

# OVERVIEW OF LEGAL REMEDIES FOR BATTERED IMMIGRANTS<sup>1</sup>

This document, written in December 2005 by Lea Webb of Webb & Pillich, LLC, for the Alliance for Battered & Abused International Women, does not constitute legal advice.

**Abbreviations:** *USC* = *US citizen*; *LPR* = *Lawful permanent resident (i.e., "green card" holder)*

	<b>VAWA Self Petitions and waivers of joint filing requirements</b>	<b>VAWA Cancellation of Removal</b>	<b>Crime Victim Visa – U Nonimmigrant Visa</b>	<b>Trafficking Visa – T Nonimmigrant Visa</b>
<b>Who is eligible?</b>	<ul style="list-style-type: none"> <li>➢ Battered spouse &amp; child(ren) subjected to extreme cruelty during marriage by a USC or LPR;</li> <li>OR</li> <li>➢ Abused spouse of US employee/military living abroad;</li> <li>OR</li> <li>➢ Non-abused parents of child abused by USC or LPR while in the US; the abuser need not be the parent of the abused child;</li> <li>OR</li> <li>➢ Battered widow of USC;</li> <li>OR</li> <li>➢ Divorced abused spouse of USC or LPR within 2 years of final divorce decree.</li> </ul>	<ul style="list-style-type: none"> <li>➢ Spouses &amp;/or child(ren) battered or subjected to extreme cruelty by a USC/LPR spouse/parent, while in the US, (must have been in the US for 3 years);</li> <li>OR</li> <li>➢ Abused spouse of USC or LPR divorced more than 2 years prior to application;</li> <li>OR</li> <li>➢ Abused spouse or child of LPR who died before the self petition was filed or approved</li> </ul>	<ul style="list-style-type: none"> <li>➢ Any victim of crimes listed below (and similar crimes) who cooperates with law enforcement in the investigation OR prosecution of the crime.</li> <li>➢ <b>This may include:</b> Non-citizens abused by boyfriends and other persons who are not their spouse or parent, Persons abused by boyfriend, spouse or parent who is a student, non-immigrant visa holder, a diplomat or undocumented immigrant, etc.; Victims of rape or sexual assault (including in the workplace); Nannies abused by their employers; Victims held hostage by a spouse, family member or an employer</li> </ul> <p><b>CRIMES:</b> 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 the above mentioned crimes.</p>	<ul style="list-style-type: none"> <li>➢ Victims must be or have been victims of severe form of trafficking, AND (unless a minor) cooperate with law enforcement in the investigation or prosecution of the crime;</li> <li>➢ May include prostitutes and wives who were brought into a situation by fraud and subjected to forced labor within the home, including sex, as well as many other situations.</li> </ul> <p><b>Severe form of trafficking</b> = sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; OR the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery;</p>
<b>Can Legal Aid Provide Services? What if Legal Aid cannot accept the case?</b>	<ul style="list-style-type: none"> <li>➢ Yes.</li> <li>➢ Client should seek the assistance of an immigration attorney, but may also proceed without an attorney</li> </ul>	<ul style="list-style-type: none"> <li>➢ Yes.</li> <li>➢ Client will be in removal proceedings – inadvisable without an attorney.</li> </ul>	<ul style="list-style-type: none"> <li>➢ Often, but not always.</li> <li>➢ This law is developing and currently somewhat complicated procedurally.</li> <li>➢ Client should seek the assistance of an immigration attorney, but may also proceed without an attorney.</li> </ul>	<ul style="list-style-type: none"> <li>➢ Yes. Always.</li> <li>➢ This status is very beneficial to the client, but the process and application are quite complicated.</li> <li>➢ Client should seek the assistance of an immigration attorney, but may also proceed without an attorney.</li> </ul>

<sup>1</sup> This chart contains information on legal immigration remedies for battered immigrants from the Immigration Marriage Fraud Act, the Violence Against Women Act (VAWA), and the Victims of Trafficking and Violence Prevention Act (VAWA II). The information in this chart is not an exhaustive list of potential remedies a battered immigrant may pursue. Other remedies such as a waiver of the joint filing requirement and "gender-based asylum" may be applicable with fact-specific cases. If interested, please contact an immigration expert for further information.

11/05