AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

NIWAP

LEGAL momentum
The Women's Legal Defense and Education Fund

3.4

VAWA Cancellation of Removal [1][2]

By Rebecca Story, Cecilia Olavarria and Moira Fisher Preda

Introduction

Cancellation of removal[3] (formerly suspension of deportation[4]) is a type of "waiver" that allows certain immigrants in deportation or removal proceedings to be granted permanent residence if they have established roots in the United States and meet other requirements.[5] A special form of cancellation of removal for battered immigrants was created as part of the Violence Against Women Act ("VAWA") and is called VAWA Cancellation of Removal.[6]

---

[1] "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women."

[2] In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (United States v. Windsor, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

[3] *See* INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2).

[4] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), (hereinafter IIRIRA) replaced "suspension of deportation" relief with "cancellation of removal," which is similar to suspension but has stricter eligibility requirements.

[5] *See* A.B.A. COMMISSION ON DOMESTIC VIOLENCE AND AYUDA, INC., *Chapter Eight: Cancellation of Removal, in* DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000).

[6] When an applicant is granted VAWA cancellation, her child may be granted parole until the family-based petition filed by the battered parent on the child's behalf can be approved. INA § 240A(b)(4); 8 U.S.C. § 1229b(b)(4).

Cancellation can only be granted by an immigration judge once a battered immigrant has been placed in removal proceedings.[7] This means that cancellation is not relief for which every battered immigrant woman can apply. She first must be charged by immigration authorities with an immigration violation – usually being unlawfully present in the United States or overstaying a visa – and ordered to appear before an immigration judge.

If an immigration judge grants the battered immigrant's application for cancellation of removal, the immigrant is granted lawful permanent residence. If the judge denies the application, the battered immigrant will be ordered removed from the United States.

Given the potential for deportation associated with applying for cancellation of removal before an immigration judge, it is important that immigrant victims of abuse find legal representation so they may effectively present a claim under VAWA if eligible. Applying for cancellation of removal is a complex process. No one should attempt to file a cancellation application without the assistance of an immigration attorney. In this regard, all immigrant victims of domestic violence and sexual assault placed in removal proceedings after being turned in or discovered by the immigration authorities must secure the assistance of an immigration attorney knowledgeable about VAWA.

This chapter provides basic information on VAWA cancellation of removal, lists the eligibility requirements that must be met by an applicant, and provides some suggested examples of evidence that an attorney or advocate may offer to meet each requirement. This chapter is designed to help advocates and attorneys who are not immigration attorneys identify immigrant victims who may be eligible for cancellation of removal. The information provided will also be useful to immigration attorneys who may not have experience with domestic violence, sexual assault, or incest cases. This chapter will help them to work in collaboration with advocates and other attorneys assisting immigrant victims. The most successful cancellation of removal cases are those in which advocates and civil attorneys support the efforts of the immigration attorney.[8]

Who is eligible for VAWA cancellation of removal?

The following immigrants qualify for VAWA cancellation of removal:

- A person who is an abused spouse, former spouse, or intended spouse[9] of a U.S. citizen or lawful permanent resident;
- A person who is or was an abused child[10] of a U.S. citizen or lawful permanent resident; and
- A person who is the non-abusive parent of a child who is or was subjected to domestic violence or extreme cruelty by a U.S. citizen or lawful permanent resident parent. The parent herself need not be abused.[11]

The following are examples of battered immigrants who do not qualify to file a VAWA self-petition but might qualify for VAWA cancellation of removal:

- The parent of an abused child, regardless of the child's U.S. citizenship, who was never married to the child's abusive U.S. citizen or permanent resident parent;
- The abused spouse of a U.S. citizen or permanent resident spouse who has died or any abused children of a U.S. Citizen or permanent resident parent who has died over 2 years ago;
- An abused spouse who was divorced for over 2 years from the U.S. citizen or permanent resident abuser spouse;

[7] Removal proceedings were called "deportation" proceedings before April 1, 1997. Some individuals who were in deportation proceedings before that date and are still in the U.S. may apply for suspension of deportation under VAWA, which has essentially the same requirements as cancellation of removal.
[8] For a discussion on the benefits of collaboration, see Chapter 1 of this manual.
[9] See INA § 101(a)(50); 8 U.S.C. § 1101(a)(50), for definition of "intended spouse." An immigrant victim can qualify for relief under VAWA even if the marriage is invalid due to the bigamy of the abusive spouse, provided the immigrant victim was unaware that her intended spouse was still married.
[10] See INA § 101(b)(1); 8 U.S.C. § 1101(b)(1), for definition of child. A person who is now over the age of 21 yet who was abused before age 21 can also file for cancellation of removal based on the abuse.
[11] The abusive parent need not be the natural parent of the abused child and may be a step-parent. Further, the parent of an abused child may file for VAWA cancellation whether or not she was ever married to the child's abusive parent.

- An abused stepchild whose immigrant parent has been divorced from the abusive parent for over 2 years;
- An abused spouse or child whose citizen or legal permanent resident parent renounced citizenship or lost lawful permanent resident status over 2 years ago;
- Victims of child abuse or incest abused by a U.S. citizen or permanent resident parent while under 21 years of age but who did not file their VAWA self-petition while they were under 21 and who are now over 21 years of age; and
- Victims of child abuse who cannot establish that they have resided with the U.S. citizen or permanent resident abuser parent.

What is the procedure for applying for cancellation of removal?

In order to apply for cancellation of removal, the immigrant survivor must be in removal proceedings before an immigration judge. If she is not, it may be possible in some instances to be placed in removal proceedings in order to apply for VAWA cancellation. To do this, the immigrant must essentially "turn herself in" to the immigration authorities and inform them she is unlawfully present in the United States. This should only be considered when the survivor cannot qualify for a green card in any other way, because if the application for cancellation is ultimately denied, the immigrant will be ordered removed and deported from the United States.

The following is an overview of the different phases of applying for relief in removal proceedings.

REQUESTING ISSUANCE OF A CHARGING DOCUMENT ("NOTICE TO APPEAR") IF NECESSARY

If an applicant is not already in removal proceedings, she must secure the assistance of an immigration attorney to help her turn herself into Immigration and Customs Enforcement (ICE) of the Department of Homeland Security, ("DHS", formerly INS) and request that she be put in removal proceedings. Each local DHS office has its own procedures and has discretion to decide whether to initiate removal proceedings. In some jurisdictions, this process may occur rather quickly, while in others it may take several months. In some cases, the DHS office might decide not to place the immigrant in removal proceedings.

The immigrant must currently be **out of lawful immigration status** to be placed in proceedings. If, for example, the battered immigrant entered the U.S. without authorization, overstayed her visa, or worked without DHS authorization while on an otherwise valid non-work visa, she may be found to be in violation of the immigration laws and removable. If she is still in lawful status under a current non-immigrant visa such as a student, tourist, or work-related visa, such as an H-1B visa, she cannot be placed in removal proceedings.

DHS initiates removal proceedings by issuing a charging document called a "Notice to Appear" ("NTA"). This charging document formally alleges that the individual is not a citizen or national of the United States and charges the immigrant with specific violations of immigration law. Examples of the immigration violations with which a potential applicant may be charged are overstaying a tourist visa, unauthorized work while on a student visa, or entering the United States without authorization.[12]

APPEARING BEFORE THE IMMIGRATION COURT AFTER A NOTICE TO APPEAR IS ISSUED BY THE DEPARTMENT OF HOMELAND SECURITY AND FILED WITH THE COURT

Several different units of federal agencies are involved in immigration enforcement proceedings before immigration judges. Immigration enforcement officers working for the Department of Homeland Security (DHS) either for Immigration and Customs Enforcement or for Customs and Border Patrol may issue to an individual a Notice to Appear in immigration court. Immigration judges work for the Executive Office of Immigration Review (EOIR) that is part of the U.S. Department of Justice. The attorneys representing DHS in immigration proceedings seeking removal of an immigrant from the United States is a trial attorney who works for DHS. For removal proceedings to begin, DHS enforcement agents, file the Notice to Appear (NTA) with the immigration court. Upon receiving the NTA, the immigration court will mail a hearing notice to the immigrant informing her of the time, date, and location

[11] *See e.g.* INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i); INA § 237(a)(1)(C), 8 U.S.C. § 1227(a)(1)(C).

of the next hearing. **It is very important to give DHS a safe current address where the battered immigrant can receive mail.** If she does not receive the hearing notice and/or fails to appear at the hearing, she will be ordered removed in her absence. If this occurs, she will be barred from applying for cancellation of removal, and may potentially be barred from other immigration relief in the future. Likewise, the immigrant may be subject to detention if found by DHS and, ultimately, deportated from the United States.[13]

The first hearing will be a preliminary one, called a "master calendar" hearing, where the immigrant must appear and plead to the charges on the NTA. There are normally two or three brief master calendar hearings before the immigrant has a longer individual hearing in which testimony is taken regarding the cancellation application.

PLEADING TO THE CHARGES

As stated above, only immigrants who are currently inadmissible or deportable for violating the immigration laws may be placed in removal proceedings. For any charge of inadmissibility or deportability, DHS has the burden to establish this.[14] In many cases, an immigrant, through her attorney, will concede to the charges in order to move the process more quickly to the point where a cancellation application may be considered.[15] However, it is very important that the attorney not concede a charge such as fraud or one based on a criminal ground if it will render the victim ineligible for cancellation of removal. If the attorney is in doubt, he or she should speak to an expert with knowledge and experience with VAWA cases.

After pleading to the charges, the attorney will state what relief from removal the immigrant (called the "respondent" in removal proceedings) is seeking. At this time, the attorney must state that the respondent will apply for cancellation of removal. If the attorney fails to request cancellation of removal at this time, the immigrant victim will be precluded from applying for cancellation later in the proceedings. It is therefore very important that the attorney meet with the client and explore whether she qualifies for VAWA cancellation or any other type of relief before this master calendar hearing.

The applicant may request additional time to prepare and file the application or may file it at the master calendar hearing if it is ready. Form EOIR-42B (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents), which can be downloaded from the Executive Office for Immigration Review website (http://www.usdoj.gov/eoir/formslist.htm), must be used. This form has instructions that *must be read in detail*. These instructions include all filing requirements concerning fees, fee waivers, photographs, fingerprinting, and accompanying documents. The types of supporting documents that should be submitted with the application are discussed in more detail later in this chapter. After the respondent files the application, she is eligible to apply for employment authorization.[16]

THE INDIVIDUAL HEARING ON THE MERITS OF THE APPLICATION

At the immigrant's master calendar hearing, the judge will schedule a date for the immigrant to return for a longer individual hearing (called a "merits hearing") where testimony will be taken concerning the cancellation application. The applicant must prove several things to receive cancellation of removal, and these requirements are discussed in detail later in this chapter. She will answer questions about the abuse, about her moral character (including the circumstances of any arrests if she has a criminal record), her work history in the United States, her ties to the community, how she and any of her children would be affected by being deported, and various other matters. She should also bring witnesses to testify about her moral character and ties to the community. She may also submit affidavits in support of the requirements. If the judge decides after hearing the testimony to grant cancellation of removal, the applicant receives lawful permanent resident status and will eventually receive an actual green card in the mail.

The following facts must be established to be granted VAWA cancellation of removal by the immigration judge.

---

[13] INA § 240(b)(5)(A) and (7); 8 U.S.C. § 1229a(b)(5)(A) and (7).
[14] *See Murphy v. INS,* 54 F.3d 605, 608-9 (9th Cir. 1995).
[15] *Woodby v. INS,* 385 U.S. 276 (1966) (concerning deportability); *Molina v. Sewell,* 983 F.2d 676, 678 (5th Cir. 1993) (concerning admissibility). *See also* 8 C.F.R. 240.8(a).
[16] *See* 8 C.F.R. 274a.12(c)(10).

Relationship to the abuser: The applicant must submit evidence of her relationship to the batterer. If she is applying as an abused spouse, she should submit a copy of her marriage certificate. If she is an intended spouse, then she must demonstrate that she believed she was the spouse. A battered child applicant must submit his or her birth certificate and, in the case of a stepchild, the marriage certificate of the parent to the abusive stepparent.
Continuous physical presence: The applicant must have lived continuously in the United States for 3 years immediately preceding the filing of the application.[17] A single absence from the United States of 90 days, or aggregate absences over 180 days, breaks continuity of physical presence. However, an applicant is not considered to have failed to maintain continuous physical presence if the absences from the United States were connected to the abuse .[18]
Battery or extreme cruelty:[19] The applicant must prove that she was battered or subject to extreme cruelty by the United States citizen or legal permanent resident spouse or parent.[20]
Good Moral Character: [21] The applicant must prove that she is of "good moral character," which is a legal term used in immigration law. The immigration laws do not precisely define good moral character, but preclude a finding of good moral character if the immigrant has certain criminal convictions or for other reasons.[22] The applicant must show good moral character during the 3-year period immediately preceding her application. The immigration judge may be permitted to find good moral character even if there is an act or conviction that would otherwise bar such a finding if the action or crime was connected to the abuse.[23]

Extreme Hardship: An applicant must prove that she, her child, or the parent of the abused child would suffer "extreme hardship" if deported. The following circumstances on their own will **not** constitute extreme hardship: economic deprivation, loss of employment, or difficulty readjusting to life in the native country.[24] The best way for battered immigrants to prove extreme hardship is to show how experiencing the abuse has been harmful to the victims and how deportation would impede any progress that they have made to overcome the effects of the abuse. Battered immigrant applicants can rely on both domestic violence and non-domestic violence related extreme hardship factors to support their cancellation applications. The victim should emphasize how the hardship is related to or exacerbated by the domestic violence, and the steps she needs to take to overcome the effects of the violence.

Extreme hardship is determined based on the facts of each case.[25] Demonstrating the following factors will assist in proving the extreme hardship element of the cancellation of removal application:[26]

- The nature and extent of the physical and psychological consequences of the battering or extreme cruelty;
- The impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, alimony, maintenance, child custody, and visitation);
- The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, particularly those related to the abuse or surviving the abuse, which would not be available or reasonably accessible in the foreign country;
- The existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the applicant or applicant's child for leaving an abusive situation, or for taking action to stop the abuse;

---

[17] Unlike other types of cancellation of removal provided for under immigration law, the serving of a Notice to Appear on an immigrant applying for VAWA Cancellation does not stop continuous presence from accruing. INA § 240A(b)(2)(A)(ii); 8 U.S.C. § 1229b(b)(2)(A)(ii).
[18] INA § 240A(b)(2)(B); 8 U.S.C. § 1229b(b)(2)(B).
[19] For full discussion of battering or extreme cruelty, see the section on self-petitioning under VAWA in Chapter 3.3 of this manual.
[20] INA § 240A(b)(2)(A)(i); 8 U.S.C. § 1229b(b)(2)(A)(i).
[21] For full discussion of good moral character, see the section on self-petitioning under VAWA in Chapter 3.3 of this manual.
[22] *See* INA § 101(f); 8 U.S.C. § 1101(f).
[23] INA § 240A(b)(2)(C); 8 U.S.C. § 1229b (b)(2)(C). This exception applies to crimes and actions connected to the battering or extreme cruelty and for which a waiver of inadmissibility is also permitted under the immigration laws.
[24] Matter of Anderson, 16 I. & N. Dec. 596 (BIA 1978).
[25] Matter of Ige, 20 I. & N. Dec. 880, 882 (BIA 1994); Matter of Chumpitazi, 16 I. & N. Dec. 629 (BIA 1978); Matter of Kim, 15 I. & N. Dec. 88 (BIA 1974); Matter of Sangster, 11 I. & N. Dec. 309 (BIA 1965).
[26] 8 C.F.R. §§ 1240.20(c) and 1240.58(c). *See also* INS Memorandum from Paul Virtue, INS General Counsel, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (October 16, 1998).

- The abuser's ability or lack thereof to travel to the foreign country, and the ability, willingness, or lack thereof of foreign government authorities to protect the applicant and/or the applicant's child from future abuse;
- The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the foreign country would physically or psychologically harm the applicant or the applicant's children if they were deported.

Applicants may also seek to support the extreme hardship element of their cancellation of removal cases by providing evidence of the "traditional" types of extreme hardship typically used in non-VAWA cancellation claims. This type of evidence is most helpful when the applicant can make a strong connection between the particular hardship and the abuse and its consequences. Some "traditional" hardships present in regular cancellation cases, such as economic hardship caused by deportation, can be exacerbated by the abuse. This would be the case, for example, if, because she has left her husband and is believed to have brought shame to the family, an immigrant survivor will be ostracized by her family in her native country and have no economic support.

The following are established factors used to assess extreme hardship:

- Age (youth/old age) of the applicant;
- Ages and number of the applicant's children;
- The children's ability to speak the native language of the foreign country and the children's ability to adjust to life there;
- Serious illness of the person or her child that necessitates medical attention not adequately available in the foreign country;
- A person's inability to obtain adequate employment abroad;
- The person and her children's length of residence in the United States;
- Existence of other family members residing legally in the United States and lack of family in the home country;
- Irreparable harm arising from a disruption of educational opportunities;
- The adverse psychological impact of removal;
- The impact of separation on both mother and children if the mother is removed and the children do not accompany her;
- The extent to which deportation would interfere with court custody, visitation, and child support awards; and
- The extent to which the battered woman is an asset to her community in the United States (i.e., involvement in church/temple/mosque, children's school, community, other service programs). [27]

The information below outlines how eligibility for VAWA Cancellation can be proven. The applicant has the burden to prove that she meets all requirements for cancellation of removal. Therefore, it is in the applicant's best interest to have as much supporting documentation as possible to help in proving her claim for relief. This documentation should be as complete and as detailed as possible. Advocates and attorneys should help the battered immigrant gather as much evidence as possible to document each aspect of her cancellation claim. The following is a checklist of suggested supporting documents.

STATUS OF THE ABUSER AND RELATIONSHIP TO THE ABUSER

- Evidence that the batterer is a U.S. citizen (such as a U.S. birth certificate or naturalization certificate) or permanent resident (such as a green card or other document with the batterer's alien number)
- If the applicant is applying as a battered spouse, a copy of her marriage certificate; if the applicant was previously married to someone other than the abuser, she must submit proof that her prior marriage was terminated

[27] Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,067 (Mar. 29, 1996) (to be codified at 8 C.F.R. pts. 103, 204, 205, and 216).

- If the applicant is the battered child of a citizen or resident, a birth certificate; in the case of a battered stepchild, the marriage certificate of the parent to the abusive stepparent must also be submitted
- Documents showing that the marriage was entered into in good faith and not to evade the immigration laws

CONTINUOUS PHYSICAL PRESENCE (Some of these documents, such as joint tax returns, lease agreements, or birth certificates of children born to the marriage, will also help prove good faith marriage.)

- Copy of all income tax returns filed by the applicant or the applicant jointly with the spouse; if the returns were not filed, she will have to file back tax returns
- Birth records of children born in the United States
- Driver's license (if obtained lawfully)
- Copy of lease agreements, rental receipts, or mortgage payments
- Employment records (paycheck stubs, tax forms, etc.)
- Bank statements
- Utility bills and copies of credit card statements
- Copy of insurance policies (automotive, health, life insurances)
- School records of the applicant or her children
- Medical records
- Court records, including protection orders and custody and support orders
- *If the applicant does not have other documentation to establish her continuous presence*: affidavits from landlords or neighbors and other persons who can attest to her continuous presence in the United States

BATTERY OR EXTREME CRUELTY

- Police reports
- Restraining/protective orders
- Photos of bruises, cuts, injuries, etc.
- Medical records
- Hospital records documenting the abuse (even if she did not tell anyone at the hospital that her partner caused the abuse and even if she denied that the cause was domestic violence or sexual assault, in which case the battered immigrant should be prepared to explain why)
- Intake forms from domestic violence or sexual assault organizations shelter or women's community center or both
- Letters from counselors, domestic violence case workers, shelter advocates
- Child Protective Services reports describing the abuser's behavior[28]
- Torn clothing or destroyed property or photographs of these
- Transcript from "911" calls
- Psychological evaluations
- Affidavits from neighbors, friends, or family who witnessed the abuse, witnessed any incident of the abuse, saw the survivor's bruises, heard her scream, or witnessed her abuser's threats against her, her children or her family members

[28] Any negative information in these reports submitted with the application must be added in testimony. You should consult with a family law attorney with knowledge and experience with child abuse cases.

GOOD MORAL CHARACTER[29]

- "Police clearance letter" from each jurisdiction in which the applicant has lived for the past 3 years[30]
- If the applicant has ever been arrested, an arrest report and court disposition for the arrest and an explanation in her affidavit of the circumstances of the arrest
- Affidavits by friends, community members, children's teachers, clergy, etc.
- Awards, certificates of appreciation, etc.

EXTREME HARDSHIP VIOLENCE AGAINST WOMEN RELATED FACTORS[31]

- Affidavit from the victim detailing the history of power and control; emotional, physical and sexual abuse; nature and extent of the battering or extreme cruelty; and consequences to her physical and psychological well-being if she's removed from the United States
- Affidavits from experts, such as battered women's advocates, social workers, shelter workers, counselors, or psychologists about the impact of the abuse on the victim and her children
- Affidavits from the victim's family members, friends, and co-workers describing how the physical, sexual, and psychological abuse affects the victim or her children
- Affidavits from teachers, counselors, clergy, or day care providers about the impact of the violence on the victim's children
- Documentation on the impact of the loss of access to the U.S. courts, both the civil and criminal systems (including, but not limited to, the ability to obtain and enforce protection orders, secure criminal investigations and prosecutions, and receive assistance offered by family law proceedings, including orders regarding child support, alimony, maintenance, child custody, visitation and property division)[32]
- Court records (including civil protection orders, custody, child support, and safe visitation orders, as well as copies of the underlying pleadings when useful)[33]
- Police records (including police reports and copies of all taped calls)
- "Victim impact statements" provided by the victim for sentencing in a criminal case[34]
- Documentation demonstrating the victim's efforts to seek help from the justice system
- For a victim who may not have sought help from the justice system, or a victim who unsuccessfully sought help from the justice system, affidavits from persons who can document the victim's fears or the abuser's actions that prevented her from seeking assistance from the courts (or the barriers that the victim faced or encountered when she tried to seek help from the justice system)
- Evidence of the VAWA cancellation applicant's or her children's needs for social, medical, mental health, victim, or other supportive services that would not be available or reasonably accessible in the foreign country (It is important to note that a VAWA cancellation applicant must prove that parallel services designed for domestic violence and/or sexual assault victims are lacking in the home country.), including the following:
    - Records of counseling programs in which the applicant or her children have participated and affidavits from the counselors describing the program and the benefit of the program to the applicant;
    - Copies of medical and mental health records that document the abuse;

---

[29] *See* INA § 101(f); 8 U.S.C. § 1101(f).
[30] The applicant should contact the local police for each county or locality where she has lived for six months or more during this period and request a police clearance or "good conduct" letter. For her current jurisdiction, she should make sure to submit a recent police clearance letter.
[31] Adapted from A.B.A. COMMISSION ON DOMESTIC VIOLENCE INC., *Chapter Six: Proving A Case, in* DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000).
[32] The U.S. State Department issues human rights country reports each year that contain a section on the rights of women. These reports will sometimes provide brief information about lack of police and legal protection for victims of domestic violence and sexual assault. These Country Reports can be found at http://www.state.gov/g/drl/hr/.
[33] A protection order that awards custody, safe visitation, and child support can help the victim prove extreme hardship, because deportation will deprive the victim of the protection provided by the court order.
[34] Victim impact statements, which are used in criminal cases, provide the crime victim with an opportunity to address the sentencing judge about the effect the crime has had on the victim's life and the victim's opinion about the sentence.

    - Affidavits from battered women's advocates and shelter workers who have worked with the applicant or her children;
    - Affidavits from advocates, experts, university professors, or women's groups and other documentation confirming that services parallel to those she is receiving in the United States are lacking in her home country.
- Documentation on the existence of laws, social practices, or customs in her home country that would penalize or ostracize the applicant or the her children for having been the victim of abuse, for leaving the abusive partner, for getting a divorce, for reporting the abuser's violence to authorities, or for actions by the victim taken to stop the abuse and protect her children, including the following:
    - Documentation about any laws or the lack of laws in her home country that protect victims of domestic violence from continued abuse and that could hold the abuser accountable for his actions, with particular attention to whether the laws are effective in the particular region of the country to which the victim will return;
    - Documentation of customs and practices in the battered immigrant's home country that would harm her or make recovery or healing difficult for the VAWA applicant or her children;
    - An affidavit by the victim stating her knowledge of laws, customs, and practices in her home country that harm victims of domestic violence, divorced women, and single mothers.
- Documentation of abuser's ability to travel to the victim's home country, and the ability and willingness of foreign authorities to protect the applicant or her children from future abuse, including the following:
    - Documentation of the abuser's history of travel outside of the United States, his travel in her home country, contacts in her home country, and his access to funds needed for travel;
    - Documentation of the abuser's history of stalking, escalation of violence, and his behavior following the separation;
    - An affidavit by the victim describing the abuser's level of contact with friends and family in the country to which the victim would be deported.
- Documentation of the likelihood that the abuser's family, friends, or others acting on his behalf in her home country would be likely to physically or psychologically harm the applicant or her children, including the following:
    - Affidavits from the victim's family members and others who have been threatened by the abuser or the abuser's agents in the home country;
    - Documentation of the abuser's stalking behavior and his manipulation of third parties to track, harass, and monitor the victim or her children.
- If the abuser is the parent of the VAWA cancellation applicant's U.S.-born children, evidence of this parent-child relationship should be included. An abuser with parental rights could obtain a court order prohibiting the removal of a citizen child from the United States, effectively cutting off a deported victim permanently from access to her children, causing extreme hardship to the victim and her children. Information should be gathered about parental rights and custody laws in the home country, as an abuser who is the father of the victim's children could obtain control over the children in the home country and cut the victim and her family members off from all access to her children. This is particularly important to emphasize when the children are U.S. citizens and when U.S. courts have determined that it is in the children's best interests to be in the applicant's custody.

TRADITIONAL FACTORS OF EXTREME HARDSHIP[35]

- Age of the applicant upon entry into the United States and at the time of application for cancellation of removal
    - For age to be a significant factor, the battered immigrant would have entered the United States at an early age or have an entire support system (socially and culturally) tied to the United States. Additionally, an immigrant who has lived in the United States for a long time and who may be older might argue that it will be difficult to re-assimilate to a new culture (that of the home country) or find employment.
- Age and number of the applicant's children and their ability to speak applicant's native language and to adjust to life in another country, demonstrated by evidence including but not limited to the following:

[35] 8 C.F.R §1240.58(a)

    - Affidavits from the children's teachers, clergy, and child care providers on the following:
        - The children's ability to speak, read, or write in English and or a native language
        - The children's current adjustment to life in the United States;
        - The children's likely response to moving to a country in which the language and customs are foreign;
        - The effect that the children's moving to another country would have on their ability to overcome the harmful effects of hearing, witnessing or experiencing domestic violence.
    - An affidavit from an expert on how the children's exposure to the abuse has harmed the child. The expert should assess each child's needs for counseling services to address harms suffered due to abuse and the additional harm that would arise from removing each child to a foreign country or separating each child from the battered immigrant parent.
    - If children are born to an interracial couple or a couple from different ethnic or religious groups, provide information about how this factor might affect each child's adjustment to the country to which the victim might be deported.
- Medical condition of the survivor or any of her children that requires medical attention not adequately available in the foreign country, demonstrated by evidence including but not limited to the following:
    - Documentation of any serious illness of the victim or her children and, if appropriate, description of how the illness was caused by or exacerbated by the abuse;
    - Description of whether similar medical treatment is available to the victim in the victim's home country or why alternative healthcare services there are likely to be less effective, particularly if such services do not take into consideration treatment needed because of the abuse; emphasis should be placed on the need for coordinated services to address the illness, the abuse, and the effects of the abuse.
- The immigrant's inability to obtain adequate employment in the foreign country
- The immigrant and her advocate should address this issue only if the victim's inability to obtain any employment or to obtain adequate employment was a result of or connected to the abuse. Examples might include (1) the victim's status as a divorcee precludes employment; (2) the abuser's level of power and influence in the home country prevent employers from hiring the immigrant victim; or (3) adequate employment sufficient to support the victim is not open to women in her home country.
- The applicant's and her children's length of residence in the United States
    - The immigrant and her advocate should raise this issue when the immigrant victim is or was married to a United States citizen or lawful permanent resident spouse for a significant period, and the abuser refused to obtain legal residency for the victim or her children.
    - The immigrant and her advocate should raise this issue also when the battered immigrant applicant was brought to the United States illegally as a child and has lived in the United States for a long time, particularly if the applicant completed high school in the United States.
- Existence of the applicant's other family members legally residing in the United States or/and lack of family (as support system, for employment contacts) in the home country, demonstrated by evidence including but not limited to the following:
    - A list of each member of the victim's family who legally resides in the United States, including the family members' immigration or U.S. citizenship status and length of time in the United States;
    - Affidavits from family members (each family member's affidavit and the victim's affidavit should articulate the role each relative has played providing the victim with emotional support, how they helped the victim escape, survive, or heal from the effects of having suffered abuse while living in the United States).

- Irreparable harm that may arise as a result of disruption of educational opportunities, demonstrated by evidence including but not limited to the following:
    - Affidavits from teachers, special education counselors, and mental health treatment providers can be used to document potential harm from lost educational opportunities for children. When the children's special educational needs are related to having been victims of or having witnessed domestic violence, this should be emphasized;
    - Affidavits should highlight lost opportunities and special job training programs and educational opportunities in which the victim is participating or for which she qualifies through her local domestic violence and/or sexual assault organization.
- The adverse psychological impact of deportation, demonstrated by evidence including but not limited to the following:
    - An affidavit from an expert discussing the adverse psychological impact deportation would cause the abused woman.
    - An affidavit from an expert describing the nexus between the adverse impact of deportation and the specific abuse this victim has suffered.
- The impact of separation on both the victim and her children if the victim is removed, demonstrated by evidence including but not limited to the following:
    - Data on the danger to the child of living with an abuser if the victim is deported. Many abusers commit violence against their children, as well as their spouses. Even if the children are not physically abused, living with an abuser is likely to traumatize the children and affect their emotional development. Include the psychological impact on the children of being permanently separated from their non-abusive parent by deportation and being left in the care of the abusive parent;
    - Description of the extent to which deportation would interfere with court-ordered custody, visitation, and child support awards;
    - Discussion of the harm to the U.S. citizen and lawful permanent resident children of being forced by their mother's deportation to move to their mother's home country with her as the only option other than having to continue living with the abuser.
- The extent to which the battered immigrant woman is an asset to her community in the United States, demonstrated by evidence including but not limited to the following:
    - Information regarding the battered immigrant applicant's involvement in a local religious community, the children's schools, community service programs, or immigrant women's or domestic violence prevention programs;
    - Letters from friends, neighbors, employers, clergy, social workers, and fellow church members attesting to the applicant's strong qualities and contributions to her community;

  Any acknowledgment of her children's personal involvement, achievements, contributions, awards, scholarships, etc. is important, as they confirm the unique ways each child has established his or her own bonds to their community.

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap