ROUTES TO STATUS FOR DOMESTIC VIOLENCE SURVIVORS

Background
In the traditional family-based petition process noncitizens must rely on their U.S. citizen or lawful permanent resident relatives to file applications, rendering them particularly vulnerable to abusive sponsors. Congress first addressed this problem in 1990 with the battered spouse waiver for conditional residents who otherwise had to rely on abusive spouses to file a “joint” petition with them. It soon became evident, however, that this remedied only part of the problem; many spouses and parents failed to file petitions for their noncitizen relatives, using their control of the immigration process as a weapon of abuse. In the 1994 VAWA, Congress added two new forms of immigration relief to help this latter population: “VAWA self-petitioning” and “VAWA suspension of deportation.”

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act reframed VAWA suspension of deportation as VAWA cancellation of removal. In October 2000, President Clinton signed the Victims of Trafficking and Violence Protection Act of 2000, which removed many of the problems noncitizens encounter in pursuing VAWA status. It also included new nonimmigrant visas leading to adjustment of status for other victims of crimes, including domestic violence survivors who do not qualify for VAWA relief. In 2005 Congress added protections for abused parents of US citizens and abused spouses and children of certain nonimmigrants.

ASISTA, of which the author is a Co-Director, has a nationwide network of experts, including criminal and family court judges, that works together to ensure DHS implements the will of Congress. In addition, the author has served as the primary liaison with DHS (and former INS) on VAWA and U visas for over a decade. Unfortunately, many immigration attorneys are not familiar with the special routes to status and often fail to present adequate cases because of their inexperience with domestic violence issues. Noncitizens are most likely to profit from referrals to those in ASISTA’s network, who are encouraged to employ a partnership model involving both domestic violence advocates and immigration attorneys.

Gender-based asylum is the framework under which most domestic violence claims by those abused abroad will fall. Gender-based asylum operates in the general asylum system, which is separate from the system noted above for forms of relief specifically designed for domestic violence survivors. Applying for any form of asylum requires expertise beyond that needed for the other forms of status for domestic violence survivor. Nevertheless, if a noncitizen primarily fears being harmed in the

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homeland, she may wish to pursue this form of relief. To win such a case, she will need an attorney with experience in both asylum and domestic violence.³

**Self-Petitioning, VAWA Cancellation, and the Battered Spouse Waiver**

A key aspect of the special routes to status based on domestic violence is the “any credible evidence” standard dictated by Congress.⁴ This is the most liberal evidentiary standard in the immigration law, acknowledging that the “primary” evidence normally required may be unavailable to many noncitizen survivors of domestic violence.⁵ Findings, judgments, and documents from family court are inherently “credible” and extremely helpful to noncitizens seeking immigration status.

There are many kinds of evidence that may be helpful to noncitizens seeking status as victims of domestic violence. This section describes those most helpful.⁶

**Battery or Extreme Cruelty**

A requirement for self-petitioning, VAWA cancellation, battered spouse waivers and work authorization for abused spouses and children of nonimmigrants is proof of battery or extreme cruelty.⁷ U visa applicants must show they suffered “substantial physical or emotional abuse”⁸ as the result of a crime (including domestic violence and sexual assault). For self-petitioning and VAWA cancellation, battery or extreme cruelty to either the applicant or the applicant’s child will qualify a noncitizen for status.

**Extreme cruelty** is a broad concept for immigration purposes, covering any kind of abuse designed to exert power and control over the victim. It is not limited to any state definition (if there is one) and includes psychological, emotional and economic abuse, coercion, threats (to anyone or anything the victim cares about), intimidation, degradation, social isolation, possessiveness, harassment of employers and other employment-related abuse, manipulating and using immigration status, and harming children, family members and pets.

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³ ASISTA Immigration Technical Assistance Project can connect you to experts on domestic violence as a basis for asylum. Contact ASSITA Co-Director, Gail Pendleton, for referrals: gailpendleton@comcast.


⁵ See, e.g., 8 C.F.R. § 204.2(c)(2)(i).

⁶ For in-depth descriptions of eligibility requirements and filing procedures for the immigration applications described here, please visit the Clearinghouse section of www.asistahelp.org.


**VAWA Cancellation Factors**

In addition to showing the requirements for self-petitioning, VAWA cancellation applicants must show extreme hardship to themselves or to their children (regardless of the children's immigration status). The factors DHS considers for VAWA cancellation (also for self-petitioning before VAWA 2000) are summarized in the following considerations:

- The need for access to courts and to the criminal justice system in this country;
- The applicant's need for and use of services or support systems in this country juxtaposed against the lack or unavailability of similar services and support in the homeland;
- The lack of laws or enforcement of laws that protect victims of domestic violence, and the likelihood the abuser will follow her back (or already is there);
- The likelihood people in the home country (including his relatives, her relatives or their community) will harm the applicant;
- The abuse the victim suffered was very severe or longstanding;
- Laws, social mores, and customs in the home country that penalize or ostracize women who challenge the subordination of women, who are divorced, or who have adopted "Western" values; and
- The application of all the above factors to the children.

**Visas for Victims of Crime**

The two new visas Congress created in 2000 are for certain victims of crimes. Neither the status of the victim nor the perpetrator is relevant for either visa. Thus, the U visa in particular should prove helpful to domestic violence survivors whose abusers are undocumented or are not their spouses or parents.

Accessing the criminal justice system is essential to both visas, but family courts may help make noncitizens aware of their options, including a U or T visa, and refer them to advocates or attorneys who can help them.

**The U Visa**

Victims of a large array of crimes are eligible for U visas. They include victims of domestic violence, nannies subjected to abuse from their employers, trafficking victims, and victims of rape in the workplace or by non-intimates. To qualify for a U visa, victims must show that they have suffered "substantial physical or mental abuse." The proof noted in the section on battery and extreme cruelty will, therefore, be helpful in these cases as well.

In addition, judges who have authority to investigate crimes can provide certificates to noncitizens who are qualifying victims of crimes and "have been, are being, or are likely to be helpful" in an investigation or prosecution. 9 This will both encourage

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9 For the U forms, including the certification form, go to the U visa section of the Clearinghouse at www.asistahelp.org.
undocumented victims of crimes to report them and help the criminal justice system prosecute perpetrators who prey on immigrant communities.

The T Visa

These visas for victims of trafficking for sex or labor are often the bailiwick of the federal law enforcement, but local law enforcement may provide support for these applications, especially in states that have passed their own anti-trafficking laws and in cases which may be a low priority for federal law enforcement, such as cases involving individuals, as opposed to groups, trafficked for forced labor (i.e., nannies and "fiancées" who become indentured servants). Trafficking victims may gain T visas without certification by showing otherwise how they've been helpful, so the family court system may provide valuable “secondary” evidence to support T applications. Such evidence could include findings or documents that show the noncitizen is a victim of sex or labor trafficking.

Gender-Based Persecution

A victim of domestic violence seeking asylum must show that she fears persecution in her homeland because she has been or is likely to be subjected to domestic violence if returned there. In most cases, the claim is based on past abuse; fleeing to the U.S. was the victim’s final desperate attempt to save herself and her children. Often, the abuser may now be in the U.S., continuing his persecution of his family. These are the cases in which the family courts may be helpful by making findings. It is virtually impossible to win an asylum claim without the help of an experienced advocate or attorney, so making helpful referrals is especially important in these cases.