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Immigration Options for Victims of Crimes

Element	I-360 VAWA Self Petition	I-751 Domestic Violence Waiver for Conditional Residents	I-589 Asylum	I-914 T Visa	I-918 U visa	I-360 SIJS
Who is it for?	1. An abused spouse or child (including step-child) of a USC or LPR; or 2. A parent of a child who is abused by the parent's USC or LPR spouse; or 3. An abused parent of a USC son or daughter.	Admitted as a Conditional Resident (issued a "green card" that is/was valid for only two years).	Any individual who has suffered, or has a well-founded fear of, persecution in home country on account of his/her race, religion, national origin, membership in a particular social group or political opinion.	Victim of a severe form of trafficking in persons (including sex and/or labor trafficking).	Victim of qualifying crime in INA 101(a)(15)(U)(iii), including but not limited to: rape, sexual assault, prostitution, incest, domestic violence, FGM, involuntary servitude, trafficking, kidnapping, sexual exploitation, false imprisonment, murder, manslaughter, blackmail, extortion, witness tampering, perjury, stalking, fraud in foreign labor contracting and has cooperated with law enforcement during the investigation or prosecution of the crime.	Child under the jurisdiction of state court authorized to make placement decisions with regard to the child, and court has ordered that child cannot be reunified with one or both parents due to abuse, abandonment, neglect or something similar under state law and it is not in the child's best interest to be returned to his/her country of origin.

Last updated June 26, 2016

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Element	I-360 Self Petition	I-751 Waiver	I-589 Asylum	I-914 T Visa	I-918 U visa	I-360 SIJS
Eligibility Requirements	1. Spouse or parent is or was (within 2 years of filing) a USC or LPR; or whose son or daughter is a USC; 2. Good faith marriage (spouse only) and resided together in the US; 3. Battery or extreme cruelty; 4. Good moral character.	1. Conditional Resident; 2. Good Faith Marriage; 3. Battery or Extreme Cruelty.	1. Past persecution or well-founded fear of future persecution; 2. Persecutor is government or private actor that the government is unwilling/unable to control; 3. On account of race, religion, national origin, membership in a particular social group or political opinion.	1. Victim of a severe form of trafficking; 2. Physically present in the US, American Samoa, Puerto Rico, US Virgin Islands, Guam or Northern Mariana Islands on account of the trafficking; 3. Complied with any reasonable request for assistance in the investigation or prosecution of trafficking (exceptions for trauma or if under 18 years of age; cooperation can be demonstrated through primary and secondary evidence and does not require a law enforcement certification on I-914 Supplement B); 4. Would suffer extreme hardship if returned to home country.	1. Victim of qualifying crime; 2. Suffered substantial physical or mental abuse from the crime; 3. Law enforcement certification that applicant (or parent/guardian/next friend of child victim) has information and has been/ is being/ likely to be helpful to authority investigating or prosecuting the crime (law enforcement certification, on I-918 Supplement B is a requirement).	1. Unmarried, under 21, and present in the U.S.; 2. State court declares that (a) the child is a dependent of the court or legally placed with a state or private agency or individual, (b) not in child's best interests to return to home country, (c) the child cannot be reunified with one or both parents because of abuse, abandonment, neglect, or a similar reason.

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Eligible Derivatives	Minor child(ren) of person filing as a spouse/child of an abusive LPR/USC are automatically included as derivatives; if the petition is filed or approved before they turn 21 but don't get LPR status before 21, they shall be considered a VAWA self-petitioner with the same priority date as the parent. If applying as Abused Parent of USC, there are no eligible derivatives.	No derivatives per se; though conditional resident children can be included in parent's I-751 application.	Spouse (non-abusive) and child(ren) (under 21 and unmarried).	Adult victim- spouse, child(ren) (under 21 and unmarried); Child victim- spouse, child(ren), sibling(s) (under 18 and unmarried), parent(s). Family members whose eligibility is based on present danger of retaliation (regardless of the age of the principal): parent, siblings (under 18 and unmarried), and adult or minor child of a derivative beneficiary of the principal (T-6).	Adult victim- spouse (non-abusive), child(ren) (under 21 and unmarried); Child victim- spouse, child(ren), sibling(s), parent(s)	None with approved I-360 alone. Current explicit prohibition on petitioning for parent. Once LPR status is obtained, may be able to petition for siblings or children.

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Divorce, Remarriage, Death	Divorce within past 2 years “connected to” domestic violence OK; Remarriage while petition is pending NOT OK, AFTER approval OK. If abusive USC parent or spouse dies, may file within 2 years after death. NOT applicable to cases where LPR abuser dies.	Divorce and death are additional bases for filing a waiver which may be filed concurrently with DV waiver if applicable. Remarriage before approval of the waiver might raise CIS fraud suspicions.	Applicant’s divorce or remarriage not relevant, derivative spouse may lose eligibility if divorced from asylum seeker.	Applicant’s divorce or remarriage not relevant to primary victim’s eligibility, derivative family member may lose eligibility if the family relationship is terminated before the application is approved.	If client is on the waitlist for visa availability, then applicant’s divorce will cut off eligibility for spouse derivative. If client has full 4 years of continuous presence, applicant’s divorce or remarriage not relevant, derivative spouse/child may lose eligibility on CIS discretion.	Depends-states may consider applicant’s prior marriage before filing I-360 and/or adjustment differently as divorce may not re-qualify someone as a child; but may if forced or false marriage.

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Public Benefits	Prima facie eligibility confers eligibility as “qualified alien” under welfare law for benefits if need is “connected to” the abuse.	No special access to public benefits, except generally as LPR “qualified alien.”	Approval confers eligibility for federally-funded public benefits and specialized services = all benefits refugees receive.	Minors who “may have been” trafficked can apply for Interim HHS Eligibility Letters, and trafficked minors can apply for HHS Eligibility Letters. Continued Presence or T Visa approval leads to HHS Certification, which grants eligibility for federally funded public benefits and specialized services. Some states confer benefits pre- and post-filing of T visa and granting of T visa.	No special eligibility conferred by U Visa except where states have conferred.	I-360 approval may not confer any access to benefits; however, if a child is in ORR custody, they may be eligible for the federal foster care program. But the answer may be more nuanced depending on the state.
Deadline	Within two years of a divorce “connected to” domestic violence. Within 2 years of USC or LPR abuser’s loss of status, if related to domestic violence.	Anytime before the expiration of the card, or after if applying for a waiver.	Adults- within one year of entry to US or qualifying event, with some exceptions. Unaccompanied child- no filing deadline. Must file I-730 for derivatives within 2 years of grant.	Person trafficked before October 28, 2000 must have applied for a visa within one year of January 31, 2002, or show exceptional circumstances. If trafficked after that date, no filing deadlines.	None, but must file I-918 for derivative minor child before the derivative child turns 21.	I-360 must be submitted before applicant turns 21; must also obtain state court order as defined by state law (i.e., 18 in some states, 21 in other states).

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Employment Authorization	Can be granted upon approval of I-360. If eligible to apply for residency concurrently with VAWA self-petition (called VAWA one step), may file work permit also based on immediate eligibility to adjust and the EAD can come before the 360 is approved.	Inherent in Conditional Resident status (because = LPR).	Eligible upon asylum approval (no EAD required) or after asylum application has been pending for more than 180 days (with no delays attributed to the applicant as those stop the counting of the 180-day period). If the asylum clock is stopped the amount of time can vary greatly.	Can be granted along with T Visa or with Continued Presence.	Can be granted along with U Visa or based on deferred action status if on the U Visa waitlist (2-year EAD).	Can be submitted upon filing of the I-485 application.

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Lawful Permanent Resident ("Green Card") Eligibility	Eligible to apply as soon as Priority Date is current (can transfer from prior I-130) (immediate for USC spouse/child, may be several years for LPR spouse/child based upon times indicated in visa bulletin).	Approval affirms unconditional Legal Permanent Resident status.	Eligible to apply without fee one year after asylum grant.	Eligible to apply after 3 years of continuous physical presence or eligible to apply to adjust early if receive confirmation from the federal Attorney General (e.g., Department of Justice) that the investigation and case is complete and that the victim has complied with requests for cooperation.	Eligible to apply after 3 years of continuous physical presence and applicant has not unreasonably refused to provide assistance in the criminal investigation or prosecution; is not inadmissible under INA section 212(a)(3)(E), and applicant's presence in the US is justified on humanitarian grounds, to ensure family unity or is in the public interest.	Immediately available as long as there are sufficient visas available; as of May 2016, there will be delays for applicants from El Salvador, Guatemala, and Honduras. Check the U.S. Department of State's monthly visa bulletins for the most up to date information.
INA provisions	204, 245(a) & (c)	216(c)(4)(C)	208, 209	101(a)(15)(T); 214(o); 245(l)	101(a)(15)(U); 214(p); 245(m)	101(a)(27)(j); 245(h)

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