CHAPTER FIVE

OVERVIEW OF IMMIGRATION RELIEF FOR IMMIGRANT VICTIMS OF ABUSE AND CRIME

I. INTRODUCTION

Immigrant victims of domestic abuse and crime are particularly vulnerable in both the criminal and immigration processes. Uncertainty as to their immigration status, coupled with fear of removal and the resulting separation from family and support networks, frequently make immigrant victims reluctant to report their abusers to the authorities or to seek relief. Over the past two decades, through the advocacy of immigrant, domestic abuse, and human rights activists, Congress has become increasingly aware of the special vulnerability of immigrant victims and has implemented a number of special forms of immigration relief for them. This section will first list those forms of immigration relief that apply in particular to immigrant victims of abuse and crime and will then briefly describe the requirements and process for the forms of relief not covered elsewhere in this manual.

The forms of immigration relief in the following list are specifically directed to spouses and children of abusive United States citizens (USCs) and lawful permanent residents (LPRs). Self-petitioning also applies to parents of abusive USC sons and daughters:

- VAWA self-petitioning for lawful permanent resident status
- VAWA cancellation of removal, and
- the abused spouse waiver for conditional permanent residence.

In addition, there are now several forms of immigration relief for victims of abuse and crime, even though they are not related to USCs or LPRs. These are:

- T nonimmigrant status for victims of severe forms of human trafficking;
- U nonimmigrant status for persons who have suffered substantial harm as a result of being the victim of certain listed crimes;
- Special Immigrant Juvenile Status for children found dependent on a juvenile court, and;
- Asylum and related protections.

Of course, these victims may also apply for any other form of immigration relief for which they are eligible.

The abused spouse waiver for conditional permanent residents, Special Immigrant Juvenile Status, and asylum and related protections are covered elsewhere in this manual. This chapter will focus on VAWA self-petitioning, VAWA cancellation of removal, and T and U visas.

II. SELF-PETITIONING FOR ABUSED SPOUSES AND CHILDREN OF UNITED STATES CITIZENS AND LAWFUL PERMANENT RESIDENTS (INA §§ 204(a)(1)(A)(iii) – (vi); (B)(i) – v); (C); (D); (J)

A. OVERVIEW

Under the regular family immigration process, the USC or LPR spouse or parent files a visa petition with USCIS asking that his or her spouse or child be granted permanent resident status. If that petition is approved, then the foreign spouse or child applies for a visa, based upon the USC or LPR relative's approved petition. Unfortunately, this process can work great hardship on victims of domestic abuse, because the abuser, who initiates the immigration process, can use that process as a tool to control the victim. For example, the abuser may refuse to begin or continue in the immigration application, or may threaten to report the victim to the immigration authorities if the victim seeks help or attempts to report the abuse.

In response to this problem, Congress devised a procedure known as "self-petitioning" in the Violence against Women Act of 1994, updated in the Battered Immigrant Women Protection Act of 2000 (VAWA 2000) and the Violence Against Women Reauthorization Acts of 2005 and 2013. "Self-petitioning" allows the foreign spouse or child (defined as unmarried and under 21 years of age) of a USC or LPR abuser to file his or her own petition for a visa (called a "self-petition"), thereby allowing the victim, instead of the abuser, to initiate and control the immigration process. An important new benefit was added by VAWA 2005, which provides that parents of abusive USC sons and daughters may also self-petition.

VAWA self-petitions are filed with the CIS's Vermont Service Center, on Form I-360. An abused spouse or child may file the self-petition even if he or she is in the United States in unlawful status.

If the self-petition is approved, the self petitioner and his or her children are given permission to remain in the United States, with employment authorization, until a lawful permanent resident visa is available for them. This permission to remain is known as "deferred action status." Status as an abused spouse or child generally also entitles the victim to certain public benefits.

The following persons are eligible to self-petition:

- Abused spouses of USCs and LPRs
- Non-abused spouses whose children have been abused by the USC or LPR spouse, even if the children and abuser are not related
- Abused persons who believed that they were validly married to a USC or LPR abuser, but whose marriage was invalid solely because the abuser was already married (known as "intended spouses")
- Abused children of USCs and LPRs (abused sons and daughters of USCs and LPRs who are now over 21 but under 25 may self-petition up to age 25 if the abuse was "at least one central reason" for the filing delay)
- Abused parents of USC sons and daughters.

Moreover, applicants in the first four of the foregoing categories may include their children in their self-petitions. This applies even to those applicants who are themselves children.

A self-petitioning spouse must establish the following:

- Marriage or "intended marriage" to the abuser
- The abuser is a USC or LPR
- The victim entered into the marriage in good faith, meaning that he or she intended to establish a life together with the spouse and did not enter into the marriage solely for immigration purposes
- Battery or extreme cruelty by the USC or LPR spouse during the marriage on the self-petitioner or his or her child
- Past or present residence with the abuser (but there is no minimum amount of time that the victim must have lived with the abuser)
- Either (a) current residence in the United States or (b) if living abroad, the abuser is an employee of the U.S. government or a member of the U.S. uniformed services or abused the alien spouse or the alien spouse's child in the United States; and
- Good moral character.

A self-petitioning abused child must establish the following:

- Relationship to the abusive parent
- The self-petitioner is a child, meaning unmarried and under 21, at the time the application is filed (Note exception described above for abused sons and daughters of USCs and LPRs)
- The USC or LPR parent battered or inflicted extreme cruelty upon the self-petitioner
- The self-petitioner is of good moral character (presumed for children under 14)
- Past or present residence with the abuser (visitation is sufficient), and
- Either (a) current residence in the United States or (b) if living abroad, the abusive parent is an employee of the U.S. government or a member of the uniformed services or subjected the applicant to abuse in the U.S.

A self-petitioning parent must establish the following:

- Relationship to the abusive son or daughter
- The self-petitioner is a person of good moral character
- Is an immediate relative under INA § 201(b)(2)(A)(i) (indicating that the abusive USC son or daughter must be at least 21 years of age), and
- Past or present residence with the abusive USC son or daughter.

It is not yet clear whether self-petitioning parents may apply outside the United States.

In regard to the requirement of good moral character, there is a special waiver, allowing CIS to find that the self-petitioner is a person of good moral character despite falling under one of the statutory bars to good moral character in INA § 101(f), if the act or conviction that creates the statutory bar was connected to the applicant's having been abused.

B. BATTERY OR EXTREME CRUELTY

The term used for abuse under the INA is "battery or extreme cruelty." This phrase is defined broadly under the INS/USCIS regulations (8 C.F.R. § 204.2 *et seq*.) and includes both physical and mental abuse. The term includes, but is not limited to:

- Acts and threatened acts of violence
- Forceful detention causing physical or mental injury
- Psychological abuse
- Sexual abuse, rape, molestation
- Forced prostitution
- Acts that may not appear violent but are part of an overall pattern of violence
- Social isolation
- Accusations of infidelity
- Stalking
- Interrogating the victim's friends, family, or coworkers
- Economic abuse (such as not allowing the victim to work outside the home), and
- Actions against some other person or thing if these acts were deliberately used to perpetrate extreme cruelty against the self-petitioner or the self-petitioner's child.

C. DOCUMENTING THE ABUSE

Congress has imposed a special standard of proof for self-petitions, known as the "any credible evidence" standard. This means that forms of proof that might not necessarily meet the evidentiary standards for introduction into evidence in court must be considered in a VAWA self-petition and may well meet the self-petitioner's burden of proof. Police reports and law enforcement records of telephone calls or visits to the victim's address are excellent forms of evidence to support a VAWA self-petition. However, neither police reports nor law enforcement records are required to meet the burden of proof in VAWA self-petitions.

D. CERTAIN CHANGES IN STATUS DO NOT AFFECT THE SELF-PETITION

Both before a self-petition is filed and while it is pending, a number of changes in status can occur. These might include a child turning 21, or a self-petitioning abused spouse obtaining a divorce from the abuser. There are a number of special provisions under VAWA governing these sorts of changes. A summary of those types of changes and their effect on a self-petition follows:

An abused spouse may self-petition up to two years after a divorce from the abuser, if there was a connection between the divorce and the abuse. CIS does not require that the divorce decree specifically state that the termination 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.

An abused spouse of a USC may self-petition up to two years after the abuser's death.

An abused parent of a USC son or daughter may self-petition up to two years after the death of the USC son or daughter or, if the USC lost or renounced citizenship related to an incident of domestic violence, up to two years after the loss or renunciation of citizenship.

Spouses and children of USCs and LPRs can self-petition up to two years after the USC or LPR loses immigration status, if the loss of status is related to domestic violence.

A self-petitioner's remarriage after the self-petition is approved will not revoke the approval.

Self-petitioning and derivative children do not "age out" of eligibility, as long as they were under 21 when the self-petition was filed. Moreover, the Child Status Protection Act applies to VAWA self-petitions.

Abused sons and daughters of USCs and LPRs who qualified to self-petition before turning 21 may file the self-petition prior to reaching age 25, if the abuse the person suffered was at least one central reason for the filing delay.

E. BENEFITS FOR APPROVED VAWA SELF-PETITIONERS

Deferred action status until the self-petitioner is eligible to adjust status to that of lawful permanent resident.

- Employment authorization
- Public benefits, generally including medical care, food stamps, and TANF
- Relaxed requirements for obtaining lawful permanent residence through "adjustment of status," and
- Special waivers of inadmissibility grounds.

III. VAWA CANCELLATION OF REMOVAL FOR ABUSED SPOUSES AND CHILDREN OF USCs AND LPRs WHO HAVE BEEN IN THE UNITED STATES FOR THREE YEARS – INA § 240A(b)(2)

Some abused spouses and children of LPRs and USCs may not be eligible to self-petition, but may still be eligible for a related form of relief known as VAWA cancellation of removal. A grant of cancellation of removal gives the recipient lawful permanent resident status, with accompanying employment authorization, and may also make the recipient eligible for public benefits. Unlike self-petitioning, however, cancellation of removal may be applied for only in removal proceedings in the Immigration Court, as a form of relief from removal. Where the cancellation case is very strong, the victim may wish, after thorough explanation of the consequences from his or her advocate, to consider asking ICE to implement removal proceedings, so that the victim may apply for cancellation.

The following persons are eligible to apply for cancellation of removal:

- Abused spouses of USCs and LPRs

- Abused sons and daughters (both children and persons over 21) of USCs
- Parents of abused children of USCs or LPRs, even if not married to the abuser, and
- Abused "intended spouses" of USCs or LPRs.

A grant of cancellation does not include the recipient's children, but DHS must parole the recipient's child, or, if the recipient is a child, the recipient's parent, into the United States and grant them employment authorization. This parole status lasts until the child or parent is able to obtain a permanent resident visa based upon a visa petition filed by the recipient, now an LPR.

As can be seen from the list of persons eligible to apply for cancellation of removal, that list is wider than the group of persons eligible to self-petition. For example, the following persons are eligible for cancellation, even though they could not self-petition:

- An adult son or daughter of an abusive USC or LPR
- Spouses of abusive USCs or LPRs who were divorced or widowed more than two years ago
- Persons who are parents of abused children of USCs or LPRs and who are not married to the abuser; and
- Sons and daughters whose USC or LPR abusive parent died more than two years ago.

An applicant for cancellation must meet the following requirements:

- Three years continuous physical presence in the United States (brief absences and abuses related to abuse do not interrupt this period)
- Good moral character during that time
- The USC or LPR spouse or parent has subjected the applicant or the applicant's child to battery or extreme mental cruelty
- Removal would cause extreme hardship to the applicant or his or her USC, LPR, or "qualified alien" child or parent
- The applicant is not inadmissible under the inadmissibility grounds dealing with commissions of crimes or security and related risks, nor deportable under the deportation grounds dealing with marriage fraud, crimes, failure to register, falsification of documents, or security and related issues, and
- The applicant has not been convicted of an aggravated felony, as defined at INA § 101(a)(43).

In regard to the good moral character requirement listed above, there is a special provision, similar to that for VAWA self-petitioners, allowing CIS to find that the applicant is of good moral character, despite falling under a statutory bar to good moral character, where the act of conviction creating the bar was connected to the applicant's having been abused.

IV. T AND U NONIMMIGRANT VISAS

In the Victims of Trafficking and Violence Protection Act of 2000, Congress devised two extraordinary types of nonimmigrant visas, known as the T and U visas from their locations at INA § 101(a)(15)(T) and (U). These visas are intended to protect victims of serious crime who have gathered the courage to come forward, report the crime, and assist in its investigation and prosecution. The T visas apply to victims of severe forms of human trafficking and reflect Congress' concern with the growing impact of human trafficking and its intention to vigorously prosecute traffickers and protect their victims. The U visa applies to non-citizens who suffer substantial physical or mental abuse resulting from a wide range of criminal activity, including felony assault; rape; manslaughter; and domestic violence. Note that while domestic violence is one of the qualifying crimes for U status, there are many other qualifying crimes that are not connected to domestic abuse.

The benefits of T and U visas are similar. Both provide authorized stay in the United States and employment authorization. After three years in either T or U nonimmigrant status, the nonimmigrant may apply to adjust status to that of lawful permanent resident. In addition, family members of the principal applicant may obtain derivative T or U status. An adult T or U nonimmigrant may apply for admission of his or her spouse and children. A T or U victim who is under 21 may apply for admission of his or her spouse, children, parent, and unmarried siblings under 18.

Importantly, neither T nor U visas require that the victim be related to a USC or LPR. The victim may apply for T or U visas regardless of his or her current immigration status and regardless of whether he or she is in the United States lawfully.

The T and U visas are an important collaboration between immigrant victims of crime and law enforcement. Through the law enforcement certificates required for U visa applicants and strongly recommended for T visa applications, law enforcement gains a new means of helping victims deal with the traumatic effects of crime and rebuild their lives. At the same time, immigrant victims gain security in their immigration status, enabling them to better assist law enforcement in investigating and prosecuting crime.

A. REQUIREMENTS FOR T NONIMMIGRANT VISAS FOR VICTIMS OF HUMAN TRAFFICKING, INA §§ 101(a)(15)(T), 214(o), 212(d)(13); 8 CFR § 214.11.

To be eligible for a T nonimmigrant visa, the applicant must meet the following requirements:

- The applicant is or has been a victim of a "severe form of trafficking in persons." This term is defined as trafficking for sex or labor. Sex trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining a person for the purpose of a commercial sex act, where the act is induced by force, fraud, or coercion, or where the person induced to perform the act is under 18 years of age. Labor trafficking means recruiting, harboring, transporting, providing, or obtaining a person for labor or services, through force, fraud, or coercion, for the purpose of subjecting the person to involuntary servitude or debt bondage.

- The applicant must be physically present in the United States, American Samoa, or the Northern Mariana Islands on account of the trafficking.

- The applicant must have complied with any reasonable request for assistance from federal, state, or local law enforcement in the investigation or prosecution of acts of trafficking, or must not have attained 18 years of ago.

- The applicant would suffer extreme hardship involving unusual and severe harm upon removal. In determining whether the applicant has experienced this level of hardship, CIS considers factors such as the applicant's age and personal circumstances, the physical or psychological consequences of the trafficking, the impact of loss of access to the U.S. criminal justice system for protection and criminal and civil redress, and whether the applicant would be protected in his or her country against retaliation or re-victimization.

The T visa application, like VAWA self-petitions, is adjudicated by the USCIS Vermont Service Center, rather than by local USCIS district offices.

Because of the foregoing requirements that the applicant have complied with any reasonable request for assistance in the investigation or prosecution of the crime, the applicant must have had contact with a law enforcement agency (LEA), in order to report the crime and be available for requests for assistance. Advocates should explain this requirement to clients and explain what the law enforcement agency may expect of witnesses, so that the client can make an informed decision on how he or she wishes to proceed. CLINIC is available to consult with Catholic Charities offices providing services to trafficking victims on trafficking cases in general and on the client's decision of whether to contact law enforcement agencies. A trafficking victim who has not yet had contact with an LEA may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline, at (888) 428-7581, to file a complaint and be referred to an LEA.

A determination of whether an LEA's request for assistance is reasonable requires considering the totality of the circumstances, taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the victim's specific circumstances, including fear, severe trauma, and age and maturity.

An application for a T visa is made on Form I-914 and must be supported by evidence to establish the requirements set forth above. One way to establish two of those requirements (that the applicant has been a victim of human trafficking and the applicant's compliance with any reasonable request from prosecutors) is through Supplement B to Form I-914, the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. It is important to remember, however, that a law enforcement certificate is not required for the T visa, although the applicant must present evidence that he or she has contacted a law enforcement agency and made himself or herself available to assist law enforcement.

B. OTHER RELIEF FOR VICTIMS OF TRAFFICKING

Not all trafficking victims wish to apply for the T visa. Instead, they may simply want to return home. Nonetheless, they may want to stay in the United States long enough to pursue civil

remedies such as wage and hour claims and damages lawsuits, or law enforcement may need them to stay in the United States in connection with a criminal investigation or prosecution. An alternate route to temporary authorized stay in the United States is a status known as "continued presence." Only law enforcement agencies or CIS may request continued presence. Requests for continued presence are sent to the USCIS Office of International Affairs/Parole/Humanitarian Affairs Branch (OIA/PHAB) in Washington, D.C. The OIA/PHAB telephone number is 202-305-2670; fax number is 202-514-0542.

When a trafficking victim receives either continued presence or a T visa, he or she is eligible for public benefits to the same extent as refugees in the United States.

C. REQUIREMENTS FOR U NON-IMMIGRANT RELIEF FOR VICTIMS OF CRIME – INA §§ 101(a)(15)(U), 214(p), 212(d)(14)

In 2007 USCIS issued regulations implementing the U visa statute. Prior to the issuance of regulations, CIS was granting "interim relief" in the form of deferred action status to persons who appeared to be potential U nonimmigrants.

Persons who may be eligible for U visas should not be removed from the United States until they have had the opportunity to avail themselves of the law. In addition, the immigration authorities should help in referring crime victims for services, such as medical care and reasonable protection.

An applicant for U nonimmigrant status or a U visa must establish the following:

- The applicant has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
- The applicant (or, if the applicant is under age 16, his or her parent, guardian or next friend) possesses information concerning the criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution;
- The criminal activity violated the laws of the United States or occurred in the United States or its territories or possessions, and;
- The application includes a certification from a federal, state, or local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from a DHS official, stating that the applicant "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the listed criminal activity. In contrast to T visas, U visas require a law enforcement certification.

Criminal activity, for purposes of the U visa, is defined as rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting, stalking or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes, or any similar activity in violation of federal, state or local criminal law.

Applications for U status, or for issuance of a U visa abroad, are made on an I-918 form, and are adjudicated at the Vermont Service Center. All applications must include a law enforcement certification completed on an I-918B form, and derivative status for eligible family members of the U applicant made be sought through submission of an I-918A form. There is no fee for the application, but applicants must pay a biometrics fee unless a fee waiver is granted.

An application for a U visa requires close collaboration with law enforcement, because of the requirement that the petition contain a certification from a federal, state, or local law enforcement agency. USCIS has

U status is granted for a four year period, and the U status recipient may apply for adjustment of status after three years. Applicants for adjustment of status must show

- Physical presence in the U.S. for three years since date of approval of U status;
- No unreasonable refusal to provide assistance to law enforcement in connection with the qualifying criminal activity leading to U status;
- No inadmissibility under INA § 212(a)(3)(E) (related to participants in Nazi persecution, genocide, torture, or extrajudicial killing);
- Presence in the U.S. justified on humanitarian ground, to ensure family unity or in the public interest

Adjustment applications are filed with the Vermont Service Center, and only CIS has jurisdiction to adjudicate these applications. U status holders who are in proceedings should seek termination of proceedings before applying for adjustment of status, and those with outstanding orders of removal should file for reopening and termination.

U status holders may also apply for certain "qualifying family members" at the time of applying for residence. These include the spouse, parent or child of the principal U status beneficiary as long as that family member did not have U nonimmigrant status. An application for the family member is submitted by the U status holder on Form I-929 and must also include proof that either the U status holder or the qualifying family member will suffer extreme hardship if not allowed to remain in or be admitted to the United States. Upon approval of the I-929, the qualifying family member may apply for residency through adjustment of status or at a U.S. Consulate abroad.

By statute, U status or U visa approvals for principal beneficiaries are capped at 10,000 per year; there is no limit imposed on the number of derivative beneficiaries who may be approved for derivative U status or a U visa. When the cap is reached in a fiscal year, approvable applicants are granted deferred action until the following fiscal year when U status or a U vsisa may be issued.

V. ADDITIONAL INFORMATION

- *The VAWA Manual: Immigration Relief for Abused Immigrants, by the Catholic Legal Immigration Network and the Immigrant Legal Resource Center (ILRC), available for purchase from ILRC, at* www.ilrc.org (VAWA self-petitions and cancellation of removal; explanatory material, primary source documents, and samples).