

FAXBrief



An Update of Statistics and Issues Facing Immigrants and Refugees

Issue L (50)

March 26, 1999

THE VIOLENCE AGAINST WOMEN ACT, Part 1: SELF-PETITIONING

The Violence Against Women Act ("VAWA") is a key law providing the right to battered immigrant spouses and children to "self-petition" for lawful permanent residence. This FaxBrief will explain who is eligible to self-petition, the process, and the basic options available for abuse survivors under the Act. This law allows the abused immigrant spouses of U.S. citizens ("USCs") and lawful permanent residents ("LPRs") as well as their children, to "self-petition" for legal status without the assistance or permission of the USC/LPR abuser.¹ This allows the abuse survivor to protect herself and/or the children, and to end dependence on the abuser.

VAWA gave two different methods for abuse survivors to become LPRs. The first is self-petitioning. This process resembles the ordinary family petitioning process in many ways, but has additional requirements. The second is a defense to deportation ("suspension of deportation") or removal ("cancellation of removal")². This FaxBrief covers self-petitions

¹ Please note that while the specific language of VAWA applies to either women or men who have been abused by their spouses; because the majority of abuse survivors are women, we will be referring to the self-petitioners as women.

² Deportation refers to proceedings commenced on or before March 31, 1997, while "removal" refers to proceedings commenced on or after April 1, 1997. Suspension pertains to deportation, while cancellation pertains to removal.

while a following FaxBrief will cover suspension/cancellation.

Self-Petitions

In ordinary family immigration, the USC or LPR files an I-130 petition to establish his or her relationship to the beneficiary (the intending immigrant) and the petitioner's immigration status. Until the passage of VAWA, the beneficiary of a petition was at the mercy of the petitioner, who was not required to file the petition in the first place, or, having filed it, could revoke the petition at any time up until the beneficiary actually immigrated. This led abusers to use attainment of immigration status as a "carrot" and the threat of deportation as a "stick" to keep the abused spouse under control. However, under VAWA, if abuse is experienced by either the spouse or the children, the abuse survivor may file a petition herself without involving the abusing spouse. A VAWA self-petitioner must use form I-360 instead of the I-130, and must file it with the Vermont Service Center (which is the only Service Center in the country that receives and processes VAWA self-petitions).

As in regular family immigration, the self-petitioner must establish both the relationship and the status of the abusive spouse. The abuser *must* be a USC or LPR; if not, the self-petition will be denied. The relationship is proven by submitting copies of the marriage certificate (and a translation to English, if needed) to the USC/LPR abuser, and termination of all prior marriages of both the abuser and the self-petitioner. Proof of status is established by a copy of proof of citizenship of the abuser (if s/he is a citizen) – such as a birth certificate (if born in the U.S.), or naturalization certificate (if born outside U.S.) – or proof of lawful permanent residence (if s/he is a resident) – such as a resident alien card (or "green card").

In addition to the above, the VAWA self-petitioner must fulfill many other requirements. First, the self-petitioner must establish "up front" that the marriage to the abuser was made "in good faith", that is, not in an attempt to avoid immigration laws, or to buy a green card. (In most marriage-based immigration cases, the beneficiary isn't required to establish the "good faith" of the marriage until the final interview). Next, the self-petitioner must establish that physical or mental abuse by the USC/LPR has taken place against the spouse or children. The self-petitioner has to show that she is a person of "good moral character". Finally, the self-petitioner must demonstrate that she and/or her child would suffer extreme hardship as a result of being deported.

When all of the documentation has been gathered, the petition is filed, together with a \$80.00 fee. Once the Vermont Service Center ("VSC") determines that the petition is not frivolous, the self-petitioner may apply

for “deferred action” status. This status is critical since it allows the self-petitioner to obtain employment authorization, which is needed to earn the money to pay the subsequent INS processing fees.

If the self-petitioner is married to a USC, then she is eligible to file for residence once her petition is approved. If the self-petitioner is married to an LPR, she must wait until her priority date (the date that her self-petition was received by the VSC) is “current” in her category (the Department of State publishes the “current” dates for all categories and countries on a monthly basis). Petitions are processed in the order received, and when a petition is “current” it means that the beneficiary’s turn has come up.

Because of changes in the law – principally the expiration of §245(i) – the manner of entry of the self-petitioner is critical in determining how and when she may complete the process. If she is married to a USC and entered with inspection, she is eligible to adjust her status in the U.S. under §245(a) (there is no deadline under this section). However, if she entered without inspection she could adjust under 245(i) – so long as her petition was filed no later than January 14, 1998. Applicants who don’t fall into either category are ineligible to adjust under §245(a) or §245(i) and face a great problem in completing the process.

The reason for this is the creation by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) of the three and ten year bars. If a non-citizen has been in the U.S. unlawfully for 180 days or more and then leaves the U.S., s/he faces a bar to reentry of three years. If a non-citizen has been in the U.S. unlawfully for one year or more, s/he faces a bar of ten years.³ Unlawful status includes all the time after an entry without inspection, all of the time after expiration of entry permit, or the time after the violation of entry status (either INS, an immigration judge, or a consular official must make a determination of the violation of status). It is critical to realize that these bars apply even if the non-citizen is traveling to her home country to go to the U.S. consulate to pick up her immigrant visa.

Help is on the way. Senators Biden (D-Del.) and Hatch (R-Utah) both proposed bills on January 19, 1999 (S.51, and S. 245, respectively) that would restore protections under VAWA that were eroded by IIRIRA.

³ This refers to time on or after April 1, 1997. For example, under this section of law, a person who entered without inspection on January 1, 1997, accrued his first day of unlawful presence on April 1, 1997, reached 180 days of unlawful status in late September 1997, and one year of unlawful status on March 31, 1998. However, if he doesn’t leave the U.S., he won’t trigger the bars.