

Humanitarian Protections for Noncitizen Survivors of Domestic Violence and Other Crimes: An Overview

Federal law provides numerous forms of protection for noncitizens who are survivors of domestic violence or other crimes. This fact sheet provides basic information about three of these forms of protection: “self-petitions” under the Violence Against Women Act (VAWA), “U visas” for survivors of crime, and “T visas” for survivors of severe forms of trafficking.

Immigrant survivors of crime are less likely to report their victimization to local law enforcement compared to U.S. citizens.¹ Unfortunately, some noncitizens are more vulnerable to certain types of violence than others. Women, for example, are particularly vulnerable to sexual violence.² For noncitizen women without immigration status, issues such as domestic violence, human trafficking, and exploitation in the workforce present unique challenges due to the added vulnerability created by their status. Lesbian, gay, bisexual, trans, and queer (LGBTQ) noncitizens also face obstacles to reporting crimes.

How does immigration status impact a person’s vulnerability for exploitation?

Studies show that lacking an immigration status can increase a noncitizen’s risk of violence in the home or exploitation in the workplace. Low-wage jobs, and people in isolated environments like health or domestic care workers, hotel workers, food service workers, agricultural workers, and janitorial staff experience high rates of sexual harassment and assault.³ A 2023 study found that

This factsheet explains:

- How immigration status impacts a person's vulnerability for exploitation
- How congress has sought to protect noncitizens who are survivors of domestic violence
- The battered spouse waiver
- VAWA "self-petition"
- Who is eligible for self-petition
- VAWA cancellation of removal
- The U visa
- The T visa

immigrant women make up large shares of the health care and social assistance, professional services, and hospitality industries⁴ Lesbian, gay, bisexual, and trans workers have also reported high levels of verbal and physical abuse in the workplace with trans workers indicating the highest rates of abuse.⁵ Noncitizens may fear their employers will revoke their work visas or report them to Immigration and Customs Enforcement (ICE) if they report sexual assault.⁶ Some noncitizens are brought to the United States through human trafficking networks and are forced to work in extremely isolated conditions often under surveillance, threat of deportation, and threat of **physical** ⁷

In addition, some noncitizens may face increased risk of domestic violence if obtaining lawful immigration status depends on an abusive spouse.⁸ For example, noncitizens may depend on a U.S. citizen or lawful permanent resident (LPR) spouse to petition for them through the family-based immigration system or their legal status may be tied to their spouse's employment-based immigration status. This situation can not only leave noncitizens financially dependent on a spouse, but also leaves them vulnerable to a spouse's threat of deportation. Abusive spouses may delay, withdraw, or fail to file petitions for their family members, or threaten to report their victims to immigration authorities.⁹ Finally, even when their legal status does not depend on an abusive spouse, noncitizens may be fearful of reporting abuse or exploitation to the police for fear that they will be deported and separated from their families. This effectively provides abusers with a tool to silence their victims.

How has Congress sought to protect noncitizens who are survivors of domestic violence?

In the last three decades, Congress has made numerous changes to U.S. immigration laws to offer protections for noncitizen survivors of domestic violence and other criminal offenses.

The Immigration Reform Act of 1990 created the "battered spouse waiver," which allows survivors of domestic violence who obtained conditional permanent residency based on their marriage to a U.S. citizen to file an application to remove that conditionality without the assistance of their abusive spouse.¹⁰ The Violence Against Women Act (VAWA) of 1994 included provisions to allow noncitizen survivors of domestic violence to obtain immigration relief independent of their abusive spouse or parent through a process called "self-petitioning."¹¹ The Victims of Trafficking and Violence Protection Act of 2000 created new forms of immigration relief for noncitizen survivors of violent crime ("U visas") and survivors of sex or labor

trafficking ("T visas").¹² The Violence Against Women Act of 2005 expanded protections for some noncitizen survivors of elder abuse. Finally, the Violence Against Women Act of 2013 added stalking and fraud in foreign labor contracting to the list of crimes covered for U visa eligibility.

What is the battered spouse waiver?

In an effort to prevent marriage fraud, federal immigration law requires applicants for marriage-based green cards to receive "conditional" permanent resident status for two years before being granted full LPR status. As a result, noncitizen survivors of domestic violence may feel compelled to remain in an abusive relationship for up to two years to obtain a green card. The Immigration Reform Act of 1990 created the "battered spouse waiver," which allows survivors of domestic violence to file an application to remove the conditional status on their permanent residency without the assistance or knowledge of their abusive spouses and without having to stay in the abusive relationship. Noncitizen children who also have conditional permanent residence may be eligible for the waiver as dependents on their noncitizen parent's application or separately if they were abused. Applicants must provide proof that the marriage was "entered into in good faith," and they were "battered or subjected to extreme cruelty" by their U.S. citizen or LPR spouse or parent.¹³

What is a VAWA "self-petition"?

Under VAWA, noncitizen survivors of domestic violence, child abuse, or elder abuse may "self-petition" for LPR status without the cooperation of an abusive spouse, parent, or adult child.¹⁴ Survivors may also self-petition if they are divorced as long as the marriage to the abusive spouse was terminated within two years of filing the petition, and there is a connection between the divorce and the domestic violence.

An approved VAWA self-petition provides the applicant with work authorization, deferred action, and an approved noncitizen petition which may allow them

to apply for lawful permanent residence. Spouses and children of U.S. citizens may apply immediately and receive a green card as an immediate relative. By contrast, spouses, and children of LPR abusers are placed into the family preference system along with all other petitions for spouses and children of lawful permanent residents and are subject to the visa cap backlogs.

There is no limit to the number of VAWA self-petitions that may be filed in any given year.

Who is eligible to self-petition?

VAWA self-petitions are available to:

- Spouses and former spouses of abusive U.S. citizens or lawful permanent residents. Divorced spouses may self-petition if the termination of the marriage was related to the abuse and if the application is filed within two years of the termination of the marriage.
- Children of abusive citizens or lawful permanent residents who experienced abuse before turning 21.
- A noncitizen parent of an abused noncitizen child, even if the noncitizen parent is not abused themselves.
- Noncitizen spouses whose children are abused by the child's U.S. citizen or LPR parent.

In addition to proving abuse, a self-petitioner must also prove:

- Good faith marriage if the abuser is a spouse or stepparent.
- The relationship to the abuser.
- The immigration status of the U.S. citizen or LPR spouse, parent, or child.
- Good moral character.
- Residence with the abusive family member.

- Parent-child relationship if the applicant is a non-abusive noncitizen parent whose U.S. citizen or LPR spouse perpetrated the abuse.¹⁵

What is VAWA cancellation of removal?

VAWA cancellation of removal is a form of relief designed to keep survivors of abusive U.S. citizen or LPR spouses or parents from being ordered deported. It is a form of relief that a noncitizen survivor can only seek in immigration court after being placed in removal proceedings. Successful cancellation of removal results in LPR status for the survivor, and their noncitizen children ultimately receive a green card as well.

To qualify for VAWA cancellation of removal, a survivor must prove:

- They had been battered or subjected to extreme cruelty by a U.S. citizen or LPR spouse or parent.
- Continuous physical presence in the United States for three years.
- Good moral character.
- That removal would cause extreme hardship to the noncitizen survivor, or to their child or parent.
- That certain inadmissibility grounds do not apply or that she qualifies for a waiver of inadmissibility.¹⁶

What is a U visa?

The U nonimmigrant visa ("U visa") was created by the Victims of Trafficking and Violence Protection Act of 2000 to protect certain noncitizen crime survivors who assist or are willing to assist in the detection, investigation, or prosecution of a criminal offense. It requires the applicant to obtain a signed certification from a law enforcement agency attesting to their involvement in the report, investigation, or prosecution of the crime. There are currently 28 categories of crimes that are eligible for certification. The U visa grants the survivor permission to live and work in the United States

and, under current regulations, requires the termination of any case in immigration court filed against the noncitizen.¹⁷

Noncitizens with pending U visa applications, and any included family members, may be eligible to receive a work permit.¹⁸ Applicants who apply for U visas from within the United States automatically receive work authorization when the application is approved. Family members included in the survivor's approved application are eligible for a work permit if they are otherwise eligible to work.¹⁹ Under current regulations, noncitizens in removal proceedings with a pending U visa application may request that their removal proceedings be terminated.²⁰

There are up to 10,000 U visas available each year for principal applicants. Spouses and unmarried children (and, if the applicant is under 21, parents and unmarried minor siblings) of U visa applicants may also qualify to be included in the survivor's application.²¹ There is no limit on the number of visas available for dependent family members.

Who may qualify for a U visa?

To qualify for a U visa, a noncitizen:

- Must have suffered "substantial physical or mental abuse" due to the criminal activity. The criminal activities include abduction, abusive sexual contact, being held hostage, blackmail, domestic violence, extortion, false imprisonment, felonious assault, female genital mutilation, fraud in foreign labor contracting, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, stalking, torture, trafficking, unlawful criminal restraint, and witness tampering, or attempt, conspiracy, or solicitation to commit any of these or substantially similar crimes.
- The criminal activity must have violated the laws of the United States or occurred in the United States or one of its territories or possessions;

- Must possess information concerning the criminal activity;
- Must be helpful, have been helpful, or likely to be helpful to a federal, state, or local investigation or prosecution of the criminal activity. For minors under 16 years of age, a parent, guardian, or "next friend" who has information about the criminal activity may be the one to cooperate with law enforcement;
- Must obtain a certification from a law enforcement official, prosecutor, judge, Department of Homeland Security (DHS) official, or other federal or state authorities investigating or prosecuting the criminal activity; and
- Must be admissible under immigration law or must qualify for a waiver of inadmissibility.²²

How long do U visas last?

A U visa is valid for up to four years.²³ It may be extended if the certifying law enforcement agency confirms that the U visa holder is required to remain in the United States to assist the investigation or prosecution.²⁴

After three years of continuous presence in the United States in U visa status, a U visa holder is eligible to apply for LPR status if they meet certain requirements; have not refused to provide assistance in the criminal investigation or prosecution; and can prove that remaining in the country is connected to humanitarian need, will promote family unity, or is in the public interest.²⁵ There is no numerical limit on the number of U visa holders who may adjust to LPR status per year.

What is a T visa?

The T nonimmigrant visa ("T visa") was created to provide immigration relief to survivors of "severe forms of human trafficking." This is defined as (1) sex trafficking in which a commercial sex act is induced by fraud, force, coercion, or in which the survivor is

younger than 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjecting them to involuntary servitude or slavery.²⁶

A T visa protects recipients from removal and gives them permission to work in the United States. *Bona fide* T visa applicants also have access to the same benefits as refugees, including cash assistance, food assistance, and job training.²⁷

There are up to 5,000 T visas available each year.²⁸ Spouses and unmarried children (and, if the applicant is under 21, parents and unmarried minor siblings) of T visa applicants may also qualify as dependent family members of the trafficking survivor.²⁹ There is no limit on the number of visas available for qualified family members.

Who is eligible for a T Visa?

A noncitizen may be eligible for a T visa if the person:

- Is a survivor of a severe form of trafficking;
- Is physically present in the United States on account of trafficking;
- Assists law enforcement officials in the investigation or prosecution of the traffickers (survivors who have experienced physical or psychological trauma that prevents them from complying, or who were under 18 years of age at the time the victimization occurred, are exempted from this requirement); and
- Can demonstrate that they will suffer extreme hardship involving unusual and severe harm if removed from the United States.³⁰

How long does a T visa last?

T visas are valid for four years.³¹ To qualify for LPR status, T visa holders must maintain continuous physical presence in the United States for three years (or for the duration of a completed investigation or prosecution of the act of trafficking, whichever is less), must maintain good moral character, and must have continued to cooperate with law enforcement or demonstrate they would suffer extreme hardship if they were removed from the United States.³²

ENDNOTES

- 1 See Carmen M. Gutierrez and David S. Kirk, "Silence Speaks: The Relationship between Immigration and the Underreporting of Crime," *Crime & Delinquency*, Vol. 63, No. 8, (July 2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6699778/pdf/nihms-1035006.pdf> (finding that increases in rates of both noncitizen and foreign-born residents are negatively related to the likelihood that the police are notified of crime within a metropolitan area).
- 2 Elyse Shaw, Ariane Hegewisch, Cynthia Hess, "Sexual Harassment and Assault at Work: Understanding the Costs," *Institute for Women's Policy Research*, (Washington, DC: October 2018) 2, https://iwpr.org/wp-content/uploads/2020/09/IWPR-sexual-harassment-brief_FINAL.pdf.
- 3 See, e.g., *ibid.*, 2-3; "Take Us Off the Menu," The Restaurant Opportunities Centers United, (May 2018), 1, <https://rocunited.org/wp-content/uploads/sites/7/2020/02/TakeUsOffTheMenuReport.pdf>; and Fatima Goss Graves, et. al, "Realty Check: Seventeen Million Reasons Low-Wage Workers Need Strong Protections from Harassment," National Women's Law Center, (August 2015), 3, https://nwl.org/wp-content/uploads/2015/08/final_nwlc_vancereport2014_0.pdf.
- 4 See American Immigration Council, "A Snapshot of Immigrant Women in the United States," (June 2, 2023), 4, https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrant_women_in_the_united_states_0.pdf.
- 5 See M.V. Lee Badgett, et. al, "Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998–2008," *Chicago-Kent Law Rev.*, Vol. 84, Issue 2, (April 2009), 559-560, <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3705&context=cklawreview>.
- 6 Rebecca Smith, et. al, "ICED OUT: How Immigration Enforcement Has Interfered with Workers' Rights," (October 2009), https://s27147.pcdn.co/app/uploads/2015/03/ICED_OUT.pdf.
- 7 Department of Homeland Security, "Human Trafficking 101 Fact Sheet - English," <https://www.dhs.gov/blue-campaign/materials/human-trafficking-101>.
- 8 For more information about the challenges immigrants who experience intimate partner violence face in obtaining help, see Aisha Alsinai, et. al, "Use of immigration status for coercive control in domestic violence protection orders," *Frontiers in Sociology*, Vol. 8, (April 28, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10175620/>.
- 9 Giselle Aguilar Hass, Psy.D, et. al, "Battered Immigrants and U.S. Citizen Spouses," *Legal Momentum*, (April 24, 2006), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=f488acf2e98d-2174244addf2b513c4ced3b5e278>; Mary Ann Dutton, et al., "Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications," *Georgetown Journal on Poverty Law and Policy*, Vol. 7, No. 2, Summer 2000, 1-53, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/characteristics-help-seeking-behaviors-resources-and-service-needs>.
- 10 See Immigration Reform Act of 1999, Pub. Law No. 101-696, tit. VII, § 701 (Nov. 29, 1990), <https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg4978.pdf>.
- 11 See Violence Against Women Act (VAWA) of 1994, Pub. Law No. 103-322, tit. IV, Subtitle G, § 40701 (Sep. 13, 1994), <https://www.congress.gov/103/statute/STATUTE-108/STATUTE-108-Pg1796.pdf>.
- 12 See Victims of Trafficking and Violence Protection Act of 2000, Pub. Law No. 106-386, Div. B, tit. V, 114 Stat. 1534-37 (Oct. 28, 2000) (establishing U nonimmigrant status for certain survivors of crime) and Pub. Law No. 106-386, Div. A, 114 Stat. 1477-80 (incorporating the "Trafficking Victims Protection Act of 2000," which established T nonimmigrant status for certain survivors of severe forms of trafficking), <https://www.congress.gov/106/statute/STATUTE-114/STATUTE-114-Pg1464.pdf>.
- 13 INA § 216(c)(4); 8 U.S.C. § 1186a(c)(4).
- 14 INA § 204(a)(1)(A)(iii); 8 U.S.C. § 1154(a)(1)(A)(iii).
- 15 INA § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii).

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- 16** INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2).
- 17** 8 C.F.R. § 1003.18(d)(1)(i)(D) (mandating termination of removal proceedings if the noncitizen has obtained U nonimmigrant status).
- 18** 8 C.F.R. § 274a.12(a)(19).
- 19** 8 C.F.R. § 274a.12(a)(20).
- 20** 8 C.F.R. § 1003.18(d)(1)(ii)(B). In addition, Immigration and Customs Enforcement (ICE) currently has two policy directives regarding the exercise of prosecutorial discretion in removal cases involving the survivors of crime, including guidance that discourages taking civil immigration enforcement action against noncitizens with pending applications for survivor-based immigration benefits. See ICE Directive 11005.3, “Using a Victim-Centered Approach with Noncitizens Crime Victims” (August 10, 2021) <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf> and ICE Directive No. 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011) <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>. Between 2019-2021, this guidance was modified under the Trump administration to allow for the removal of noncitizens with pending U visa applications. See ICE, “Revision of Stay of Removal Request Reviews for U Visa Petitioners,” (August 2, 2019), <https://www.aila.org/aila-files/046CDBFA-747A-4C73-99A3-E8E7C1613D81/19080531.pdf?1697589490>.
- 21** 8 C.F.R. § 214.14(f).
- 22** INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U).
- 23** 8 C.F.R. § 214.14(g)(1).
- 24** 8 C.F.R. § 214.14(g)(2)(ii).
- 25** INA § 245(m)(1)(B), 8 U.S.C. § 1255(m)(1)(B).
- 26** INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T); Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386, Div. A, 114 Stat. 1470.
- 27** TVPA § 107(b)(1)(A); 22 U.S.C. § 7105(b)(1)(A).
- 28** INA § 214(o)(2); 8 U.S.C. § 1184(o)(2).
- 29** 8 C.F.R. § 214.11(o).
- 30** INA § 101(a)(15)(t)(IV), 8 U.S.C. § 1101(a)(15)(t)(IV).
- 31** 8 C.F.R. § 214.203(a).
- 32** INA § 245(l); 8 U.S.C. § 1255(l).