



NATIONAL  
IMMIGRANT  
FAMILY  
VIOLENCE  
INSTITUTE

IMMIGRATION RELIEF FOR  
BATTERED IMMIGRANTS

# Acknowledgments

Made up of seven partnering agencies from across the country, NIFVI is supported by the Family Violence Prevention and Services Program and the Family Youth Services Bureau. Administration for Children and Families and US Department of Health and Human Services. This document was prepared by NIFVI partner agency the International Institute of the Bay Area.

Cover photo from Microsoft Office Online clip art.

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## *What Unique Challenges Do Battered Immigrants Face?*

### ■ **Lack of Knowledge Regarding the American Legal System**

Immigrants who are unfamiliar with the U.S. legal system may be unaware that domestic violence is a crime and that their undocumented status will not prevent the police from arresting and prosecuting a batterer. As a result, immigrants may avoid calling the police for help.

Similarly, despite widespread law enforcement policies against inquiring about a victim's immigration status, undocumented immigrants may fear that calling the police will expose their undocumented status and place them at risk of deportation.

### ■ **Fear of Deportation**

Batterers may threaten their undocumented spouses with turning them in to the INS. Fear of deportation may also prevent battered immigrants from filing police reports, reporting abuse to hospital workers and reaching out for assistance from any government agency.

### ■ **Language Barriers**

Although not all undocumented immigrants face language barriers, difficulty speaking and understanding English may act as an additional barrier to seeking help. Many courts, police departments, hospitals and shelters have few, if any, resources for people who do not speak English and are being abused. Language barriers make reporting abuse more difficult, especially if the batterer, or a child, is acting as interpreter.

### ■ **Cultural Barriers**

It is important to note that domestic violence is not the norm in any culture. However, cultural mores about gender roles, family, privacy and/or relying on people outside one's family for help may prevent a battered immigrant from seeking help.

### ■ **Economic Barriers**

Undocumented immigrants are not authorized to work or receive most forms of public benefits. As a result, battered immigrants may be more economically dependent on their abusive spouses than other victims of domestic violence who have more options for

gaining economic independence. In addition, immigrants who are providing economic support to relatives in their home countries may have additional economic pressures.

#### ■ Immigration Status

An abusive spouse or parent may use the victim's immigration status as an additional tool for manipulation and accessing control. Some abusers refuse, or threaten to refuse to file a petition to get an immigrant visa for their spouses. Others file the petition but not follow through on it, or threaten not to. Some abusers threaten to, or actually do report the abused spouse's undocumented status to the Immigration Service (although in fact, the Immigration Service virtually never responds to such reports). Some abusers tell their undocumented spouses that their undocumented status will prevent them from getting custody of their children if they do leave the abusive situation with their children (although family law judges should not take immigration status into consideration).

## *Types of Status*

#### ■ U.S. Citizen

- Cannot be deported
- Can vote
- Eligible for any available public benefits
- Can petition for family members to immigrate

#### ■ Lawful Permanent Resident (LPR)

- Can live and work in U.S. permanently, unless becomes deportable
- Eligible for limited public benefits
- After five years, can apply to be US citizen
- Can petition for smaller group of family members to immigrate: takes longer

#### ■ Non-Immigrant Visa Holder

- Can live and work TEMPORARILY in the U.S.
- Limited to terms of visa
- Includes student, business, tourist
- After visa expires or terms of visa violated, becomes undocumented

### ■ Undocumented

- Generally, people who enter U.S. without permission or overstay nonimmigrant visa
- Not allowed to live or work legally in U.S.
- Subject to deportation at any time
- Generally cannot receive public benefits, except emergency medical and prenatal care

## *Gaining Legal Status*

### ■ U.S. Citizen

- Born in U.S.
- Born abroad to U.S. citizen, or parents of LPR naturalize
- After 5 years as permanent resident, may apply to naturalize

### ■ Lawful Permanent Resident

- Family-Based petition
  - Close Relative who is US citizen or Permanent Resident can petition for relative
    - US citizen can petition for spouse, child, married child, parent, sibling
    - Lawful Permanent Resident can petition for spouse, child

The **US citizen** or **LPR petitioner** has enormous power over the person his is petitioning for. VAWA attempts to prevent abuse of this power.

- 2-step process
  - Petition
  - Application for Permanent Resident Status
  - Timing depends on type of petition, country of origin

### ■ Refugees and Asylees can petition for Permanent Resident status. Refugee and Asylum status are based on well-founded fear of persecution on account of race, religion, ethnicity, nationality or social group.

- Refugees enter U.S. with status
- Asylees gain status in U.S.

- **Petition from Employer**
  - Generally for skilled positions
  - 2-step process like family-based petition.
  
- **Other Protected Status**
  - Temporary Protected Status (TPS)
  - U Visa interim relief

## *Immigration Relief for Battered Immigrants*

- Violence Against Women Act (VAWA) Self-Petition: abused spouses, children and parents of U.S. Citizen and permanent resident abusers.
- U Visa: victims of serious crime who help law enforcement.
- VAWA Cancellation of Removal: in Removal (deportation) proceedings for abused spouses, children, and parents of abused children where abuser is U.S. citizen or permanent resident.
- Battered Spouse Waivers of Joint Petition Requirement: abused holder of 2-year green card (conditional resident).
- Gender-related Asylum: survivors of gender related persecution, possibly including domestic violence in home country.
- Special Immigrant Juvenile Status: for abandoned or abused youth in jurisdiction of Juvenile Court.
- **BENEFITS**
  - Lawful immigration status
  - Lawful work authorization
  - Some applicants eligible for public benefits.

## *Immigrants Who Can Self-Petition Under VAWA*

- **SPOUSE of US Citizen or Permanent Resident: the term “spouse” includes:**
  - Valid Marriage in place marriage took place
    - Bigamy by abuser: may still be able to self petition
  - “Good faith”: Not for sole purpose of circumventing immigration law
  - Current Marriage. Abuse only during marriage, except:

- Petition within two years of divorce that was “connected” to DV
- **CHILD of U.S. Citizen or Permanent Resident: Under 21,\* unmarried, and one of the following:**
  - Biological child
    - Born in wedlock, or
    - Born out of wedlock if formal legitimation process OR bona fide parent-child relationship
  - Step-child if marriage that created step-relationship before child 18  
Child may derive benefit of abused parent’s petition
- **Adult Sons and Daughters**
  - Individuals who are currently under 25 years of age; were eligible, but failed to self-petition before they turned 21, may self petition if they can show that the abuse was “at least one central reason” for the filing delay.
  - Adult sons and daughters may qualify for VAWA Cancellation of Removal
- **PARENT of an adult U.S. citizen**

## *What Self-Petitioner Has To Prove*

- **Applicant is the “spouse,” “child,” or “parent” of abuser**
- **Abuser is a U.S. citizen or Lawful Permanent Resident**  
Exception: If the abuser had LPR status but lost it due to conviction for domestic violence, abused spouse can self-petition within two years.
- **Abuse during marriage (for self petitioning spouse). Defined as:**
  - Battery (physical threats and harm)
  - Extreme Cruelty (non-physical)
  - Includes pattern of conduct that may not appear violent in isolation
  - Child who witnesses abuse of parent may self petition.
  - Non-abused SPOUSE may self petition if child is abused
- **Applicant lived with abuser at some time**

- **Applicant currently living in the U.S.**  
Exception: Can self-petition if abuser is an employee of the U.S. government or armed forces, or if abuse occurred in U.S.
- **Applicant can demonstrate “good moral character”**  
Problems can occur with some immigration and criminal violations.

## *VAWA Self-Petition Process*

- Determine eligibility (see preliminary screening form)
- Submit Self-Petition and Documentation of each requirement to prove eligibility.
- Receive notice of “Prima Facie Eligibility” in about 1-2 months.
- Makes applicant eligible for public benefits
- Some cases receive “Request for Evidence”. Send evidence or be denied.
- Self-Petition Approval in about 6-9 months
  - Grants “Deferred Action” status
  - Eligible for Employment Authorization
- If Application Denied, may refile without prejudice
- Application for Permanent Resident Status
  - When:
    - U.S. citizen abuser: can apply right away
    - Permanent Resident abuser: Long waiting list. Legal status while waiting
  - How:
    - Application must prove “admissibility”. As of 4/11/08, not so hard



## The U Nonimmigrant Visa

### Benefits

- Nonimmigrant status in U.S. for 3 years - can be extended to 4
- Employment authorization
- “Derivative” nonimmigrant status for (non abuser) spouse, minor child(ren), plus parent or siblings of child victim
- Possibility of becoming a permanent resident after 3 or 4 years as U Visa holder
- Benefits eligibility
- Deportation process terminated

### Who Qualifies?

- A victim of certain criminal activity: Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, hostage taking, peonage, involuntary servitude, slave trade, kidnapping, abduction, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, AND attempt, conspiracy, or solicitation to commit any above-listed crime, or any similar activity in violation of federal, state or local criminal law.
- Victim has suffered “substantial abuse,” analyzed by:
  - Nature and severity of injury inflicted
  - Severity of harm suffered
  - Includes aggravation of existing condition
  - Severity of perpetrator’s conduct
  - Duration of infliction of harm
  - Extent to which there is permanent or serious harm to appearance, health, physical or mental soundness
  - Includes pattern of abuse (esp. DV)
- Applicant (or parent or guardian of applicant under 16)
  - Possesses information and is/was helpful/likely to be helpful to investigation or prosecution of crime Law Enforcement agency must certify that applicant has been or is being helpful in investigation or prosecution of the criminal activity.
  - Applicant is admissible, which means

- No immigration or criminal problems OR, can prove that it is in public policy to get U Visa

## Process

### ■ U Visa Application

- I-918 Form for principal applicant. No fee for I-918
- I-918 Supplement B must be completed and signed by Law Enforcement Agency
- Certifying Agent specifically designated by the Agency Head.
- Declaration of applicant
- Evidence of “helpfulness”
- Evidence of substantial abuse
- Application for waiver of grounds of inadmissibility.
  - Documentation depends on seriousness of violation
- I-918 Supplement A must be filed for each derivative beneficiary
  - Must qualify as a derivative at time of filing (e.g. marriage, under 18 sibling, under 21 child, parent of child applicant under 21.
    - Request for Evidence if necessary
    - Approval or Denial. U Visa is not confidential process, but mere denial should not result in Deportation.
    - Application for Work Authorization
    - Application for Permanent Residence. No process for this yet.

## VAWA/U Visa Preliminary Screening Sheet

### VAWA

- Yes     No    Has s/he (or her/his children) been abused? Did abuser:  
 Yes     No    Threaten to beat or terrorize her?  
 Yes     No    Hit, punch, slap, kick, hurt, emotionally abuse her?  
 Yes     No    Force her to have sex against her will?  
 Yes     No    Threaten to take or hurt her children?  
 Yes     No    Threaten to turn her into INS?  
 Yes     No    Control where she went, what she could do, who she could see?  
 Yes     No    Engage in pattern of behaviors that together threatened violence?  
 Yes     No    Was s/he (or her/his children) abused by a U.S. citizen or Permanent Resident (green card holder)? (Answer "yes" if a Permanent Resident was deported within two years before the self-petition is filed because of the abuse, or if a U.S. citizen abuser died within two years before the self-petition is filed.)
- Yes     No    Was s/he the spouse, child (or parent) of the abuser according to the following definitions?
- Spouse
  - Currently married, OR
  - Divorced within past 2 years because of abuse, OR
  - Marriage invalid due to abuser's failure to terminate prior or concurrent marriage, and client unaware of other marriage.
  - [If child abused, unmarried parent may qualify for VAWA Cancellation]
  - Child
  - Unmarried
  - Under 21 at time of filing [Under 25 if delay because of abuse; VAWA Cancellation available for abused adults]
  - Recognized as "child" by INS (child born in wedlock, and certain adopted children, step-children and children born out of wedlock)
  - Parent (of adult US citizen)
- Yes     No    Did s/he live with abuser at some time (If child, a visit is sufficient)?  
 Yes     No    Does s/he live in the U.S.? (This may be answered "yes" if client lives outside U.S. if the qualifying abuse took place in U.S., or if the qualifying abuser is a U.S. employee)
- Yes     No    Did the abuse occur during the marriage (if client is spouse) or during residence with abusive parent (if client is child)?
- Yes     No    Does s/he have "good moral character?" (If s/he checks any of the statements on the "red flag" checklist on reverse s/he must see an immigration expert before s/he can answer this question.)
- Yes     No    Did s/he marry the abusive spouse in "good faith?" (If s/he married in order to get a green card, this question cannot be answered "yes.")

### Good Moral Character and Inadmissibility: Possible Problems

- Yes     No    Arrested by any law enforcement agency (including Immigration), or convicted of a crime.
- Yes     No    Have been, or are, in deportation proceedings.

- Yes     No    Have been told by Immigration Service or judge to leave the U.S.  
 Yes     No    Have been involved in illegally bringing other non-citizens into the U.S.  
 Yes     No    Have engaged in prostitution within the last ten years.  
 Yes     No    Have given false information to get an immigration benefit (enter U.S., apply for status)

## Preliminary Screening for U Visa Eligibility

- Yes     No    Is client a victim of a crime in the U.S.?  
 Yes     No    Is the crime one of the following?  
 rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, hostage taking, peonage, involuntary servitude, slave trade, kidnapping, abduction, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, attempt, conspiracy, or solicitation to commit any of the above-listed crimes, or any similar activity in violation of federal, state or local criminal law.  
 Yes     No    Has the client suffered substantial harm due to the crime?  
 Yes     No    Has or will the client helped prosecute the perpetrator?  
 Yes     No    Helped investigation  
 Yes     No    Helped with prosecution  
 Yes     No    Will help investigation  
 Yes     No    Will help prosecution  
 Yes     No    Has the client unreasonably refused to help police or prosecution?  
 Yes     No    Will law enforcement agency certify that the victim has helped or will help?  
 Yes     No    Is client admissible, or does she qualify for a waiver of inadmissibility grounds?

### Additional Possible Immigration Relief

- Conditional resident abused by U.S. citizen spouse (CR printed on green card)  
 Fear of persecution in home country  
 Abandoned, neglected or abused child

## *VAWA Cancellation of Removal Grant by Immigration Judge*

### **Who is Eligible?**

Abused Spouse of U.S. Citizen or Permanent Resident

- Includes “spouse” definition from VAWA Self Petition Process
- Includes parent of abused child who is not spouse of abuser (broader than VAWA self petition)

Abused “sons and daughters”.

- Includes “child” definition from VAWA Self Petition Process
- Includes “sons and daughters” over 21
- No “derivative beneficiary”

### **What Applicant Must Show:**

- Has been battered or suffered extreme cruelty
- Has been physically present in U.S. for 3 years before applying
- Extreme Hardship to immigrant herself, or her child or parent if she were removed
- Has been a person of Good Moral Character for 3 years

Is not inadmissible for

- Crimes
- Marriage Fraud
- Security

**Process: Application can only be filed in Removal Proceedings before an Immigration Judge.**

- If eligible to Self Petition, file petition with CIS VSC
- If not eligible to Self Petition, file application with court
- Other relief possible, including adjustment of status

## *Battered Spouse Exception to Joint Petition to Remove Condition on Residence*

- Applies to “conditional permanent residents” who gained legal residence through a marriage to a U.S. citizen that occurred less than two years earlier.
- Condition must be removed by petition jointly filed by both spouses
- Joint Filing requirement may be waived if:
  - U.S. citizen subjects conditional resident to battery or extreme cruelty
  - Failure to remove condition (that is, termination of status) would result in extreme hardship to conditional resident
  - Couple divorces, but conditional resident can prove marriage was entered into in good faith
- Waiver may be filed at any time
- Showing of good faith marriage and abuse very similar to VAWA self petition.

## *Gender-Related Asylum for Domestic Violence That Occurs Outside the U.S.*

**Asylum Standard:** Well founded fear of persecution in home country on account of race, religion, social group, ethnicity, political opinion (or imputed political opinion).

- Social group has been successful basis for domestic violence-based asylum.
- Persecution: infliction of suffering or harm upon persons who differ in a way regarded as offensive.

### **Narrowing factors:**

- Domestic or gender violence is not a specific ground for asylum
  - Must argue case within one of specific grounds (e.g. social group)
  - Success is somewhat arbitrary
- Must not have had option for safety elsewhere before coming to U.S.
- Home government must have been perpetrator, or been unable or unwilling to protect

- Generally must apply within one year of entry to U.S. or dramatic change in conditions
- Must not have persecuted others, have committed particularly serious crimes, or be a danger to U.S. security

### Process

- Submit Asylum Application to CIS Asylum Office
- In the Bay Area of California, East Bay Sanctuary Covenant handles all eligible asylum cases. (510) 540-5296
- If denied, apply for asylum in Immigration Court
- In the Bay Area of California, Lawyers Committee for Civil Rights handles all eligible asylum cases in immigration court (415) 543-9444

## *Special Immigrant Juvenile Status (SIJS)*

Special Immigrant Juvenile Status (SIJS) provides lawful permanent residency to children who are under the jurisdiction of a juvenile court and who will not be reunified with their parents due to abuse, neglect or abandonment.

### What are the benefits of Special Immigrant Juvenile Status (SIJS)?

- Allows the child to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.

### Who is eligible for SIJS?

A child who is under the jurisdiction of a juvenile court, where the court has found (a) that the child cannot be reunified with either parent because of abuse, neglect or abandonment, and (b) that it would not be in the child’s best interest to be returned to the home country.

## What are the requirements for SIJS?

- The juvenile court either must declare the child to be a court dependent or must legally commit the child to a state department or agency. This should include children in dependency proceedings, delinquency proceedings, and guardianship through a probate court.
- The SIJS application will include a special order signed by the juvenile court finding that the child is “deemed eligible for long-term foster care,” because of abuse, neglect or abandonment. Eligible for long-term foster care means that family reunification is not an option, and generally the child will be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. The court’s order, or a social worker’s statement, must provide at least a brief reference to facts supporting the finding of abuse, neglect or abandonment.
- The juvenile court must find that it is not in the child’s best interest to return to her/his country of origin. This can be proven through an interview with the child, a home study in the home country, or other evidence showing there is no known appropriate family in the home country.
- The child must be under 21 and unmarried. The child’s age can be proven with a birth certificate, passport, and official foreign identity document issued by a foreign government. The child can be a parent.
- The child must remain under juvenile court jurisdiction until the immigration application is finally decided and the child receives the green card. This is important to keep in mind because the immigration interview may not be scheduled until three months to three years, or even longer, after the SIJS application is filed, depending on the local immigration office backlog and complexity of the case.



## Immigration Options for Abused Immigrants

	U VISA	VAWA
WHO IS ELIGIBLE	Crime victims who help investigation or prosecution of crime (Abuser/perpetrator of any status)	Abused spouses and children of U.S. citizen or permanent resident
WHAT APPLICANT MUST PROVE	<ul style="list-style-type: none"> <li>• Helpful in investigation</li> <li>• Suffered “substantial abuse”</li> </ul>	<ul style="list-style-type: none"> <li>• Abuser must be U.S. Citizen or Permanent Resident</li> <li>• Abuse during marriage</li> </ul>
ACTION REQUIRED BY GOV'T AGENCY	Certification by Investigating Agency	none
NECESSARY DOCUMENT REQUIREMENTS	<ul style="list-style-type: none"> <li>• Generally must have police report</li> <li>• Applicant declaration</li> <li>• Law enforcement certification</li> </ul>	<ul style="list-style-type: none"> <li>• Proof of abuser’s status</li> <li>• Proof of relationship to abuser</li> <li>• Applicant declaration</li> </ul>
ELIGIBILITY for IMMIGRATION BENEFITS FOR RELATIVES	<ul style="list-style-type: none"> <li>• Spouse or minor child of adult victim</li> <li>• (nonabusing) parent of child victim</li> <li>• siblings under 18 of child victim</li> </ul>	<ul style="list-style-type: none"> <li>• Minor child of applicant</li> <li>• Non-abused parent of abused child may apply if married to the child’s abuser</li> </ul>
DISQUALIFICATION	SERIOUS CRIMES	SOME CRIMES, IMMIGRATION VIOLATIONS
PATH TO PERMANENT RESIDENCE	After 3 years with U visa	<ul style="list-style-type: none"> <li>• US citizen abuser - concurrent with petition</li> <li>• Permanent resident abuser - long wait</li> </ul>

## VAWA/U Visa Hypotheticals

- Sylvia has been married to Ron for five years. Both Ron and Sylvia are undocumented. During the last three years of marriage, Ron has been abusing Sylvia. Can Sylvia self-petition for VAWA?
- Helen has been in a relationship with Rick for years. She is undocumented and he is a US citizen. They were living together and even bought a house together but Rick broke up with her after she had their baby. Last month, Rick came by Helen's house and hit her so badly she had to go to the hospital. The hospital informed the police, who interviewed her about the incident. What are her options?
- Josefina has been married to a US citizen for 5 years but he never filed an immigration petition for her. During that time he has hit her many times. Although her friends have told her to go to the police to report the abuse, she has always been too scared. Now she wants to leave him but wants to know what she can do to stay here.
- Lily has just escaped from a very violent marriage with her husband. Both are undocumented. During that time, her husband hit her on many occasions in front of people. Lily has letters from DV shelters about the abuse she has suffered and even medical records that document some of the abuse. There are many people who can certify that she has suffered extreme physical abuse. She also has a police report from when her husband picked the kids up from school and didn't return them until the next day after Lily was frantically calling him to return them to her. What can she do?
- Maricela is married to her US citizen husband, Alex, but has been separated from him and hiding from him for 10 years. While they had been dating, he had been physically abusive with her and she called the police on several occasions. Once they got married though he stopped hitting her, but was constantly threatening her or making fists as if he would hit her. She finally left him. Is she eligible for a VAWA self-petition?
- Katie and Matthew are married and are both undocumented. Last year, Katie was attacked in her home by a stranger and sexually assaulted. She called the police, but they never found the man who attacked her. Can she get any kind of immigration help?

- Susan was married to Daniel for 10 years and although Daniel was a legal permanent resident and promised to help Susan get her residency, he waited for 8 years to file for her. She has been on the immigration waiting list for 4 years and will probably have to wait another 3 before she can apply for residency. Daniel was also abusive towards Susan and she left him. The divorce was made final this year and she's now in a relationship with an undocumented man. Does she have any hope of becoming a resident?
- Marina has been separated from her husband, Samuel, who is a legal permanent resident for a couple of years. During their marriage there was a lot of abuse and she called the police many times but he was never arrested. She has heard that Samuel is now in prison because he stole a car and will be deported once his sentence is completed. Marina desperately wants to fix her immigration situation. What should she do?

### *Answers/Key to U Visa Hypos*

- No, Sylvia cannot apply for VAWA because even though she is married to the abuser, he has no status. If she has a police report, etc, she may be U eligible.
- Helen is not eligible for VAWA because no legal marriage. (No “common law marriage” in most states.) She may be U eligible if she cooperated with the police in their investigation.
- Josefina appears VAWA eligible. It doesn't matter that there are no police reports, as this is not a requirement for VAWA. She will, however, have to find other ways to document her abuse.
- Lily does not have a VAWA option and does not appear U eligible, because the only crime reported to police was not a U qualifying crime (unless she had sole custody and crime was written up as abduction, but even then, the kids are the victims). The U Visa is not for DV victims, but rather specifically for crime victims who report their abuse and cooperate. (She might be able to report past abuse but that it is unlikely to yield a certification.)

- Maricela is VAWA eligible. The abuse before the marriage is not enough to do VAWA, but the continued threats of violence seen in the context of previous physical violence can be considered extreme cruelty. She will have to find ways to document that he made these threats to her and she was in fear of physical abuse during marriage. The time elapsed does not matter as long as marriage is still valid (or terminated due to domestic violence less than 2 years before filing), and he still has status. (In some cases with LPR husbands, there is the possibility that he lost his status in the interim.) If VAWA turns out not to be an option, she may be eligible for the U Visa because of the police reports she made, but it could be hard to get a certification (because of how old they are) and not the best U case.
- Katie appears eligible for the U visa, and her husband can be a derivative! (However, abusers cannot be derivatives.)
- Susan may be VAWA eligible, but we need to know what the “abuse” refers to. (Extreme cruelty is a higher standard than bad, selfish husband). If Susan’s divorce was related to the “abuse” (and she is otherwise eligible), then she may file for VAWA, but must do it before 2 years after divorce finalized. She will be able to recapture her Priority Date, so her wait will remain the same (3 years). She cannot marry her new boyfriend or she will become ineligible for VAWA. If she wants, she can wait until she is an LPR and then marry him and petition for him as a spouse of an LPR, but the wait will be substantial.
- Marina appears to be VAWA eligible, but she must file immediately. If her husband is deported, which means he loses his status, she will no longer be eligible. If he were to lose his status for a reason related to his domestic violence towards her (ie., a DV conviction that made him removable), then she would have 2 years from the date of his removal to file. However, if the loss of status is for an unrelated crime, she must file before he is deported. If she does not file in time, she may be eligible for the U Visa.

## *Issues to Analyze in Determining Whether Immigrants Can Get Public Benefits*

- **Is someone with this immigration status eligible for the relief?**
  - Most battered immigrants and victims of trafficking are “qualified aliens” eligible for certain public benefits.
  - U Visa applicants will be treated as battered immigrants starting in January, 2007.
  - They may be eligible for emergency and pregnancy-related benefits, regardless of immigration status.
  - Each benefit has its own eligibility criteria.
  
- **Will receiving the benefit cause problems with the “public charge” ground of inadmissibility?**
  - The standard is whether, considering everything about the person and her circumstances (like age, background, employability) at the time of her interview for permanent resident status, she is likely to be primarily dependent on public benefits to maintain the basic needs of her household. So, the relevant questions are:
    - Is the person planning to apply for permanent resident status soon?
    - If so, will circumstances have changed so that she will no longer need public benefits at the time of her interview?
  - The US citizen or permanent resident who filed a family petition for the immigrant must file a binding Affidavit of Support (I-864) which obligates him/her to repay any public benefits received by the immigrant. This I-864 is counted as a significant part of the “totality of circumstances” test.
  - Non-cash benefits don’t count in this analysis. (see “INS” explanation of exempted benefits)
  - Benefits received by a US citizen child are not benefits received by the parent for public charge purposes (unless the family depends primarily on those benefits to maintain basic needs of the household).
  
- **Is the immigrant income eligible for the public benefit?**
  - This issue applies once the immigrant is already a permanent resident.

- In cases where a US citizen or permanent resident petitioner files an I-864 Affidavit of Support, his/her income is “deemed” to be the immigrant’s income in determining whether her income is low enough to be eligible for benefits like Medicaid or Food Stamps. Generally, this means that she will not be income eligible for public benefits.