



## Violence Against Women Act (VAWA) Provides Protections for Noncitizen Women and Victims of Crime

With approximately 23 million immigrant women and girls in the United States, over half of the foreign-born population is female.<sup>1</sup> Unfortunately, women are particularly vulnerable to sexual violence.<sup>2</sup> Issues such as domestic violence, human trafficking, and exploitation in the workforce present unique challenges to noncitizen women due to the added vulnerability created by their immigration status in the United States. For these and other reasons, federal law provides numerous forms of protection for noncitizen women—and men—who are the victims of domestic violence or other qualifying crimes. This fact sheet provides basic information about three of these forms of protection: “U” visas for victims of crime, “T” visas for victims of severe forms of trafficking, and “self-petitions” under the Violence Against Women Act (VAWA).

### **How does immigration status impact exploitation in the workforce?**

Studies show that domestic care workers, hotel workers, food service workers, agricultural workers, and janitorial staff experience high rates of sexual harassment and assault because they tend to work for tips in isolated environments.<sup>3</sup> A 2015 study of working immigrant women found that nearly half of them were employed in these industries.<sup>4</sup> Noncitizen women in these and other industries may fear their employers will revoke their work visas or report them to Immigration and Customs Enforcement (ICE) if they report sexual assault.<sup>5</sup> Some noncitizen women are brought to the United States through human trafficking networks and are forced to work under surveillance, threats of deportation, and threats of physical harm.<sup>6</sup>

In addition, noncitizen women may face challenges related to domestic violence, especially if obtaining lawful immigration status depends on an abusive spouse.<sup>7</sup> For example, noncitizen women 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 not only leaves noncitizen women financially dependent on a spouse, but also leaves them vulnerable to a spouse’s threat of deportation. Abusive spouses often delay, revoke, or fail to file petitions for their family members, or threaten to report their victims to immigration authorities.<sup>8</sup> Finally, even when their legal status does not depend on an abusive spouse sponsoring a visa, noncitizen women 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 victims of domestic violence?**

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

The Immigration Reform Act of 1990 created the “battered spouse waiver,” which allows victims 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 spouse if they are in an abusive relationship. The Violence Against Women Act (VAWA) of 1994 included provisions to allow noncitizen victims of domestic violence to obtain immigration relief independent of their abusive spouse or parent through a process called “self-petitioning.” The Battered Immigrant Women Protection Act of 2000 (VAWA 2000) created new forms of immigration relief for noncitizen victims of violent crime (“U” visas) and victims of sexual assault or trafficking (“T” visas). Finally, the Violence Against Women Act of 2005 expanded these protections and included some victims of elder abuse.

### **What is a U visa?**

The U visa was created by the Victims of Trafficking and Violence Protection Act of 2000 to protect certain noncitizen crime victims who assist or are willing to assist in the investigation or prosecution of a criminal offense. A U visa grants the victim permission to live and work in the United States and may result in the dismissal of any case in immigration court filed against the noncitizen.

Noncitizens with pending and granted U visa applications are eligible to receive a work permit.<sup>9</sup> 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 victim’s application are eligible to apply for a work permit if they are otherwise eligible to work.<sup>10</sup>

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 victim’s application.<sup>11</sup> 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” as a result of being the victim of certain criminal activity. The criminal activities include rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of these 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), 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.<sup>12</sup>

### **How long do U visas last?**

A U visa is valid for up to four years.<sup>13</sup> 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.<sup>14</sup>

After three years of continuous presence in the United States, a U-visa holder is eligible to apply for LPR status if he or she meets certain requirements; has 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.<sup>15</sup> 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 visa was created to provide immigration relief to victims of “severe forms of human trafficking,” which is defined as (1) sex trafficking in which a commercial sex act is induced by fraud, force, coercion, or in which the victim is younger than 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through use of force, fraud, or coercion for the purpose of subjection to involuntary servitude or slavery.<sup>16</sup>

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.<sup>17</sup>

There are up to 5,000 T visas available each year.<sup>18</sup> 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 victim.<sup>19</sup> 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 victim 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 (victims under 18 years of age are exempted from this requirement); and
- Can demonstrate that she will suffer extreme hardship involving unusual and severe harm if removed from the United States.<sup>20</sup>

## **How long does a T visa last?**

T visas are valid for four years.<sup>21</sup> To qualify for LPR status, T-visa holders must maintain continual 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.<sup>22</sup>

## **What is the battered spouse waiver?**

In order 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 victims of domestic violence may feel compelled to remain in an abusive relationship for up to two years in order to obtain a green card. The Immigration Reform Act of 1990 created the “battered spouse waiver,” which allows victims of domestic violence to file an application to remove the conditional status without the assistance of their abusive spouses and without having to stay in the abusive relationship for two years by providing proof of battering or extreme cruelty and the validity of the marriage.<sup>23</sup>

## **What is a VAWA “self-petition”?**

Under VAWA, noncitizen victims 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.<sup>24</sup> Victims 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 allows him or her to apply for lawful permanent residence. When the individual applies for LPR status, he or she is subject to the family preference system and any backlogs that may exist. Thus, 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 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 file before turning 25.
- A noncitizen parent of an abused noncitizen child, even if the noncitizen parent is not herself abused.
- Non-citizen spouses whose children are abused by the child's other 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 step-parent.
- The relationship to the abuser.
- The immigration status of the 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.<sup>25</sup>

### **What is VAWA cancellation of removal?**

VAWA cancellation of removal is a form of relief designed to keep victims of abusive U.S.-citizen or LPR spouses or parents from being deported. It is a form of relief that a noncitizen victim can seek in immigration court after being placed in removal proceedings. Successful cancellation of removal results in LPR status for the victim, and

his or her noncitizen children ultimately receive a green card as well.

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

- He or she has been battered or subjected to extreme cruelty by a U.S.-citizen or LPR spouse or parent.
- Physical presence in the United States for 3 years.
- Good moral character.
- That removal would cause extreme hardship.
- That certain inadmissibility grounds do not apply or that she qualifies for a waiver of inadmissibility.<sup>26</sup>

## Endnotes

<sup>1</sup> Jynnah Radford & Luis Noe-Bustamante, *Facts on U.S. Immigrants, 2017* (Washington, DC: Pew Research Center, June 3, 2019), <https://www.pewresearch.org/hispanic/2019/06/03/facts-on-u-s-immigrants-current-data/>.

<sup>2</sup> Institute for Women's Policy Research, *Sexual Harassment and Assault at Work: Understanding the Costs* (Washington, DC: October 2018), 2, [https://iwpr.org/wp-content/uploads/2018/10/IWPR-sexual-harassment-brief\\_FINAL.pdf](https://iwpr.org/wp-content/uploads/2018/10/IWPR-sexual-harassment-brief_FINAL.pdf).

<sup>3</sup> *Ibid.*, 2-3.

<sup>4</sup> See American Immigration Council, *The Impact of Immigrant Women on America's Labor Force* (Washington, DC: March 2017), 6, [https://www.americanimmigrationcouncil.org/sites/default/files/research/the\\_impact\\_of\\_immigrant\\_women\\_on\\_americas\\_labor\\_force.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/the_impact_of_immigrant_women_on_americas_labor_force.pdf).

<sup>5</sup> *Ibid.*, 3.

<sup>6</sup> Department of Homeland Security, *Human Trafficking 101*, <https://www.dhs.gov/sites/default/files/publications/blue-campaign/materials/infosheet-human-trafficking-101/bc-infosheet-human-trafficking-101-english.pdf>.

<sup>7</sup> For more information about the challenges immigrant women face, see Kavitha Sreeharsha, *Reforming America's Immigration Laws: A Woman's Struggle* (Washington, DC: American Immigration Council, June 2010), <https://www.americanimmigrationcouncil.org/research/reforming-americas-immigration-laws-womans-struggle>.

<sup>8</sup> Giselle Aguilar Hass, Psy.D, Nawal Ammar, Ph.D., and Leslye Orloff, J.D., *Battered Immigrants and U.S. Citizen Spouses* (Washington, DC: Legal Momentum, April 24, 2006); Mary Ann Dutton, Leslye E. Orloff, and Giselle Hass, "Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications," *Georgetown Journal on Poverty Law and Policy* 7, no 2, Summer 2000, p. 1-53.

<sup>9</sup> 8 C.F.R. § 274a.12(a)(19).

<sup>10</sup> 8 C.F.R. § 274a.12(a)(20).

<sup>11</sup> 8 C.F.R. § 214.14(f).

<sup>12</sup> INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U).

<sup>13</sup> 8 C.F.R. § 214.14(g)(1).

<sup>14</sup> 8 C.F.R. § 214.14(g)(2)(ii).

<sup>15</sup> INA § 245(m), 8 U.S.C. § 1255(m).

<sup>16</sup> 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.

<sup>17</sup> TVPA § 107(b)(1)(A); 22 U.S.C. § 7105(b)(1)(A).

<sup>18</sup> INA § 214(o)(2); 8 U.S.C. § 1184(o)(2).

<sup>19</sup> 8 C.F.R. § 214.11(o).

<sup>20</sup> INA § 101(a)(15)(t), 8 U.S.C. § 1101(a)(15)(t)

<sup>21</sup> 8 C.F.R. § 214.11(p).

<sup>22</sup> INA § 245(l); 8 U.S.C. § 1255(l).

<sup>23</sup> INA § 216(d)(4); 8 U.S.C. § 1186a(d)(4).

<sup>24</sup> INA § 245(a); 8 U.S.C. § 1255(a).

<sup>25</sup> INA § 204(a)(1)(A), 8 U.S.C. § 1154(a)(1)(A).

<sup>26</sup> INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2).