

10/5/98

Requirements Under the Immigrant Provisions of The Violence Against Women Act



Self-Petitioning:	Cancellation of Removal:
Spouses and children who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident <i>during marriage</i> , or Unabused parents of children who have been abused by a U.S. citizen or permanent resident while in the U.S. Note: <ul style="list-style-type: none"> • <i>The abusive U.S. citizen or lawful permanent resident spouse need not be the parent of an abused child for the unabused spouse to apply under VAWA.</i> • <i>Battered women may include their children in th petition whether or not the children themselves have been subjected to abuse.</i> • <i>An unabused parent of an abused child may not file under VAWA if the abused child has previously filed a self-petition.</i> 	Undocumented spouses and children who have been battered by a U.S. citizen or lawful permanent resident during marriage and while in the U.S., or Unabused parents of children who have been abused by a U.S. citizen or permanent resident while in the U.S. Note: <ul style="list-style-type: none"> • <i>The abusive U.S. citizen or lawful permanent resident spouse must also be the parent of the abused child.</i> • <i>Battered spouses may not include non-qualifying children in their cancellation applications. Children must apply for themselves if they qualify for cancellation as victims of abuse or wait for their abused parent to get lawful permanent residency and file on their behalf.</i>
<i>Cannot divorce before filing a self-petition.</i>	Can apply for cancellation after a divorce.
Can show that deportation would cause extreme hardship to self and/or children.	Can show that deportation would cause extreme hardship to self and/or children.
Can show good moral character (i.e. no criminal convictions or fraud.)	Can show good moral character.
Must show that marriage was in good faith (i.e. didn't marry solely to adjust immigration status.)	Not required to show good faith marriage, <i>but ineligible if found deportable for marriage fraud.</i>
Must reside in the U.S. to file.	Must be physically present in the U.S. to file.
Must have resided in the U.S. with the U.S. citizen or lawfully permanent resident spouse.	No specific cohabitation period required.
No specific term of residency required.	Three year continuous years of residency must be accumulated <i>before the INS serves a notice to appear.</i>
Available regardless of current immigration status. Note: <i>Applicants are generally not placed in deportation/removal proceedings, even if self-petition is denied.</i>	Must be in deportation/removal proceedings. Note: <i>Those deportable for marriage fraud, certain crimes, or terrorist activities ineligible.</i>
Possibly not available to certain F-1 students violating visas obtained after November 29, 1996. (<i>INA pp. 115</i>)	Available to students who violate non-immigrant visas.
Those who enter the U.S. without inspection after April 1, 1997, must show a "substantial connection" between abuse and their violation of immigration laws.	Those who enter the U.S. without inspection are not required to demonstrate any connection between abuse and unlawful entry.
Spouses and children of a U.S. citizen or lawful permanent resident must wait their turn in the visa allocation system, currently up to 5 years.	Applicants not subject to visa allocation, <i>but are subject to a total ceiling of 4,000 cases granted annually.</i>
Eligible for work authorization after petition has been approved and while application is pending, currently up to 5 years. Note: <i>Applicants must show economic necessity and be granted deferred action.</i>	Eligible for work authorization once cancellation application has been filed.
Must demonstrate that she is not likely to become a public charge (i.e. depend on public benefits.) Prior receipt of public benefits, primarily income assistance, may affect the petition. Note: <i>Self-petitioners do not have sponsors, and are therefore not subject to an affidavit of support, with a 125% of poverty income requirement.</i>	Prior receipt of public benefits not necessarily a bar to cancellation, though some judges may consider evidence of bad moral character.

*Based on chart by Ayuda, Inc.