



VIOLENCE AGAINST WOMEN ACT (VAWA)

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VAWA was first enacted in 1994 and has since been reauthorized, the latest in 2005. It allows non U.S. citizen and non Lawful permanent resident survivors of domestic violence and other crimes to obtain legal status without having to rely on their abusers. The focus is on battered spouses, children and parents of U.S. citizens or lawful Permanent residents.

The spouse, child or parent who is subject to extreme cruelty or battered by a U.S. citizen or lawful permanent resident may file a self-petition for permanent resident status on form I-360. They can self-petition for immigration relief without the abuser's assistance or knowledge. Certain criteria need to be met.

SELF PETITIONING SPOUSE

- Must be legally married to the abusive U.S. citizen or lawful permanent resident
- Was married to the abusive U.S. citizen or lawful permanent resident but marriage was terminated due to the death of the abusive spouse within the two years prior to filing
- Was married to abusive U.S. citizen spouse or lawful permanent resident but marriage was terminated within two years prior to filing due to divorce related to the abuse
- Is residing in the U.S. or has resided in the U.S. with the abusive U.S. Citizen or Lawful Permanent Resident Spouse
- Was battered in the U.S. unless the abusive spouse is a U.S. government employee or a member of the U.S. military
- Must have been battered or subjected to extreme cruelty during the marriage OR is the parent of a child (under 21 years of age) who has been battered or subjected to extreme cruelty by the U.S. citizen or lawful permanent resident during the marriage
- Is a person of good moral character
- Must have entered into a good faith marriage and not solely for obtaining immigration benefits
- Is a person whose deportation would result in extreme hardship to self or to his/her child
- Is eligible for immigration classification based on the relationship

SELF-PETITIONING CHILD

- May file self-petition until the age of 25 if she/he can demonstrate that the abuse was at least one central reason for the delay
- Otherwise, must be unmarried
- Is the child (under 21 years of age) of a U.S. citizen or lawful permanent resident of the U.S.
- Is residing or has resided in the U.S. with the abusive parent

- Has been battered by or was subject to extreme cruelty by the parent while residing with that parent

- Is a person of good moral character

SELF-PETITIONING PARENT

- Is the parent of a current U.S. citizen
- Was the parent of an abusive U.S. citizen who within the past two years lost or renounced the U.S. citizenship due to a domestic violence incident or who has died
- Is residing or has resided with the U.S. citizen son or daughter
- Was subjected to battery or extreme cruelty by the U.S. citizen or permanent resident
- Is a person of good moral character
- Is eligible for immigration classification



The petition needs to be accompanied by evidence of the aforementioned. Evidence of the qualifying relationship may be established by marriage certificates in the case of a self-petitioning spouse; a birth certificate issued by civil authorities in the case of

a self-petitioning child.

Tax returns, mortgages, rental records, utility records, credit card records, insurance policies, school records, medical records etc. may be submitted as evidence of residing together.

Evidence of abuse may include, but not necessarily limited to, reports and affidavits from police, judges, medical personnel, school officials, social workers as well as copies of any legal documents such as restraining orders, orders of protection, etc.

Evidence of extreme hardship may be in the form of affidavits, medical reports, protection orders and other court documents, and police reports.

The self-petitioner's affidavit is primary evidence

of good moral character. The affidavit should be accompanied by either a police clearance certificate or a state issued criminal background check from wherever the self-petitioner has resided for six or more months during the 3-year period prior to filing the petition.

If the USCIS approves the self-petition and the self-petitioner does not have legal immigration status in the U.S., the USCIS will place the person in deferred action. Deferred action means that the USCIS will not initiate deportation proceedings against the self-petitioner.

Self-petitioners and their derivative children with an approved petition are eligible to apply for employment authorization.

Under VAWA, spouses battered or subjected to extreme cruelty by certain non-immigrant professionals such as the A, G or H non-immigrant visa programs are eligible to apply for work authorization.

Self-petitioners who are immediate relatives of U.S. citizens, such as spouses and unmarried children under 21, may file for permanent resident status upon approval of the I-360 without having to wait for a visa number to become available. However, self-petitioners who require a visa number to file for permanent resident status must wait for a visa number to become available before filing for such permanent resident status.

Certain visas such as the "T" visa for victims of trafficking and the "U" visa for victims of certain crimes such as rape, torture, domestic violence, sexual assault, etc. are available for those individuals who do not meet the criteria for self-petitioning.

Please note that all facts above are general in nature and that all cases are unique. Before making a decision on any legal matter on your own, you are advised to consult with an attorney.

Please send your questions to legal@citymasala.com.

Domestic violence is a systematic pattern of behavior in a relationship that is used to gain and/or maintain control over another. This abuse can be emotional, financial, psychological, sexual, or physical. Without intervention, this pattern of behavior typically escalates in frequency and severity.

Some organizations that may be helpful in providing general information include:

The Minnesota Center Against Violence and Abuse Electronic Clearinghouse or www.mincava.umn.edu - posts information about domestic vio-

What is domestic violence?

lence. On this website, you will also find information about a variety of other types of violence and service providers.

National Coalition Against Domestic Violence or www.ncadv.org - posts information on "what is battering", barriers to leaving a violent relationship, predictors of violence and resources for getting help.

Pennsylvania Coalition Against Domestic Violence or www.pcadv.org - offers fact sheets about domestic violence and the article "Are you ... a battered woman?"