



MAKING PROTECTIONS FOR IMMIGRANT VICTIMS MORE BURDENSOME UNDERMINES VAWA

Since its enactment in 1994, VAWA included vital protections for immigrant survivors of domestic violence and sexual assault. **Congress specifically recognized that the abusers of immigrant victims often use their victims' lack of immigration status as a tool of abuse, leaving the victim afraid to seek services or report the abuse to law enforcement.**ⁱ Congress sought to remedy that in VAWA to ensure that all victims have access to safety and protection and that all perpetrators can be held accountable.

While these critical protections have helped thousands of survivors of domestic violence, sexual assault and trafficking, there have been isolated allegations of fraud in these programs.ⁱⁱ In 2012, the Congressional Research Service (CRS) found empirical evidence for widespread fraud assertions lacking.ⁱⁱⁱ In addition, as highlighted in the CRS report, the current system already has numerous gatekeepers, checkpoints, and roadblocks that immigrant survivors must pass in order to access VAWA protections.

In fact, if anything, advocates are concerned that the current requirements and process are already so burdensome that they deter battered immigrant women who would qualify for VAWA protections from applying in the first place, or prevent those with legitimate cases from having their applications approved.^{iv}

Increasing those barriers would jeopardize immigrant victims and their children and empower abusers to block victims' access to justice and safety.

Why Special Protections for Immigrant Victims Are Necessary

VAWA "self-petitioning" was created in 1994 to assist victims married to or children of abusive U.S. citizen or legal permanent resident spouses and who use their control over the victims' immigration status as a tool of abuse (e.g., by failing to petition for them and thus intentionally leaving victims without legal status).

In 2000, Congress specifically created the U visa program to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking...and other crimes... while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States."^v To be eligible for a U visa, victims are required obtain a law enforcement certification demonstrating that they have assisted or are willing to assist in the investigation or prosecution of the crime. The 2005 and 2013 VAWA reauthorization continued support for all these protections.

The Current System Already Has Numerous Mechanisms to Ferret Out Fraud While Prioritizing Victim Safety

All VAWA self-petitions and U visa applications are handled by a centralized, specially trained expert unit of the U.S. Citizenship and Immigration Services (USCIS) (the "VAWA Unit" at the Vermont Service Center) – with expertise and specialized training not only in VAWA laws and regulations, but also the dynamics of the barriers facing immigrant victims of domestic violence, in addition to the detection and prevention of fraud.^{vi}

Created by the Immigration Committee of the National Task Force to End Sexual and Domestic Violence.

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- Despite assertions to the contrary, an applicant CANNOT simply claim that they were subject to abuse or extreme cruelty or neglect to have an approved VAWA application. Applicants are required to submit supporting evidence that is carefully scrutinized to ensure that applications that are approved have clear merit.
- **The number of cases approved annually is small. In 2017, there were 4,481 VAWA self-petitions adjudicated in the first three quarters. Of those, 1545, or 34% were denied.**^{vii}
 - VAWA self-petitions for abused family members of US citizens and permanent residents account for less than 1 percent of family petitions approved by USCIS.^{viii}
 - **The VAWA self-petition is only the first step for an immigrant victim** – once approved, it provides only “deferred action” status. Before Lawful Permanent Resident (LPR) status (a “green card”) is granted, current law requires that the victim has to have a face-to-face interview at the local USCIS office.

The U visa application process also requires supporting evidence that is carefully scrutinized.

- To be eligible, a victim must demonstrate that she/he suffered “substantial injury” as a result of a limited list of serious crimes.
- A U visa can only be granted if a law enforcement officer (department head or authorized supervisor) or other investigative agency certifies that the victim is, has been, or will be helpful in the investigation or prosecution of the crime. This requirement acts as a built-in fraud prevention mechanism. This process also allows for the withdrawal of a certification if the victim is no longer helpful.
- As in VAWA self-petition cases, USCIS’ VAWA Unit may request further evidence from the petitioner, USCIS may also reach out to the law enforcement agency for further information.^{ix}

Prior proposals to reduce confidentiality protections for applicants would endanger victims.

ⁱ Congress recognized that providing battered immigrant women and children who “were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser’s control” Section 1502(a)(2) of Public Law 106–386—OCT. 28, 2000.

ⁱⁱ While some individuals’ allegations regarding fraudulent claims in their specific case may prove true, still, they tell us little about whether there is any systemic problem, nor whether the current system is best positioned to defend against such attempts while also protecting victim safety. More importantly, it is especially critical to question the motivations of the advocacy organizations that so loudly demand changes that would compromise victim safety. For example, “SAVE” has been shown to be linked to a mail order bride company found in federal court to have engaged in egregious practices. See “Mail Order Bride Company President Lobbying To Weaken Protections For Abused Immigrants”, http://www.huffingtonpost.com/2012/05/08/violence-against-women-act_n_1500693.html.

ⁱⁱⁱ See Congressional Research Service report, “Immigration Provisions of the Violence Against Women Act (VAWA)”, by William Kandel, June 7, 2012 (hereafter CRS Report), Available at: <https://fas.org/sgp/crs/misc/R42477.pdf>

^{iv} See CRS Report, p. 6.

^v See section 1513(a)(2)(A), Public Law No: 106-386, 114 Stat. 1464

^{vi} See USCIS, Department of Homeland Security, “Report on the Operations of the Violence Against Women Act Unit at the USCIS Vermont Service Center,” October 22, 2010, at p. 3 (“Consolidation of VAWA petition adjudications in the VSC [Vermont Service Center] was intended, among other things, to prevent fraud by assigning adjudication of specialists in domestic violence cases who

could efficiently discern fraudulent petitions, fairly adjudicate legitimate petitions, and protect victims from accidental violations of confidentiality.”), available at:

<http://www.uscis.gov/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf>

See also CRS report, p. 8 fn 48.

^{vii} USCIS. “Data Set: Form I-360 Victims of Domestic Violence, Battery or Extreme Cruelty (VAWA)” Available at:

<https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-360-victims-domestic-violence-battery-or-extreme-cruelty-vawa>

^{viii} In the first three quarters of FY 2017, only 2936 VAWA self-petitions for abused family members of US citizens and permanent residents were approved, compared to the family-based petitions that were approved in the same period. Statistics for I-129F (fiancé petitions) and family petitions (immediate relatives) were combined to reach the number of 430,0011 for the first three quarters of 2017. USCIS Servicewide Receipts and Approvals for All Form Types, FY2017

[https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly All Forms FY17Q4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly%20All%20Forms%20FY17Q4.pdf)

^{ix} U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal, and Territorial Law Enforcement, Department of Homeland Security, p. 15.