

KNOW YOUR RIGHTS

IMMIGRATION AND DOMESTIC VIOLENCE

1. What is a self-petition under the Violence Against Women's Act?

Usually, an immigrant has to wait until her US citizen or lawful permanent resident (LPR) spouse applies to the Immigration Naturalization Service (INS) for her green card. Her spouse must submit the application and participate in the entire process which can be quite lengthy. However, because abusive spouses use this process to control and manipulate victims of domestic violence, the Violence Against Women's Act (VAWA) was passed, which allows domestic violence victims and their children to apply for green cards without the consent or participation of the spouse. This application is called a VAWA self-petition (Form I-360).

2. What are the eligibility requirements for a self-petition?

A person may be eligible for a self-petition if she meets the following requirements:

- *She is currently legally married to a US citizen or LPR or she was the spouse of a US citizen or LPR within*

the last two years and the spouse lost his status due to an incident of domestic violence (where spouse is deported) or there is a connection between the legal termination of the marriage and the domestic violence (when you're divorced because of domestic violence) or during the relationship, she was battered or subject to extreme cruelty by her spouse

- *She entered the marriage in good faith*
- *She resided with her spouse*
- *She is a person of good moral character*

3. What is a battered spouse waiver and to whom does it apply?

A spouse who has a temporary green card is considered a conditional resident. This means she filed for a green card within the first two years of marriage to her spouse, and the INS granted her temporary status to ensure that she did not get married solely for immigration purposes and the marriage was entered in good faith. Usually, in order to obtain her permanent green card, she must file a joint petition with her spouse after two years of obtaining the conditional green card. This process is called removing the conditions.

Victims of domestic violence can apply to remove the conditions without the participation of the spouse. This petition can be filed at any time before or after the two year period. This application, called a battered spouse waiver (Form

I-751), is similar to a self-petition but is easier to file.

4. What other immigration options are available for victims of domestic violence?

U Nonimmigrant Visas - This allows victims of certain crimes (including domestic violence, felonious assault, rape, etc) to obtain legal status. It can benefit clients who are not otherwise eligible to self-petition because they are not legally married to their abuser or their abuser is not a USC or LPR

Requirements for U Nonimmigrant Visas:

- *Suffered substantial physical or mental abuse as a result of having been a victim of the qualifying crime.*
- *In possession of information about the criminal activity.*
- *Has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local prosecutor, to a judge, to USCIS, or other state, federal, or local authorities investigating or prosecuting criminal activity.*

T Nonimmigrant Visas - These are available to victims of a "severe form of trafficking in persons." This term is defined as trafficking for sex or labor. The applicant must show the following:

- *Is physically present in the United States on account of the trafficking.*
- *Would suffer extreme hardship involving unusual and severe harm upon removal.*

VAWA Cancellation of Removal -

This option becomes available when an immigrant is in removal proceedings in Immigration Court. She must establish that:

- *She has been present in the U.S. continuously for three years*
- *that her U.S. citizen/LPR spouse or parent subjected her to battery or extreme cruelty*
- *that she is a person of good moral character and that removal would cause extreme hardship to herself or to her U.S. citizen/LPR child or parent*
- *that she is not “inadmissible” to the U.S. due to criminal activity or other fraud issues.*

If an immigrant is granted cancellation of removal, she will become a Legal Permanent Resident.

Asylum - Asylum is available to applicants who can show that they are unable or unwilling to return to their home country because of past persecution or a “well founded fear of persecution on account of race, religion, and nationality, membership in a particular social group or political opinion.”

Work Permits for Abused Spouses of Certain Non-Immigrant Visa Holders

- Derivative spouses of A (diplomatic visa), E (iii) (treaty-based travel), G (visa category related to officials or employees of foreign governments or international organizations), and H (business visa) visa holders who are accompanying

or following to join the principal visa holder can obtain work authorization. The derivative spouse must demonstrate that he or she (or his or her child) has been battered or subject to extreme cruelty perpetrated by the principal non-immigrant visa holder. Obtaining work authorization, however, does not create any separate status and the derivative spouse is not eligible to apply for lawful permanent residency.

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