA self-petition. USCIS may consider any credible evidence presented in support of the application.[43]

The regulations provide what initial evidence must be submitted with the VAWA self-petition. The following is a list of forms and documents that must be included:

a. **A detailed, argumentative cover letter** acting as a roadmap to the evidence included;

b. **Form G-28**, Notice of Appearance of Attorney (*on blue paper*);

c. **Form I-360, VAWA Self-Petition**, with copy of the applicant's birth certificate and identity documents, marriage certificate to show any legal name change, evidence of lawful entry into the United States (if applicable) and/or any prior lawful immigration status;

d. **Client Affidavit - signed and notarized affidavit of the applicant in her own words describing all eligibility requirements including**:

[43] 8 C.F.R. § 204.2(c)(2)(i).

- Name, date of birth, and place of birth of self-petitioner;
- All past entries to and exits from the United States;
- If spousal case, description of how she met her husband and why they married;
- Address and length of time she lived with abuser;
- Names, dates of birth, and places of birth for all children;
- Detailed, chronological description of incidents of battery and extreme cruelty;
- Information on any medical attention received as a result of the abuse;
- Description of self-petitioner's good moral character with examples;
- Information regarding all of the self-petitioner's arrests, including date of arrest, final disposition in criminal case, and sentence;
- If self-petitioner has never been arrested, a statement stating this; and
- If spousal case, a statement regarding whether she is still married to the abuser.

e. **Evidence that the abuser is a U.S. citizen or LPR**:
- U.S. birth certificate,
- U.S. passport,
- LPR card,
- Application for marriage license,
- Child's birth certificate showing place of birth of abuser,
- Client affidavit explaining how she knows that abuser was a U.S. citizen or LPR,
- Notarized letters from family and friends, or
- If abuser obtained status through USCIS (LPR or naturalized U.S. citizen), submit request for USCIS to search its records.

f. **Evidence of Legal and Good Faith Marriage, if spousal case**
- Client Affidavit explaining how they met and why they married;
- Marriage Certificate;
- Divorce Certificates or Death Certificates for all prior marriages for self-petitioner and abuser
- Birth Certificates for children
- Leases in both names
- U.S. Income Taxes jointly filed in both names
- Bills in both names
- Bank account statements in both names
- Photographs of the wedding
- Notarized letters of family and friends

g. **Evidence of Joint Residence**
- Any correspondence addressed to both names at same address
- Notarized letters from landlord, family, friends

h. **Evidence of Current Residence in the United States**
- Utility Bill or other correspondence in client's name with U.S. address
- Rent receipts
- Photo identification with address
- Notarized letters of family and friends

i. **Battery and/or Extreme Cruelty**
- Client Affidavit

- Police Report(s)
- Certified Disposition for all criminal cases of abuser
- Order(s) of Protection
- Medical Records
- Letter from domestic violence counselor
- Notarized letters of family and friends

j. **Good Moral Character**
- Client Affidavit
- Local police clearance letter or state-issued criminal background check for all places where the client has lived for six months or more during the three year period before filing the VAWA self-petition
- If the client has been convicted of any crimes, certified criminal disposition for all arrests
- Notarized letters of family and friends
- School records for children

Filing the VAWA Adjustment of Status Application

The burden of proof is on the applicant to demonstrate eligibility for VAWA adjustment of status. Please confirm with NIJC that your client is eligible to file for adjustment of status before filing the application. As noted earlier, sometimes an applicant can file the application simultaneously with the VAWA self-petition; other times, the applicant must wait for years following the approval of the self-petition before she will be eligible for adjustment of status. **If an applicant files for adjustment before being eligible, she may be placed in removal proceedings!** The following is a list of forms and documents that must be included with the application:

a. Form G-28, Notice of Appearance as Attorney (on blue paper)
b. Form I-485, Application for Adjustment of Status
c. Filing fee of $1070 in a money order payable to "Department of Homeland Security" or Fee Waiver Request on Form I-912
d. 2 passport-style photographs of applicant
e. Form G-325A, Biographic Information
f. Form I-864W, Waiver of Affidavit of Support
g. Sealed Form I-693, Medical Examination completed by an authorized civil surgeon
h. Birth Certificate of Applicant
i. Marriage Certificate of Applicant
j. Proof of legal termination for any and all past marriages
k. Birth Certificates for all children
l. Form I-765, Application for Employment Authorization
m. 2 passport-style photographs of applicant

Unlike the VAWA self-petition, there are filing fees for an application for adjustment of status and an application for employment authorization. When filed together, the filing fee is $1070 for the I-485 and the I-765.

A VAWA self-petitioner may request a fee waiver of this filing fee if needed.[44] The fee waiver request should be made on Form I-912 which must be included with the VAWA Adjustment of Status and Employment Authorization applications, not filed separate and apart to the submission of the application packet.

USCIS will exercise its discretion to grant a fee waiver in the case of an applicant who: a) is receiving a means-tested benefit, b) has a household income of 150% or below of the poverty guidelines, or c) can demonstrate financial hardship. An applicant may claim eligibility for a fee waiver on more than one ground. It is recommended that you submit any documentation that would substantiate the fee waiver request such as means-tested benefits statements, taxes, pay stubs, utility bills, rent receipts, medical bills, etc.

A grant of a fee waiver will be indicated on the USCIS receipt notice; if a fee waiver request is denied, USCIS will reject the entire application packet. If the application packet is rejected and returned to you, you and your client must decide whether it is best to try to re-file with a stronger fee waiver request or simply submit the required fees.

Practice Pointers

- **Translations:** Any document not in English must be translated. The translation must include a signed and dated statement from the translator certifying that s/he is competent in both languages to render an accurate translation.

- **Original Documents:** All USCIS application forms, affidavits, letters of support, and certified dispositions must be submitted in the original. Please note that submitting photocopies of all other supporting evidence is best, unless otherwise requested by USCIS, since USCIS will not return your client's original documents once they are submitted.

- **Filing Fees:** Any application filing fees should be in the form of a money order or cashier's check made payable to "Department of Homeland Security." NIJC discourages the use of personal checks as a form of payment for filing fees.

- **Finalizing the Self-Petition Packet:**
  - All supporting documents should be indexed but **avoid using tabs**! Instead, USCIS prefers that you reference your documents via page number. Use a two-hole punch at the top of the packet and fasten everything together with a metal two-pronged fastener. **Do not use side-binding or a plastic cover sheet.**
  - When filing multiple applications such as the VAWA self-petition, application for adjustment of status, and application for employment authorization, prepare three separate packets each with their own individual cover letters and then mail all packets in the same large envelope.

[44] 8 C.F.R. § 103.7(c).

- **Filing the Self-Petition Packet:** All VAWA self-petitions and corresponding applications are sent to the USCIS Vermont Service Center. We recommend filing via certified mail or overnight delivery service to:

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

- **Copies of the Self-Petition Packet:** Please retain a complete copy of the application for your client's file and send a courtesy hard-copy to NIJC for our files as well.

- **Address Changes:** USCIS must be notified of all address changes within ten days of such change.[45] You may report the change in address either online via www.uscis.gov or by contacting the National Customer Service Center. In addition to reporting to USCIS through these means, NIJC also recommends that you inform the VSC directly and in writing, while the application remains pending there.

What Happens After Filing

After filing the VAWA self-petition, the attorney of record and the self-petitioner may receive the following notices in the case. Generally, USCIS should mail one copy of each notice to the attorney of record and the self-petitioner. However, this is not always the case and we encourage *pro bono* attorneys to communicate with their clients upon receipt of any notices from USCIS. Please review the current processing times at www.uscis.gov to determine how long to expect for the adjudication.

Receipt Notices: You should receive a separate receipt notice for each application filed within approximately 2-4 weeks.

I-360 Prima Facie Notice: The Vermont Service Center issues the ***prima facie*** notice where, on the face of the application, it appears that all of the requirements have been met and the application appears to state a valid claim for VAWA relief. It does **not** mean that the petition has been approved. This notice is valid for 150 days and is renewable every 60 days. This notice is important because it allows self-petitioners to obtain public benefits as "qualified aliens" if necessary.

Biometrics Appointments: If the applicant filed an application for adjustment of status, she will receive an appointment notice for biometrics (digital fingerprinting and photograph) at a local Application Support Center (ASC). Applicants must bring their original biometrics notice and a government-issued photo identification document with them to the appointment.

Requests For Evidence (RFE): USCIS may issue an RFE for additional evidence and should allow up to 87 days to respond. If your RFE response is insufficient or untimely, USCIS will likely deny the VAWA self-petition. *Please contact NIJC if you receive an RFE!*

[45] INA § 265; 8 U.S.C. § 1305.

Notice of Intent to Deny (NOID): USCIS may issue a NOID if they determine that the documents submitted are insufficient to establish eligibility. *Please contact NIJC if you receive a NOID!*

Denial Notice: If the VAWA self-petition is denied for any reason, the self-petitioner only has 30 days to appeal. If the application for adjustment of status is denied, the client does not have the right to appeal, but she may file a motion to reopen within 30 days of the decision. **Please contact NIJC immediately if you receive a denial!**

I-360 Approval Notice: The USCIS will adjudicate the VAWA self-petition based on the documents filed and does not conduct in person interviews. When the VAWA self-petition is approved, you will receive the following approval notices (not necessarily at the same time or in this order):

- I-360 Approval Notice
- Initial Grant of Deferred Action, which is valid for 15 months, and is renewable in 12 month increments. Deferred action status protects an individual from being placed in removal proceedings, and allows the self-petitioner to obtain employment authorization.
    - Derivatives are **not** automatically issued Deferred Action and must submit a request for deferred action upon receipt of the principal's I-360 Approval Notice.

Please carefully review the approval notices to make sure there are no mistakes as to the name, date of birth, or derivatives. Provide your client with the original approval notices and keep a copy for your records.

I-765 Approval Notice: USCIS should issue a decision on the I-765 within 120 days of filing the application. When USCIS approves the application, you will receive the approval notice and your client will receive her employment authorization document.

Interview Notice for VAWA Adjustment of Status: If the applicant filed an application for adjustment of status, she will receive an interview on this application after the VAWA self-petition is approved. Please note that although USCIS adjudicates the VAWA self-petition without in person interviews, generally, all applicants receive an interview for the application for VAWA adjustment of status. The majority of NIJC cases placed with *pro bono* attorneys will receive an interview notice for the Chicago District Office of USCIS located at 101 W. Congress Parkway, Chicago, IL 60605. Please contact NIJC when your case is scheduled for interview for information on how to prepare for the interview.

I-485 Approval Notice: When USCIS approves the I-485, you will receive an approval notice and the client will receive her lawful permanent resident card. Upon receipt of the card, the client should confirm that all information on the card is accurate, including her name and date of birth.

Additional Considerations

Public Benefits

Immigrant survivors of domestic violence may be eligible for certain forms of public assistance. Considering NIJC clients are living at 200% or below of the federal poverty guidelines, public benefits may be critical to our clients. The following are common questions and answers relating to immigrant survivors of domestic violence and the use of public benefits.

Are survivors of domestic violence eligible for public assistance?
Yes, so long as the immigrant survivor of domestic violence can demonstrate that she:

- Has a pending or approved family-based immigrant visa petition, an application for cancellation of removal or suspension of deportation, or a VAWA self-petition;
- Has been abused or are the child or parent of a person abused by a U.S. citizen or LPR;
- Needs public assistance because of the abuse; and
- Is not currently residing with the abuser.

What kinds of public assistance are available to immigrant survivors of domestic violence?
There are many different types of assistance programs in Illinois, including medical benefits, nutritional assistance, cash assistance, child care subsidies, higher education assistance, and job training programs.

Because the requirements for each program vary, please visit your local Illinois Department of Human Services, http://www.dhs.state.il.us, for more information on eligibility requirements for specific benefits. The Illinois Department of Human Services maintains a helpful chart of program eligibility by citizenship status on their website at http://www.dhs.state.il.us/page.aspx?item=16628 and a more comprehensive manual regarding eligibility at http://www.dhs.state.il.us/page.aspx?Item=13187.

What if the self-petitioner has children who are U.S. citizens? What benefits can the children access?
U.S. citizens are eligible for all public assistance programs. The child's eligibility for public assistance will be based on income and other qualifications, not the parent's immigration status.

When applying for public benefits for a child ONLY, the Illinois Department of Human Services cannot ask a parent about their immigration status.

Are there any immigrant consequences for accepting public benefits?
The Violence Against Women Reauthorization Act of 2013, eliminated the public charge ground of inadmissibility for VAWA self-petitioners. *See* INA § 212(a)(4)(E)(i). However, as part of this application, the applicant must disclose all means tested public benefits received, except emergency Medicaid. If fraud was used to obtain a public benefit, it may implicate the grounds of inadmissibility at INA § 212(a)(6)(C). Most types of public assistance, including medical insurance for those without significant health problems, nutritional assistance and one-time assistance programs generally will not have any effect on eligibility for immigration benefits.

However, accepting certain kinds of benefits by claiming to be a U.S. citizen, such as unemployment compensation, Section 8 vouchers, or cash assistance (TANF), may affect eligibility for adjustment of status.

Employment Authorization

Generally, VAWA self-petitioners are not eligible to apply for employment authorization until the VAWA self-petition is approved. However, if the self-petitioner files an application for adjustment of status, she qualifies to apply for employment authorization during the pendency of the application for adjustment of status.

Eligibility

To receive employment authorization pursuant to 8 C.F.R. § 274a.12, a VAWA self-petitioner meet one of the following grounds:

- (c)(9) – pending application for adjustment of status (Form I-485)
- (c)(14) – approved deferred action status
- (c)(31) – approved VAWA self-petition (when no deferred action is granted)

Note: there is no eligibility based solely on the pending I-360. Therefore, unless the self-petitioner qualifies to file an application for adjustment of status, she will not be eligible for employment authorization during the pendency of the VAWA self-petition.

USCIS Forms and Fees

The form for employment authorization is the Form I-765 and the current fee is $380. However, there is no fee for the initial or renewal I-765 when submitted with an application for adjustment of status. The $1070 filing fee for an application for adjustment of status includes the initial filing for the I-765 and any renewals. However, the client would need to submit proof of that initial $1070 filing fee when submitting any I-765 renewal applications.

If the client is unable to pay the I-765 filing fee, she should submit a fee waiver request using Form I-912, Request for Fee Waiver. The applicant also should submit any documentation that would substantiate the request such as a LINK Card, SNAP benefit statement, taxes, earnings statements, utility bills, rent receipts, etc.

Renewal of Employment Authorization

USCIS generally issues employment authorization in one year time periods. The client will need to renew her employment authorization up to four months before it expires unless she has been granted lawful permanent residence.

If the client is renewing her employment authorization based on deferred action, she will also need to include a request to extend deferred action. Generally a cover letter requesting the extension of deferred action accompanied by the I-765 and supporting documents is sufficient.

Obtaining a Social Security Number

Upon receipt of an employment authorization document, the client should apply for a social security number at the nearest social security administration office. The social security administration will issue the client a restricted social security number that is only valid for employment with authorization from USCIS. With the valid employment authorization card and social security number, the client can obtain lawful employment. In addition, the foreign national can apply for an Illinois state identification and driver's license, if qualified to do so.

When the USCIS later approves the client's application for adjustment of status, she should return to the social security office with her LPR card and request that the restriction requiring employment authorization be removed from her social security card.

Derivatives

In many cases, the self-petitioners unmarried children under the age of 21 may qualify as derivatives on the self-petition. Therefore, when there are minor children, it is important to note their dates of birth and file the VAWA self-petition before any of the derivatives turns 21. Filing the VAWA self-petition late may result in a child losing the possibility of obtaining lawful status with their parent.

When USCIS approves the principal's VAWA self-petition, the I-360 approval should list all derivatives. If the derivatives are in the United States, with the I-360 approval, they may be eligible to file a request for deferred action and an application for employment authorization. The derivative child may want the employment authorization even if too young to work because it provides a government issued identification and allows the derivative to apply for a social security number.

If the VAWA self-petitioner qualifies for and applies for adjustment of status, please check with NIJC to determine if the derivative child also qualifies. If the child qualifies, he/she must file their own separate application for adjustment of status.

Closing the *Pro Bono* Case After Approval

The *pro bono* representation should end upon completion of the agreed upon representation listed in the retainer agreement. NIJC provides *pro bono* support according to NIJC's *pro bono* retainer with the client. Therefore, if NIJC signs a retainer for the VAWA self-petition, we would expect that the *pro bono* representation terminate upon approval of the VAWA self-petition. If the retainer also specifies that it is for adjustment of status, then the *pro bono* representation would continue through the adjustment of status. Similarly, the NIJC *pro bono* retainer will specify whether derivatives are also clients and if so, the scope of their representation.

NIJC encourages *pro bono* counsel to sign their own retainers with the clients limiting it to the same representation as listed in NIJC's *pro bono* retainer. If there is any modification to the *pro bono* representation and includes matters outside the scope of NIJC's *pro bono* retainer, please contact NIJC as we cannot guarantee to provide technical support for matters outside the scope of our retainer.

Once the terms of the retainer are met (generally the client has been granted either a VAWA self-petition or adjustment of status, if applicable), we recommend that the *pro bono* attorney send the client a closing letter. In addition, please send a copy of the approval notices and a complete copy of the file to NIJC, if you have not previously done so. Upon receipt, NIJC will mail the client a closing letter with appropriate advisals and will also close the case at our office.

Now that your case is complete, please consider reviewing NIJC's case list for additional *pro bono* opportunities and encouraging colleagues to consider our *pro bono* projects!

For More Information on Immigration Issues and Domestic Violence Contact NIJC

National Immigrant Justice Center
A Heartland Alliance Partner
208 S. LaSalle St., Suite 1300
Chicago, IL 60604
312-660-1370
www.immigrantjustice.org

Important Phone Numbers and Addresses

- Vermont Service Center (for Attorneys of Record only):*
  - Inquiry Hotline: 802-527-4888; OR
  - Inquiry Email: HotlineFollowUpI360.Vsc@dhs.gov

*Please include your name, organization's name and phone number in addition to the client's name, date of birth, A number, receipt number for the application, and the nature of the inquiry
*The VSC generally responds to emails and phone messages within 72 hours

- Immigration Court Automated Hotline: 800-898-7180

- Chicago Domestic Violence Hotline (for shelter or counseling referrals): 877-863-6338

- National Domestic Violence Hotline: 800-799-SAFE or www.ndvh.org

- Customs & Border Protection FOIA Information: www.cbp.gov/xp/cgov/admin/fl/foia/

- Executive Office for Immigration Review FOIA Information: www.justice.gov/eoir/efoia/foiafact.htm

- Orders of Protection in Illinois:
  - Illinois Legal Aid
    http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_Content&contentID=5177#a=intro

  - Domestic Violence Court Advocacy Program
    http://www.hullhouse.org/programsandcenters/program/domesticviolencecourt.html

Glossary of Immigration Terms

* * *

A

"A" Number: An eight digit number (or nine digits, if the first number is a zero) beginning with the letter "A" that the DHS gives to some non-citizens. (Please note that EOIR now requires all A Numbers to be submitted as nine digit numbers. If your client's A Number only has eight digits, add a "0" to the beginning of the number.)

Adjustment of Status: A process by which a non-citizen in the United States becomes a lawful permanent resident without having to leave the United States.

Admission: The decision of the DHS to allow a non-citizen at the United States border or international airport or seaport to enter the United States.

Admissible: A non-citizen who may enter the United States because he/she is not among the classes of aliens who are ineligible for admission or has a waiver of inadmissibility.

Affidavit of Support: A form (I-134) filed by a U.S. citizen or lawful permanent resident for a non-citizen seeking lawful permanent residence.

Aggravated Felon: One convicted of numerous crimes set forth at INA § 101(a)(43). An aggravated felony includes many crimes, but the most common are: (1) drug trafficking--any crime involving distribution, importation or sale of drugs, no matter the amount or the sentence; (2) the crime of theft, robbery or burglary with one year sentence whether imposed or suspended; and (3) the crime of violence with a one year sentence whether imposed or suspended.

Alien: A person who is not a citizen or national of the United States.

Alien Registration Receipt Card: The technical name for a "green card," which identifies an immigrant as having permanent resident status.

Aliens Previously Removed: Ground of inadmissibility, for persons previously removed for anywhere from five years to twenty years depending on prior circumstances.

Aliens Unlawfully Present: Ground of inadmissibility for three years for an individual unlawfully present in the United States for more than 180 days but less than one year commencing April 1, 1997 or for ten years if unlawfully present for one year or more.

Asylee: A person who is granted asylum in the United States.

Asylum: A legal status granted to a person who has suffered harm or who fears harm because of his/her race, religion, nationality, political opinion or membership in a particular social group.

B

Beneficiary: A person who will gain legal status in the United States as a result of a visa petition approved by the DHS.

C

Cancellation of Removal: Discretionary remedy for an LPR who has been a permanent resident for at least five years and has resided continuously in the United States for at least seven years after having been admitted in any status and has not been convicted of an aggravated felony, or anyone physically present in the United States for a continuous period of not less than ten years, who has been a person of good moral character during such period, has not been convicted of certain offenses and who establishes that removal would result in "exceptional and extremely unusual hardship" to the U.S. citizen or LPR spouse, parent, or child.

Child: The term "child" means an unmarried person under twenty-one years of age who is: (1) a legitimated child; (2) a stepchild; (3) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile; (4) an illegitimate child; (5) a child adopted while under the age of sixteen; and (6) a child who is an orphan. There is a significant amount of case law interpreting these categories.

Citizen (USC): Any person born in the fifty United States, Guam, Puerto Rico, or the U.S. Virgin Islands; or a person who has naturalized to become a U.S. citizen. Some people born abroad are also citizens if their parents were citizens.

Conditional Permanent Resident Status: A person who received lawful permanent residency based on a marriage to a U.S. citizen, which was less than two years old at the time. Conditional residents must file a second petition with the U.S. citizen within two years of receiving their conditional resident status in order to retain their U.S. residency.

Consular Processing: The process by which a person outside the United States obtains an immigrant visa at a U.S. consulate in order to travel to the United States and enter as a lawful permanent resident.

Conviction: Formal judgment of guilt entered by a court or, if adjudication of guilt was withheld, if a judge or jury has found the person guilty or the person has entered a plea of guilty or *nolo contendere* and has admitted sufficient facts to warrant a finding of guilt and the judge has ordered some form of punishment, penalty or restraint.

Credible Fear Interview: An interview which takes place if an alien who arrives in the United States with false documents or no documents, and is therefore subject to expedited removal, expresses a fear of persecution or a desire for asylum. The purpose of the interview is to determine if the alien can show that there is a significant possibility that he/she can satisfy the qualifications for asylum.

D

Deferred Action: An exercise of prosecutorial discretion in which DHS will not to pursue removal of a foreign national from the United States for a specified time period. Deferred action is not a legal status, but an alien in deferred action status may apply for employment authorization.

Department of Homeland Security (DHS): The federal department charged, in part, with implementing and enforcing immigration law and policy.

Deportable: Being subject to ejection from the United States for violating an immigration law, such as entering without inspection, overstaying a temporary visa, or being convicted of certain crimes.

Deportation: The ejection of a non-citizen from the United States. Prior to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), non-citizens were ejected from the United States through deportation proceedings. IIRIRA combined what were formerly known as deportation proceedings and exclusions proceedings into once single removal procedure.

Detention: Asylum seekers who enter the United States without documentation may be detained at a DHS detention facility until they pass a credible fear interview or until the completion of their asylum hearing.

Derivative Family Member: An individual who will gain legal status in the United States by virtue of their qualifying relationship to a principal beneficiary of a visa petition or other application for lawful status.

E

Entry: Being physically present in the United States after inspection by the DHS or after entering without inspection.

Entry Without Inspection (EWI): Entering the United States without being inspected by the DHS, such as a person who runs across the border between the United States and Mexico or Canada. This is a violation of the immigration laws.

Employment Authorization Document (EAD): The I-688 card that the DHS issues to a person granted permission to work in the United States. The EAD is a plastic, wallet-sized card.

Excludable: Being inadmissible to the United States for violating an immigration law, such as for not possessing a valid passport or visa, or for having been convicted of certain crimes.

Exclusion: The ejection of a non-citizen who has never gained legal admission to the United States (however, the person may have been physically present in the United States). Prior to IIRIRA, non-citizens who had never gained legal admission to the United States were ejected through exclusion proceedings. IIRIRA combined

what were formerly known as deportation proceedings and exclusions proceedings into once single removal procedure

Executive Office for Immigration Review (EOIR): The Immigration Court, the Board of Immigration Appeals, and one other agency within the Department of Justice that decides immigration cases.

Expedited Removal: An abbreviated removal procedure applied to aliens who arrive in the United States with false documents or no documents.

I

I-94 Card: A small white paper card issued by the DHS to most non-citizens who do not have green cards upon entry to the United States. It is usually stapled to a page of the non-citizen's passport. The DHS may also issue I-94 cards in other circumstances.

Illegal Alien: See "Undocumented".

Immigration and Customs Enforcement (ICE): The agency within the Department of Homeland Security responsible for overseeing detention and release of immigrants and the investigation of immigration-related administrative and criminal violations.

Immediate Relative: The spouse, parent, or unmarried child under 21 of a U.S. citizen. Generally speaking, the immigration laws treat immediate relatives better than other relatives of citizens or legal permanent residents.

Immigrant: A person who has the intention to reside permanently in the United States; usually a lawful permanent resident.

Immigrant Visa: A document required by the INA and required and properly issued by a consular office outside of the United States to an eligible immigrant under the provisions of the INA. An immigrant visa has six months validity.

Immigration and Nationality Act (INA): The immigration law that Congress originally enacted in 1952 and has modified repeatedly.

Immigration and Naturalization Service (INS): Former branch of the United States Department of Justice charged with enforcing the immigration laws. On March 1, 2003, the INS ceased to exist. Responsibility for immigration policy and immigration functions is now shared between the Department of Justice and the Department of Homeland Security.

Immigration Judge: Presides over removal proceedings.

Inspection: The DHS process of inspecting a person's travel documents at the U.S. border or international airport or seaport.

L

Lawful Permanent Resident (LPR): A person who has received a "green card" and whom the DHS has decided may live permanently in the United States. LPRs eventually may become citizens, but if they do not, they could be deported from the United States for certain activities, such as drug convictions and certain other crimes.

N

Native: A person born in a specific country.

National: A person owing permanent allegiance to a particular country.

Naturalization: The process by which an LPR becomes a United States citizen. A person must ordinarily have been an LPR for five years before applying for naturalization. A person who became an LPR through marriage to a U.S. citizen and is still married to that person in most cases may apply for naturalization after three years as an LPR.

Nicaraguan Adjustment and Central American Relief Act (NACARA): Legislation passed by Congress in 1997 to restore the opportunity for certain individuals present in the United States to adjust to permanent resident status. The legislation covers Cubans and Nicaraguans, Guatemalans, Salvadorans, and certain East Europeans of Former Soviet Bloc Countries. Under the legislation, different requirements apply to each group.

Non-citizen: Any person who is not a citizen of the United States, whether legal or undocumented. Referred to in the INA as an "alien."

Nonimmigrant: A person who plans to be in the United States only temporarily, such as a person with a tourist or student visa. A nonimmigrant will ordinarily have a visa stamp in his/her passport, and an I-94 card which states how long the person can stay in the United States.

Nonimmigrant Visa: A document issued by a consular officer signifying that the officer believes that the alien is eligible to apply for admission to the United States for specific limited purposes and does not intend to remain permanently in the United States. Nonimmigrant visas are temporary.

Notice to Appear: Document issued to commence removal proceedings, effective April 1, 1997.

O

Order to Show Cause: Document issued to commence deportation proceedings prior to April 1, 1997.

Overstay: To fail to leave the United States by the time permitted by the DHS on the nonimmigrant visa (as ordinarily indicated on the I-94 card), or to fail to arrange other legal status by that time.

P

Parole: To permit a person to come into the United States who may not actually be eligible to enter, often granted for humanitarian reasons, or to release a person from DHS detention. A person paroled in is known as a "parolee."

Petitioner: A U.S. citizen or LPR who files a visa petition with the DHS so that his/her family member may immigrate.

Priority Registration Date (PRD): Everyone who files an I-130 Petition For Alien Relative receives a priority registration date. Once a person's PRD becomes current, meaning that a visa is available, he/she can apply for LPR status. This may take a long time, as visa numbers often are not available for many years after the I-130 is approved.

R

Refugee: A person who is granted permission while outside the United States to enter the United States legally because of harm or feared harm due to his/her race, religion, nationality, political opinion or membership in a particular social group.

Relief: Term used for a variety of grounds to avoid deportation or exclusion.

Removal: Proceedings to enforce departure of persons seeking admission to the US who are inadmissible or persons who have been admitted but are removable. After IIRIRA, aliens are placed into removal proceedings instead of deportation or exclusion proceedings.

Rescission: Cancellation of prior adjustment to permanent resident status.

Residence: The principal and actual place of dwelling.

Respondent: The term used for the person in removal proceedings.

S

Service Centers: Offices of the DHS that decide most visa petitions. There are four regional Service Centers for the entire United States: the Vermont Service Center (VSC); the Nebraska Service Center (NSC); the Texas Service Center (TSC); and the California Service Center (CSC).

Stowaway: One who obtains transportation on a vessel or aircraft without consent through concealment.

Suspension of Deportation: Commonly referred to as "Suspension." A way for a non-citizen to become a lawful permanent resident. Historically, suspension has only been available to a person who is in deportation proceedings. The non-citizen usually must show that he/she has resided continuously in the United States for at least seven years, is a person of good moral character, and either he/she or his/her U.S. citizen or LPR relative will suffer extreme hardship is he/she is deported. In the Violence Against Women Act, Congress created a new "suspension of deportation" for spouses and children of U.S. citizens or LPRs who can show that they have been

victims of domestic violence or sexual abuse. These persons need only prove three years of continuous residence in the United States.

T

Temporary Protected Status (TPS): A status allowing residence and employment authorization to the nationals of foreign states, for a period of not less than six months or more than eighteen months, when such state (or states) has been appropriately designated by the Attorney General because of extraordinary and temporary conditions in such state (or states).

U

Undocumented: A non-citizen whose presence in the United States is not known to the DHS and who is residing here without legal immigration status. Undocumented persons include those who originally entered the United States legally for a temporary stay and overstayed or worked without DHS permission, and those who entered without inspection. Often referred to as "illegal aliens."

United States Citizenship And Immigration Services (USCIS): The agency within the Department of Homeland Security responsible for adjudicating all applications for immigration benefits.

U-Visa A non-immigrant visa that allows non-citizen victims of crime to stay in the United States and obtain employment authorization. After three years in U-visa status, the non-citizen may be able to adjust status to obtain lawful permanent residency. Certain family members of the U-visa holder may also be eligible for derivative U-visa status.

V

Violence Against Women Act (VAWA): Legislation passed by Congress in 1994, which contained certain immigration provisions. The immigration law provisions allow a spouse and children, or parents of children, who have been abused or subject to extreme cruelty by their legal permanent resident or United States citizen spouse or parent to immigrate without the assistance of the LPR or USC spouse or parent, provided that they meet certain conditions.

Visa: A document (or a stamp placed in a person's passport) issued by a United States consulate abroad to a non-citizen to allow that person to enter the United States. Visas are either nonimmigrant or immigrant visas.

Visa Petition: A form (or series of forms) filed with the DHS by a petitioner, so that the DHS will determine a non-citizen's eligibility to immigrate.

Voluntary Departure: Permission granted to a non-citizen to leave the United States voluntarily. The person must have good moral character and must leave the United States at his/her own expense, within a specified time. A non-citizen granted voluntary departure can reenter the United States legally in the future.

W

Waiver: The excusing of a ground of inadmissibility by the DHS or the Immigration Court.

Work Permit: There is no single document in United States immigration law that is a "work permit." Citizens, nationals, and lawful permanent residents are authorized to be employed in the United States. Certain nonimmigrant visa categories include employment in the United States. Other aliens in the United States may have the right to apply for an Employment Authorization Document (EAD).

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