



PRACTICE ADVISORY | 07/02/20

IMMIGRATION LAW'S DV-RELATED SELF-PETITIONS

Provisions of the Violence Against Women Act (VAWA)¹ amended the Immigration and Nationality Act to provide a pathway to lawful status to undocumented survivors of abuse who are the spouse or child of a US citizen or lawful permanent resident (LPR). Under these provisions, such a person can file what is known as a VAWA self-petition for lawful immigration status rather than be subject to the regular process of relying on their US citizen or LPR spouse or parent to file a petition.

A. **What are the benefits of an approved VAWA self-petition?** The benefits of include:

- work authorization;
- certain public benefits like Medicare and TANF, and with some additional requirements, Food Stamps, and other benefits;
- deportation protection during the waiting period to obtain lawful permanent residence;
- “adjustment of status” or consular process to obtain LPR status when their immigrant visa becomes available; and
- Apply for cancelation of removal while in removal proceedings to obtain LPR status.

B. **Who is eligible to self-petition under VAWA?** The spouse, child or parent are eligible if:²

- Currently living in the United States; if self-petitioner is living abroad, they may still qualify if the abusing spouse is an employee of the US government or armed services, or the abuse occurred in the US;
- Good faith marriage to US citizen or LPR spouse;
- Has not committed or been convicted of crimes that would trigger inadmissibility³;
- Abuser is a US citizen or LPR.⁴

¹ Congress included the self-petitioning process in VAWA to address circumstances where and abusive spouse uses the family visa process to control an undocumented spouse. VAWA’s amendments to the immigration laws permit abuse survivors in this situation to gain lawful status on their own without having to rely on abusive spouses to start and complete the family immigration process for obtaining lawful status.

² See 8 USC 1154(a).

³ See 8 USC 1182(a)(2) for crime-related grounds of inadmissibility.

⁴ If the abuser was lost immigration status or US citizenship due to an incident of domestic violence, the abused spouse or child may self-petition within two years of the loss of status or citizenship.

C. What constitutes “battery and extreme cruelty” under VAWA’s self-petitioning? Any credible evidence (including police reports, criminal charges and conviction documents) that establishes evidence of battery or extreme cruelty, such as the following:

- threatening to beat or terrorize;
- Hitting, punching, slapping, kicking, or hurting in any way;
- Emotionally abuse, such as insulting at home or in public;
- Forced sex;
- Threatening to take children away or hurt them;
- Threatening to deport or report to immigration authorities;
- Controlling where spouse goes, what they can do, and who they can see;
- Forcible detention;
- Engaging in a pattern of behavior that cumulatively constitutes abuse.⁵

Best Practice Steps for Defense Attorneys

- ✓ Eligibility of an alleged victim or witness to file a VAWA self-petition (or U visa) may provide a defense to criminal charges related to bias or prejudice. Defense counsel should interview alleged victims and witnesses and pursue other discovery avenues to determine if pursuing a VAWA self-petition (or U visa) played a role in contacting law enforcement, making allegations or providing testimony and/or otherwise participating in criminal proceedings against the defendant. Such interviews should be conducted with awareness and careful consideration of the risks and fears undocumented people face and assurances that defense counsel will not contact immigration authorities.
- ✓ Admission of immigration status in criminal proceedings is subject to the requirements of ER 413. See [WDA’s advisory and sample motion on ER 413](#).
- ✓ Consult WDA’s Immigration Project for assistance in pursuing a defense strategy that involves immigration status and meeting ER 413 requirements.
- ✓ Noncitizens who do not qualify for VAWA self-petitioning may be eligible for other forms of immigration relief, such as a U Visa. See WDA U visa advisory.
- ✓ In addition to identifying clients who are noncitizens to comply with *Padilla* duties, identifying noncitizen victim-defendants can be critical to defense decisions as well as connecting them to resources that can provide screening and representation to pursue avenues to lawful status such as self-petitioning or a U visa. The Northwest Immigrant Right Project provides screening and legal assistance – nwirp.org or (206) 816-3870 (W. Washington), or (509) 579-0054 (E. Washington).

⁵ 8 C.F.R. 204.2(c)(iv).