

# VAWA AND IMMIGRATION

## The Basics



Relationship to family based petitions

Immediate relative petitions

VS

Preference category petitions

# Abused family members of USCAs and (some) LPRs

## Self petitions for

- Spouse of...
  - Child of battered spouse included without separate petition
- Child of...
  - May petition independent of parent or if parent was never subject to abuse/extreme cruelty
- Parent of....
  - U.S. citizen only, not available to parents of abusive LPRs

# Where are these clients?

- Referrals

- Marketing

- Existing clients

  - Discovering VAWA eligibility in the middle of a different type of case

  - Getting informed consent to proceed

# Your role as a legal advocate

- Rules of Professional Conduct
- Referrals to outside professionals
- Time
- Patience

# Considerations unique to VAWA clients

- Need for wrap around services
- Trauma/PTSD
- Continued cohabitation with abuser
- Uncertain communication or residence
- Lack of access to identity and other documents

# What must be established to qualify for VAWA

- Resided with abuser
- Evidence applicant battered or subject to extreme cruelty during the relationship
- Good faith marriage
- Otherwise eligible for immediate relative or preference status
- Good moral character



# How to prove eligibility

The best evidence vs what you can get

## Forms

- G-28
- I-360
- G325A

# How to prove eligibility

## The best evidence vs what you can get

Evidence of abuse ---8 CFR §§ 204.2(c)(2)(iv) and (e)(2)(iv)....

- Reports and affidavits from police, judges and other court officials
- Medical personnel
- School officials
- Clergy
- Social workers
- Social service agency personnel
- OPs against the abuser or other legal or practical steps to end or document abuse
- Seeking refuge in shelter
- Consulting with a mental health professional
- Documenting injuries
- Consulting a lawyer specializing in family law
- Documenting nonqualifying abuses to show a pattern of abuse and violence

# How to prove eligibility

The best evidence vs what you can get

## Evidence of abuser's status

- **8 CFR §103.2(b)(17)(ii)**
- **Petitioner MUST provide evidence of the abuser's status but if petitioner cannot do so, USCIS WILL ATTEMPT TO ELECTRONICALLY VERIFY IT**

# How to prove eligibility

## The best evidence vs what you can get

- Evidence of cohabitation
- Evidence of good faith marriage
- Evidence of good moral character

**\*REMEMBER:** USCIS shall consider ANY credible evidence in adjudicating a VAWA case.  
INA §204(a)(1)(J)

# Most common deficiencies in evidence to be overcome

- Unavailable documents
- Lack of official reports
- Continued relationship with abuser
- Divorce
- Remarriage
- Termination of abuser's status
- End of relationship before time of filing or while petition pending
- Children aging out

# How to prove eligibility

The best evidence vs what you can get

How to overcome weaknesses in evidence

- Client's narrative
- Your narrative
- Building relationships with other professionals
- Client's existing relationships/witnesses

# I-360 Process

## Prima facie determination

- Entitles client to limited public benefits
- May be extended until final I-360 decision is made

I-797, Notice of Action

**THE UNITED STATES OF AMERICA**

Receipt Number		Case Type
August 27, 2008		Petition for American, Widow (er) or Special Immigrant (Form I-360)
Priority Date		Petitioner
Notice Date	Page	A-File Number
September 4, 2008	1	

	Section: Self-Petitioning Spouse of U.S.C. or L.P.A. <b>ESTABLISHMENT OF PRIMA FACIE CASE DUPLICATE</b>
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The above petition has been reviewed and found to establish a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act.

THIS NOTICE MAY BE USED TO ASSIST YOU IN RECEIVING PUBLIC BENEFITS.

THIS PRIMA FACIE DETERMINATION IS VALID FOR A PERIOD OF 180 DAYS FROM THE NOTICE DATE SHOWN ABOVE, AND EXPIRES ON THE DATE INDICATED AT THE BOTTOM OF THE PAGE.

We will send you a written notice as soon as we make a decision on this case. It is not expected that a final decision will be made in this case before the end of 180 days. If this period is coming to a close and you need an extension of this prima facie determination in order to continue receiving public benefits, please submit a written request for extension at least 15 days prior to expiration.

A COPY OF THIS NOTICE MUST ACCOMPANY ANY REQUEST FOR AN EXTENSION OF THIS DETERMINATION.

PLEASE NOTE: ESTABLISHING A PRIMA FACIE CASE FOR CLASSIFICATION UNDER THE SELF-PETITIONING PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT DOES NOT NECESSARILY MEAN THAT YOUR PETITION WILL BE APPROVED.

\*\*\*\*\*  
EXPIRATION DATE: April 18, 2009.  
\*\*\*\*\*

You will be notified separately about any other applications or petitions you filed. Save this notice. Please enclose a copy of it if you write to us about this case, or if you file another application based on this decision. Our address is:

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES  
VERMONT SERVICE CENTER  
75 LOWER WILDEN STREET  
ST. ALBANS, VT 05477

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# I-360 Process

## I-360 approval

What it gets your client and what it does not

- Eligibility for work authorization
- Eligibility for limited public benefits
- Not guaranteed approval of I-485



Receipt Number [REDACTED]	CASE TYPE I360 Petition For Amerasian, Widower, Or Special Immigrant	
Receipt Date September 19, 2013	Priority Date September 16, 2013	Petitioner [REDACTED]
NOTICE DATE February 12, 2014	PAGE 1	Beneficiary [REDACTED]

[REDACTED]	Notice Type: Approval Notice Section: Self-Petitioning SPOUSE of U.S.C. or L.P.R. Class: IB1
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The above petition has been approved.

You will be notified separately when a decision is reached on your pending adjustment of status application.

Please read the back of this form carefully for more information.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM DOES NOT CONSTITUTE EMPLOYMENT AUTHORIZATION NOR MAY IT BE USED IN PLACE OF AN EMPLOYMENT AUTHORIZATION DOCUMENT.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES  
VERMONT SERVICE CENTER  
75 LOWER WELDEN STREET  
SAINT ALBANS VT 05479

REASSURE YOUR CLIENT THAT  
USCIS WILL MAINTAIN  
CONFIDENTIALITY OF ALL FILINGS  
AND SUPPORTING DOCUMENTS

# Adjustment of Status

When can your client file for Adjustment of Status

- Immediate relative petitions
- Preference category petitions

4. Section 203(a) of the INA prescribes preference classes for allotment of Family-sponsored immigrant visas as follows:

**FAMILY-SPONSORED PREFERENCES**

**First:** (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

**Third:** (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth:** (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

**A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES**

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

<b><u>Family-Sponsored</u></b>	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	22DEC10	22DEC10	22DEC10	01MAR96	01JAN07
F2A	22OCT15	22OCT15	22OCT15	15OCT15	22OCT15
F2B	08NOV10	08NOV10	08NOV10	15JUL96	01JAN07
F3	22JUL05	22JUL05	22JUL05	22APR95	22FEB95
F4	08MAY04	08MAY04	01OCT03	01OCT97	01JUN94

\*NOTE: For October, F2A numbers EXEMPT from per-country limit are authorized for issuance to applicants from all countries with priority dates earlier than 15OCT15. F2A numbers SUBJECT to per-country limit are authorized for issuance to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 15OCT15 and earlier than 22OCT15. All F2A numbers provided for MEXICO are exempt from the per-country limit.



# Adjustment of Status

USCIS fee

USCIS fee waiver  
Form I-192



# Adjustment of Status Grounds of Inadmissibility

- Crimes\*
- Unlawful Presence\*

**\*Apply but may be waived if nexus to abuse can be shown**

# Adjustment of Status Grounds of Inadmissibility

- Fraud\*

**\*Applies but waiver available pursuant to INA 212(i) if Applicant demonstrates extreme hardship to self or U.S. Citizen or Legal Permanent Resident parent or child**

# Adjustment of Status

**IMPORTANT NOTE:**

**APPLICANT MAY NOT LATER FILE FOR ABUSER'S  
LAWFUL STATUS IN THE UNITED STATES**

Citizenship...

The importance of self-care...