

Filing a Self-Petition Under Violence Against Women Act (VAWA)

A U.S. citizen or lawful permanent resident usually files an immigrant visa petition for a spouse or child, so that they can migrate to the United States. A Form I-130, Petition for Alien Relative, is filed by the petitioner. The petitioner controls when or if the petition is filed. The petitioner can also withdraw the petition anytime. Unfortunately, some petitioners misuse their control of this process to abuse their family members. As a result, most battered immigrants are afraid to report the abuse to the police or other authorities. They are forced to stay in the marriage for fear that they will be reported to USCIS and be deported.

The Violence Against Women Act (VAWA) allows spouses and children of US citizens and lawful permanent residents to self-petition for their own immigrant visas (green cards). The self-petitioner must show that she (or her child) has been battered or has been the subject of extreme cruelty perpetrated by the US citizen or lawful permanent resident spouse. The self-petitioner also needs to show that she married the abuser in good faith, resides in the U.S., and has good moral character.

The requirements for a self-petition are as follows:

- Must be legally married to the U.S. citizen or lawful permanent resident batterer. A self-petition may be filed if the marriage was terminated by the abusive spouse's death within the two years prior to filing. A self-petition may also be filed if the marriage to the abusive spouse was terminated, within the two years prior to filing, by divorce related to the abuse.
- Must have been battered in the United States unless the abusive spouse is an employee of the United States government or a member of the uniformed services of the United States.
- Must have been battered or subjected to extreme cruelty during the marriage, or must be the parent of a child who was battered or subjected to extreme cruelty by the U.S. citizen or lawful permanent resident spouse during the marriage.
- Must be a person of good moral character.
- Must have entered into the marriage in good faith, not solely for the purpose of obtaining immigration benefits.

Children (under 21 years of age and unmarried), including those who may not have been abused, may be included on the petition as derivative beneficiaries, if they have not filed their own self-petition.

To self-petition, you must complete and file Form I-360, Petition for Amerasian, Widower, or Special Immigrant. Then USCIS will review the petition initially to determine whether each of the requirements listed above is present and if the self-petitioner has provided some supporting evidence. This is called a prima facie determination. If the Service makes a prima facie determination, the self-petitioner will receive a Notice of Prima Facie Determination valid for 150 days. The notice may be presented to state and federal agencies that provide public benefits.

Thereafter, if the self-petition is approved, the USCIS may exercise the administrative option of placing the self-petitioner in deferred action, if the self-petitioner does not have legal immigration status. Deferred action means that the Service will not initiate deportation proceedings against the self-petitioner. Approved VAWA petitioners, even if not eligible for adjustment of status, can legally reside in the United States because they are entitled to deferred action with accompanying eligibility for work authorization.

Self-petitioners who qualify as immediate relatives of U.S. citizens do not have to wait for an immigrant visa number to become available. They may file their adjustment of status application with the local USCIS office. Self-petitioners who require a visa number to adjust must wait for a visa number to be available before filing their adjustment of status application.

If you are thinking of filing under VAWA, here are some practical tips:

- Keep police, doctor, and other records of abuse
- Keep all immigration documents including a copy of your spouse's immigration documents
- Keep a copy of any documents to establish your residency with your spouse (bank statements, leases, bank documents, etc.)
- Keep a copy of other important legal documents (marriage license, birth certificates, etc.)

Filing a self-petition under VAWA provides a welcome relief for battered women and children. Prior to VAWA, the petitioning spouse could refuse to file the initial petition or withdraw the petition before issuance of permanent residency. This is no longer the case after VAWA. The battered spouse or child of either an U.S. citizen or lawful permanent resident is able to self-petition without the help of the abusive spouse. The law, however, is complicated and we advise you do not submit an application on your own without first speaking with an attorney.

This article does not constitute legal advice but we hope it has been helpful in presenting different options and strategies to legally stay in the United States. If you have any questions about your particular situation, contact us and let us assist you in preparing and processing your case.

The Law Offices of Darren B. Silver & Associates concentrates exclusively to the practice of immigration and naturalization law. Mr. Silver has an extensive knowledge of all aspects of immigration law and procedures. His career in immigration includes a prior position as an Adjudications Officer for INS in Los Angeles, California. Mr. Silver served the INS for a period of three years, from 1992 through 1995. While working for INS, Mr. Silver assisted in recommending policy decisions, interviewing aliens for status changes and reviewed naturalization appeals.

The experience of working inside the INS has allowed Mr. Silver significant insight into maneuvering through the complex maze which makes up the Immigration Service. Mr. Silver formed the Law Offices of Darren B. Silver in 1996 and has maintained one of the most successful immigration practices in the country. Mr. Silver is an active member of the California Bar, the Los Angeles County Bar Association immigration section, American Bar Association and the American Immigration Lawyers Association (AILA).

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