

# VAWA Evaluations: 7 Common Questions Applicants Have About VAWA Evaluations and Petitions

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There are several immigration waivers and petitions that individuals can apply for in order to become legal permanent residents in the United States. We have a detailed blog post that goes over the [seven immigration cases where you might need a psychological evaluation](#). One of the most common petitions falls under the [Violence Against Women's Act \(VAWA\)](#).

[VAWA](#) allows a battered immigrant spouse, child, or parent of either gender to file an immigration petition without their abuser's knowledge. If approved, a [VAWA](#) petition lets the applicant work in the United States and become a [legal permanent resident \(a green card holder\)](#).

These cases can be complex and we recommend that you speak to an immigration attorney for guidance and assistance in filing your petition.

Although the petition includes "women" in the title, men are also able to apply for a petition under this law. The goal of this blog post is to discuss this law in more detail, answer the most common questions we are asked regarding [VAWA](#) evaluations, and explain how a [VAWA evaluation](#) can help your case.

## What is the Violence Against Women's Act (VAWA)?

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There are an estimated 23 million immigrant women and girls in the United States and over half of the foreign-born population is female.

Unfortunately, women are particularly vulnerable to sexual violence. In addition, domestic violence, human trafficking, and exploitation in the workforce present unique challenges to noncitizen women due to the vulnerability created by their immigration status in the United States.

[VAWA](#) provides numerous forms of protection for noncitizen women and men who are the victims of domestic violence or other qualifying crimes. The law was originally passed in 1994 but it has undergone several revisions and expansions since it was first created.

The original [VAWA of 1994](#) included provisions to allow noncitizen victims of domestic violence to obtain immigration relief independent of their abusive spouse or parent through a process called "self-petitioning."

The Battered Immigrant Women Protection Act of 2000 (VAWA 2000) created new forms of immigration relief for noncitizen victims of violent crime (U-Visa) and victims of sexual assault or trafficking (T-Visa). The Violence Against Women Act of 2005 expanded these protections and included some victims of elder abuse.

## What is a U-Visa?

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A U-Visa may be granted to an undocumented individual living in the U.S. if the individual can demonstrate that they have experienced substantial mental or physical abuse due to being a victim of a serious crime that occurred in the United States.

Examples of serious crimes include but are not limited to the following: domestic violence, sexual abuse, rape, murder, torture, kidnapping, and stalking.

The individual must also be willing to help law enforcement and provide information that assists with the prosecution of the individual that committed the crime.

A U-Visa is valid for up to four years. It may be extended if the certifying law enforcement agency confirms that the U-visa holder is required to remain in the United States to assist the investigation or prosecution.

After three years of continuous presence in the United States, a U-Visa holder is eligible to apply for legal permanent resident status if he or she meets certain requirements.

They must not have refused to provide assistance in the criminal investigation or prosecution and can prove that remaining in the country is connected to humanitarian need, will promote family unity, or is in the public interest.

## What is a T-Visa?

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The T-Visa was created to provide immigration relief to victims of “severe forms of human trafficking”. This can include the following:

1. Sex trafficking in which a commercial sex act is induced by fraud, force, coercion, or in which the victim is younger than 18 years of age
2. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through use of force, fraud, or coercion for the purpose of subjection to involuntary servitude or slavery.

A T-Visa can be granted to victims of human trafficking and their immediate families if they agree to assist law enforcement in testifying against their perpetrators.

In order to be eligible for a T-Visa, an individual must demonstrate that they will endure unusual or severe harm if they were deported from the U.S.

Unusual or severe harm **does not include** current or future financial detriment or lack of social and economic opportunities.

Unusual or severe harm can include the following:

- Age and personal circumstances of the T-Visa.
- Serious physical or mental illness of the T-Visa applicant because treatment is not available in their home country.
- High likelihood of re-victimization.
- Reasonable expectation of punishment by the trafficker or related individuals upon return to their country.

T-Visas are valid for four years. In order to qualify for legal permanent resident status, T-Visa holders must do the following:

1. Maintain a continuous physical presence in the United States for three years (or for the duration of a completed investigation or prosecution of the act of trafficking, whichever is less)
2. Must maintain good moral character.
3. Must have continued to cooperate with law enforcement or demonstrate they would suffer extreme hardship if they were removed from the United States.

A T-Visa protects recipients from removal and gives them permission to work in the United States. They also have access to the same benefits as refugees, including cash assistance, food assistance, and job training.

## **What is a Battered Spouse Waiver?**

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In order to prevent marriage fraud, federal immigration law requires applicants for marriage-based green cards to receive “conditional” permanent resident status for two years before being granted full legal permanent resident status.

In these situations, a non-citizen who is a victim of domestic violence may feel obligated to stay in an abusive relationship in order to obtain legal permanent resident status.

The Immigration Reform Act of 1990 created the “battered spouse waiver,” which allows victims of domestic violence to file an application to remove the conditional status without the assistance of their abusive spouses.

They also do not have to stay in an abusive relationship for two years by providing proof of battering or extreme cruelty and the validity of the marriage.

This is probably one of the more common types of cases that we run into in our practice. More often than not, the client got married and their spouse then became violent, abusive, or used the client’s immigration status as a means to control and manipulate them.

## Who is eligible for VAWA protections and what is a “self-petition”?

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There are two basic conditions for obtaining protection under VAWA:

1. The *abuser* must be a U.S. citizen or legal permanent resident (“green card” holder), and
2. The *victim* must be either the spouse, ex-spouse, a child under 21, or parent of the abuser.

Both male and female victims may apply for protection under VAWA. Victims can “self-petition” for legal permanent resident status without the cooperation of the abuser.

A VAWA self-petition is available to:

- Spouses and former spouses of abusive U.S. citizens or lawful permanent residents. Divorced spouses may self-petition if the termination of the marriage was related to the abuse and if the application is filed within two years of the termination of the marriage.
- Children of abusive citizens or lawful permanent residents who file before turning 25.
- A noncitizen parent of an abused noncitizen child, even if the non-citizen parent is not herself abused.
- Non-citizen spouses whose children are abused by the child’s other U.S.-citizen or legal permanent resident parent.

In addition to proving abuse, a self-petitioner must also prove:

- Good faith marriage if the abuser is a spouse or step-parent.
- The relationship to the abuser.
- The immigration status of the citizen or legal permanent resident spouse, parent, or child.
- Good moral character.
- Residence with the abusive family member.
- Parent-child relationship if the applicant is a non-abusive noncitizen parent whose U.S.-citizen or LPR spouse perpetrated the abuse.

VAWA applicants are often fearful that their abusers will find out that they filed for VAWA relief. **Victims can apply for VAWA in secret so their abusers can never find out that they applied for VAWA relief.**

The Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) is legally prohibited from disclosing that a victim has applied for VAWA benefits.

## What is VAWA Cancellation of Removal?

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VAWA cancellation of removal is a form of relief designed to keep victims of abusive U.S. citizen or legal permanent resident spouses or parents from being deported.

Victims can seek relief in immigration court after being placed in removal proceedings. Successful cancellation of removal will allow them and their children to receive a green card.

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

- They have been battered or subjected to extreme cruelty by a U.S. citizen or legal permanent resident spouse or parent.
- Physical presence in the United States for 3 years.
- Good moral character.
- That removal would cause extreme hardship.
- That certain inadmissibility grounds do not apply or that she qualifies for a waiver of inadmissibility.

## **What Can I Expect During an Immigration Evaluation?**

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We get a lot of questions from clients regarding what they can expect when they meet with a psychologist for an immigration evaluation.

A psychological evaluation can be helpful in highlighting the specific hardship issues related to the case. It is also not uncommon for individuals to develop depressive disorders or Post-Traumatic Stress Disorder as a result of their experiences.

A psychological evaluation will establish the mental health consequences of the physical or sexual abuse they endured while they were being trafficked.

This process can be very anxiety-provoking, especially for someone that has never met with a psychologist. We want to ease some of your anxiety so we've included a quick overview of what to expect during an evaluation.

### **A typical immigration evaluation for a VAWA petition can include the following:**

- An interview with you and close members of your family. The interview will help us understand important psychological, medical, and social background information, and your current level of cognitive and psychological functioning.
- Consultation with your attorney to determine the type of waiver that will be best suited for your case.
- A review of medical, psychological, and other supporting documents that help us have a better understanding of your psychological and emotional functioning.
- If necessary, we will administer psychological tests and questionnaires to help us figure out specific areas where you are having psychological difficulty.

- If your attorney requests to have you evaluated for cognitive problems such as a learning disability, dementia, or traumatic brain injury, we will also administer neuropsychological tests.
- After we complete the evaluation, we will write a comprehensive report that integrates our findings and give it to your attorney.

## Conclusion

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VAWA was passed in 1994 allows a battered immigrant spouse, child, or parent of either gender to file an immigration petition without their abuser's knowledge. If approved, a VAWA petition lets the applicant work in the United States and become a legal permanent resident (a green card holder).

This law has undergone several revisions and changes and includes additional petitions including the following:

- The T-Visa: Created to provide immigration relief to victims of “severe forms of human trafficking”.
- The U-Visa: May be granted to an undocumented individual living in the U.S. if the individual can demonstrate that they have experienced substantial mental or physical abuse due to being a victim of a serious crime that occurred in the United States.
- The “Battered Spouse Waiver”: The waiver allows victims of domestic violence to file an application to remove the conditional status without the assistance of their abusive spouses.

Both male and female victims may apply for protection under VAWA. Victims can “self-petition” for legal permanent resident status without the cooperation of the abuser.

These cases can be complex and we recommend that you speak to an immigration attorney for guidance and assistance in filing your petition.

It is very likely that your attorney will request a psychological evaluation if you are applying for protection and legal permanent residence under VAWA.

We are hoping that this overview helped ease your anxiety by explaining what you can expect when meeting with a psychologist for an immigration evaluation.

You can read more about how we conduct VAWA evaluations and the benefits of retaining an expert to complete a VAWA evaluation here.