

# **VAWA I-360 Battered Spouse Self-Petition: Legal Analysis and Action Plan**

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## FINDINGS

### **VAWA I-360 BATTERED SPOUSE SELF-PETITION: COMPREHENSIVE LEGAL ANALYSIS AND STRATEGIC ACTION PLAN**

This report provides a detailed examination of the Violence Against Women Act (VAWA) self-petition process under Form I-360 for battered spouses, with particular emphasis on statutory requirements, operational procedures, evidence standards, and Northern California practice considerations. As of February 2026, USCIS reports that approximately eighty percent of VAWA I-360 petitions require forty-one and one-half months for completion, reflecting a significant increase from prior year processing times and presenting meaningful challenges to applicants seeking protection through this pathway.[1][15] The petitioning process unfolds across six distinct procedural phases-preparation and filing, receipt notice, initial review with potential requests for evidence, prima facie determination conferring certain benefits, detailed background review, and final adjudication-each governed by evolving regulatory guidance and procedural requirements that demand careful strategic planning. Critically, prima facie determination, while offering temporary access to public benefits and confirmation that the petition meets basic eligibility requirements, does not constitute approval and does not guarantee eventual approval of the underlying petition. Understanding the distinction between prima facie status and final approval, comprehending the operational mechanics of concurrent Form I-485 and I-765 filing, and strategically anticipating potential Requests for Evidence (RFEs) are essential components of effective VAWA representation in 2026.

#### **Statutory and Regulatory Framework Governing VAWA I-360 Self-Petitions**

The legal foundation for VAWA self-petitions rests upon [INA § 204(a)(1)(A)(iii)][3], which provides that certain abused spouses of U.S. citizens or lawful permanent residents may self-petition for special immigrant status without requiring the abuser's cooperation or knowledge. The statute establishes that an alien who is the spouse of a U.S. citizen or lawful permanent resident and who has been battered or subjected to extreme cruelty during the marriage may file Form I-360 directly with United States Citizenship and Immigration Services, thereby circumventing the traditional family-based immigration petition process that would otherwise require the citizen or permanent resident spouse to file on behalf of the alien beneficiary. This self-petition authority represents a fundamental departure from conventional family-based immigration law, which ordinarily vests sponsorship authority exclusively with the qualifying relative.

Implementing regulations appear in [8 CFR § 204.2(c)(1)(vi)][3], which specifies that evidence of abuse must demonstrate that the self-petitioner has been battered by or subjected to extreme cruelty perpetrated by the citizen or lawful permanent resident spouse during the marriage.[3] The regulatory framework further specifies that the qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.[3] This language establishes three indispensable elements that together define the abuse predicate: (1) identity of the perpetrator (the citizen or permanent resident spouse), (2) identity of the victim (the self-petitioner or the self-petitioner's child), and (3) temporal nexus (during the marriage). The regulations explicitly define extreme cruelty to include psychological and sexual abuse, as well as threatened acts of violence that result in or threaten to result in mental harm.[3]

The regulatory framework identifies "battery" as referring to physical abuse,[14] while "extreme cruelty" encompasses a broader range of abusive conduct.[14] As United States immigration officials have interpreted this standard, extreme cruelty includes emotional abuse, psychological abuse, financial abuse, sexual abuse,

immigration-related abuse (such as threats to call immigration authorities), and coercive control and isolation.[17] Consequently, an applicant need not demonstrate physical abuse to satisfy the battery or extreme cruelty requirement; an applicant who lived in fear, felt controlled, lost independence, or was threatened in ways that kept the applicant trapped may qualify even absent any history of physical violence.[17]

The statutory foundation for confidentiality protections appears in [8 U.S.C. § 1367][12], which prohibits disclosure of information relating to VAWA self-petitioners except in limited circumstances enumerated by statute.[9] Section 1367(a)(1) provides that the Attorney General, any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any official or employee of the Department of Homeland Security or Department of State shall not use information relating to a VAWA self-petitioner for immigration enforcement purposes.[12] The statute further provides that no information relating to an alien who is the beneficiary of an application for VAWA relief may be disclosed to anyone other than a sworn officer or employee of the Department for legitimate Department purposes.[12] The limitation under this confidentiality provision ends only when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.[12] This confidentiality regime differs fundamentally from the disclosure practices applicable to other immigration benefit categories, reflecting Congress's recognition that disclosure of information relating to VAWA applicants could place survivors at heightened risk of retaliatory abuse or detection by abusers.

## **Current Legal Landscape and Recent Procedural Developments**

The landscape governing VAWA I-360 adjudication has undergone significant transformation as of 2024 and 2025, most notably through the establishment and operation of the Humanitarian, Adjustment, Removing Conditions, and Travel Documents (HART) Service Center. Beginning April 1, 2024, USCIS consolidated all new VAWA self-petition filings at the Nebraska-based HART Service Center, terminating the prior practice of routing VAWA cases to the Vermont Service Center for initial processing.[3][15] This centralization, while intended to improve consistency and quality of adjudication through specialized workforce training, initially contributed to increased processing delays as staff underwent training and workflows were redesigned.[15] The transition represents the most significant procedural reform to VAWA adjudication in years, and early data suggest that the consolidation created temporary bottlenecks contributing to the increased overall processing times reported for fiscal year 2025.[15][43]

As of early 2025, USCIS publicly reports that eighty percent of VAWA self-petitions require forty-one and one-half months for completion, a dramatic increase from the fiscal year 2023 median processing time of thirty months for spousal I-360 petitions.[15][4][16] This represents an approximately thirty-seven percent increase year-over-year in median processing times. The data reveals significant variation depending on petitioner category: abused spouses face the longest wait at 31.1 months, self-petitioning children encounter median processing times of 30.4 months, while self-petitioning parents experience faster processing at 23.5 months.[4][16] These figures represent cases completed during fiscal year 2023, and actual processing times for petitions filed in 2025 are expected to exceed these historical medians due to ongoing backlog accumulation.[16]

A critical procedural development occurring in December 2024 represents a substantial expansion of interview requirements for VAWA self-petitioners.[27][30] USCIS announced that it would begin conducting interviews for select VAWA self-petitioners, applying this authority to cases where both Form I-360 and Form I-485 are pending.[27] The agency emphasized that this change applies only to certain noncitizens who filed a VAWA I-360 self-petition with a concurrent Form I-485, representing applicants who fall under both humanitarian and adjustment of status categories.[27] Interview selection is not presently extended to standalone I-360

applications lacking a concurrent adjustment of status petition.[27] The agency noted that interviews will be conducted at the USCIS field office with jurisdiction over the self-petitioner's residence, using trauma-informed approaches and allowing applicants to bring representatives.[27] Officers conducting interviews have received specialized training in VAWA dynamics and victim-centered adjudication.[27] Critically, USCIS emphasized that undergoing interview selection is not inherently derogatory or indicative of case outcome; interviews serve as an additional tool to ensure accurate eligibility assessment and program integrity.[27] This represents a significant procedural addition to concurrent-filing cases, potentially adding several months to overall adjudication timelines for affected applicants.[8]

## **Six-Stage Procedural Roadmap for VAWA I-360 Adjudication**

Understanding the operational mechanics of VAWA I-360 adjudication requires examining each discrete procedural stage. The complete process unfolds across preparation and filing, receipt notice issuance, initial review with potential RFE issuance, prima facie determination, detailed background review, and final decision. Each stage involves specific timelines, procedural requirements, and risk factors that applicants and their representatives must carefully manage.

### **Stage One: Preparation and Filing (One to Two Months)**

The first stage involves comprehensive document gathering and application preparation. During this phase, applicants work with immigration counsel to assemble evidence demonstrating the qualifying relationship, documenting abuse, establishing good moral character, and proving residence with the abuser.[1] Essential documentation includes a personal declaration from the applicant narrating the relationship chronology, describing specific incidents of abuse, explaining how the abuse affected daily life, and establishing the applicant's good moral character and capacity to rebuild life independently of the abuser.[17] The applicant's declaration serves as the primary evidence and core of the entire petition; a weak or unconvincing declaration substantially increases RFE risk and may result in unfavorable prima facie determinations or denials.[17]

Supporting evidence typically encompasses marriage certificates issued by civil authorities, proof of legal termination of all prior marriages of both the applicant and the abuser, evidence of the abuser's U.S. citizenship or lawful permanent resident status, documentation establishing joint residence such as utility bills in both names, lease agreements, joint bank account statements, and evidence of good faith entry into the marriage such as photographs, correspondence, financial documents, and witness affidavits.[3][1][54] Evidence of abuse varies depending on the specific forms abuse took and may include police reports, medical records, photographs of injuries, veterinary records if the abuser harmed pets, dated screenshots of threatening messages, letters from domestic violence counselors or mental health providers, orders of protection issued by state courts, documentation of shelter residence, and statements from friends or family members who observed the abuse or its effects on the applicant.[14]

Psychological evaluations prepared by licensed mental health professionals carry substantial weight and serve as particularly strong evidence of abuse impact; such evaluations document trauma symptoms including post-traumatic stress disorder, anxiety, depression, and emotional harm directly attributed to the abuse.[17] Courts and USCIS officers give significant weight to professional clinical assessments from licensed therapists and psychologists, particularly when the evaluation explains how specific abuse dynamics contributed to identified trauma symptoms.[17]

### **Stage Two: Receipt Notice (One to Two Weeks)**

Following timely filing of Form I-360 with all required supporting documentation, USCIS acknowledges

receipt by issuing Form I-797C, Notice of Action, within one to two weeks.[1][13] This receipt notice includes the applicant's receipt number, which the applicant may use to track case status online through USCIS Case Status Online.[1][13] The receipt notice confirms that USCIS has logged the petition into the system and assigned a case number, but does not constitute any determination regarding eligibility or merit.[1][13] The applicant must preserve this receipt notice and all subsequent USCIS correspondence, as these documents establish the priority date, provide critical administrative information, and serve as contemporaneous proof of filing.

### **Stage Three: Initial Review and Request for Evidence (Two to Six Months)**

Following logging into the USCIS system, adjudicators conduct preliminary review to determine whether the petition is complete and sufficiently documented to proceed to substantive adjudication.[1] If documentation is missing, unclear, or insufficient, USCIS issues a Request for Evidence (RFE) or Notice of Intent to Deny (NOID).[1][16] The applicant typically receives eighty-seven days to respond to an RFE with additional documentation or clarification addressing the specific deficiencies identified.[16] Common RFE reasons include insufficient evidence of abuse, questions regarding the qualifying relationship, concerns about good moral character, or missing documents such as birth certificates or identity documents.[4][16]

Responding promptly and comprehensively to an RFE is critical to case success; delayed or incomplete responses may result in denial for abandonment or insufficient evidence.[16] Each reason stated in an RFE must receive a detailed response with supporting evidence; partial responses addressing only some enumerated concerns are frequently insufficient to ensure approval.[32] RFE delays can extend the initial review phase by several weeks or months beyond the base two-to-six month window, depending on the time required to gather additional evidence.[1][4]

### **Stage Four: Prima Facie Determination (Three to Nine Months After Filing)**

If the petition appears credible and sufficiently documented, USCIS issues a "Notice of Establishment of Prima Facie Case," ordinarily arriving three to nine months after receipt of the petition.[1][7] Prima facie determination literally means "at first sight" and indicates that USCIS has reviewed the initial submission and found that the applicant appears to meet basic eligibility criteria under VAWA.[7][10] Critically, prima facie determination does not constitute approval of the VAWA petition; rather, it signals that the petition merits further detailed review and allows the applicant to access certain temporary benefits while adjudication continues.[1][7][10]

Prima facie status unlocks meaningful interim benefits for many applicants. Depending on state law, a prima facie determination may provide access to certain public assistance programs including health care, food support (SNAP), or education benefits.[7][10] Additionally, prima facie status may strengthen applications for work authorization (Employment Authorization Document) under Form I-765 category (c)(9), though the applicant must file the I-765 separately and meet all applicable requirements for the category.[7] Some VAWA beneficiaries may also access deferred action, which provides temporary protection from deportation and allows filing for work authorization under category (c)(14).[44] Prima facie status does not, however, guarantee eventual approval; USCIS may issue RFEs even after prima facie determination, and denial remains possible even if prima facie status was previously granted.[7][10]

### **Stage Five: Detailed Review and Background Checks (Six to Twelve Months)**

Following prima facie determination, USCIS continues detailed review of the petition. This phase involves security and background checks, evaluation of credibility and consistency across submitted evidence, verification of the abuser's immigration status, and assessment of good moral character based on the

applicant's conduct during the three-year period immediately preceding petition filing.[1][15] As of December 2024, USCIS may also schedule interviews for applicants who have concurrent Form I-485 pending, conducting these interviews at local field offices using trauma-informed approaches with officers possessing specialized VAWA training.[27][30]

Background investigation during this stage examines whether the applicant faces any criminal, security, or inadmissibility concerns that might preclude approval or require waiver consideration.[15] The adjudicating officer thoroughly reviews documentation of abuse for credibility and consistency, comparing the applicant's narrative with supporting evidence such as police reports, medical records, and witness statements to identify corroboration or inconsistency.[16] This evaluation occurs under the "any credible evidence" standard codified at [8 U.S.C. § 1154(a)(1)(J)][16], which requires careful case-by-case evaluation rather than application of categorical exclusion rules.

### **Stage Six: Final Decision (Twelve to Eighteen Months from Filing)**

Upon completion of all reviews, background checks, and (if applicable) interviews, USCIS issues a final decision approving or denying the I-360 petition.[1][39] Approved applicants receive Form I-797, approval notice, confirming VAWA self-petitioner status.[1][49] Denied applicants receive a detailed decision letter explaining the basis for denial and identifying any appeal rights available.[1] The complete I-360 adjudication ordinarily spans twelve to eighteen months from filing through final decision, though this timeline extends substantially when RFEs are issued or when interviews are conducted; estimates of three to five years for the entire process from I-360 filing through green card issuance account for post-approval adjustment of status processing.[4][15][16][18]

### **Prima Facie Determination: Function, Benefits, and Limitations**

The concept of prima facie determination requires careful explanation, as many applicants misunderstand its operational effect and implications for eventual case success. Prima facie status represents only an intermediate procedural step, not a guarantee of approval. USCIS employs prima facie determination to confirm that the initial petition submission meets minimum sufficiency standards permitting the case to proceed to full adjudication, thereby allowing applicants to access certain interim benefits while detailed review continues.[7][10]

The specific benefits available upon prima facie determination vary by jurisdiction and applicant circumstances. Federal law permits USCIS to grant deferred action to VAWA self-petitioners on a case-by-case basis following prima facie determination, providing protection from deportation during the pendency of full adjudication.[44][52] When deferred action is granted, the applicant becomes eligible to file Form I-765 for work authorization under category (c)(14), potentially leading to issuance of an Employment Authorization Document within three to six months.[44] State law determines whether additional public benefits-including health care, food assistance, or education benefits-become available upon prima facie status; California state law provides access to certain programs for prima facie-determined VAWA applicants depending on specific program rules.[7][10]

Critically, prima facie determination does not guarantee eventual approval. USCIS may continue to issue RFEs after prima facie status is granted, and the agency may ultimately deny the petition despite having issued a prima facie notice.[7][10] The continued review following prima facie determination focuses on detailed credibility analysis, verification of facts, assessment of good moral character, confirmation of qualifying relationship, and evaluation of abuse evidence under the "any credible evidence" standard. Applicants who have received prima facie determinations must not become complacent regarding potential future RFEs or

denials; rather, they should continue monitoring case status and remain prepared to respond to additional requests for evidence if issued.[7][10]

## **Concurrent Filing of Form I-485 and Form I-765: Strategic Considerations and Timing**

VAWA beneficiaries who are immediate relatives of the abuser (meaning the abuser is a U.S. citizen spouse or citizen parent) possess strategic flexibility regarding adjustment of status timing that is not available to beneficiaries of lawful permanent resident abusers. Immediate relative VAWA beneficiaries may file Form I-485 (Application to Register Permanent Resident or Adjust Status) concurrently with the I-360 petition, simultaneously with initial I-360 filing, or sequentially after I-360 approval.[25][40] The decision to pursue concurrent or sequential filing involves careful weighing of advantages and disadvantages.

Concurrent filing-submitting the I-360 and I-485 together in the same filing package-offers the substantial advantage of allowing earlier access to work authorization. Applicants filing I-485 concurrently with I-360 may request Form I-765 (Application for Employment Authorization) under category (c)(9), based on pending adjustment of status, rather than waiting for I-360 approval to file under category (c)(31).[25] The (c)(9) category typically processes faster than (c)(31) category applications, potentially reducing the overall wait time between petition filing and work permit receipt.[25] Concurrent filing also permits filing for advance parole under Form I-131 (Application for Travel Document), allowing applicants to travel outside the United States and return without abandoning the I-485 application.[25] Concurrent filing thus provides a pathway to work authorization and travel capability substantially earlier than sequential filing approaches.

However, concurrent filing involves important tradeoffs. When both I-360 and I-485 are pending, USCIS may select the case for interview as of December 2024, adding procedural complexity and scheduling delays.[27][30] Additionally, if the I-360 petition is denied, the pending I-485 may also be adversely affected or denied, potentially eliminating alternative remedies the applicant might otherwise pursue. Applicants with criminal histories, inadmissibility grounds, or weak abuse evidence may benefit from sequential filing (I-360 first, then I-485 after approval) to allow more time to develop the I-360 record, potentially resolve criminal or inadmissibility issues, and gather additional supporting evidence.[25][40]

The decision to file concurrently or sequentially should be made in consultation with experienced immigration counsel after thorough evaluation of the applicant's specific circumstances, evidentiary strength, criminal history, inadmissibility concerns, and work authorization urgency. For applicants who are immediate relatives of U.S. citizen abusers and who lack significant legal obstacles, concurrent filing typically optimizes the pathway to work authorization.[25][40]

Applicants whose abuser is a lawful permanent resident, rather than a U.S. citizen, face a different legal regime. Such applicants fall into the Family Preference category F2A (spouse and child of LPR) rather than the immediate relative category, meaning a visa must be available before the applicant can adjust status.[40][41] These applicants cannot file Form I-485 until their priority date (the date USCIS received the I-360 petition) becomes current according to the State Department's Visa Bulletin.[40][41] Accordingly, sequential filing is mandatory for LPR-abuser cases: the I-360 petition must be approved and the priority date must become current before I-485 filing is possible.[40][41]

## **Employment Authorization After I-360 Approval: Timing and EAD Categories**

The pathway to work authorization for VAWA beneficiaries varies depending on filing strategy and case circumstances. Understanding the three primary categories under which VAWA beneficiaries may request employment authorization is essential to strategic planning.

Category (c)(9) applies to applicants with pending Form I-485 applications.[25][28] This category is available to concurrent filers who submitted I-485 together with I-360, or to applicants who filed I-485 while I-360 remains pending or after I-360 approval.[25][28] Work permits in category (c)(9) typically process within seven to eleven and one-half months,[25] though actual processing times vary by USCIS service center and current workload.[26] Applications filed concurrent with I-485 or shortly thereafter generally process faster than applications filed substantially after I-485 submission.

Category (c)(31) applies to applicants with approved I-360 petitions who have not filed Form I-485.[25][28] This category becomes available only after final I-360 approval and requires filing a separate I-765 application.[25][28] Work permits under (c)(31) typically process slower than (c)(9) category permits, as they are processed sequentially after I-360 completion rather than concurrently with adjustment of status processing.[25][28]

Category (c)(14) applies to applicants who have been granted deferred action following I-360 approval or during I-360 pendency.[25][28] Deferred action is a discretionary prosecutorial discretion determination permitting the applicant to remain in the United States without lawful status, protecting against deportation and enabling work authorization application.[44][52] Work permits under (c)(14) typically process within three to six months,[44] substantially faster than (c)(9) or (c)(31) category processing.

Critically, no work permit category exists for applicants with pending I-360 petitions lacking concurrent I-485 filings or deferred action grants.[28] This means that sequential filers must wait for I-360 approval before accessing work authorization, unless they secure discretionary deferred action from USCIS during I-360 pendency.[28][44]

## **Evidence Standards and Documentation Requirements for Battery or Extreme Cruelty**

The statutory phrase "battery or extreme cruelty" encompasses a broad range of abusive conduct far exceeding physical violence. Understanding the evidentiary hierarchy and documentation standards is essential to preparing persuasive VAWA petitions that minimize RFE risk and maximize approval likelihood.

"Battery" refers specifically to physical abuse, including hitting, striking, pushing, or any intentional physical contact causing pain or injury.[14] Physical abuse evidence may include photographs of injuries, medical records documenting treatment for injuries, emergency room visit records, police reports documenting incidents of violence, and testimony from witnesses who observed physical abuse or its effects.[14][17]

"Extreme cruelty" encompasses a substantially broader category of abusive conduct including emotional abuse, psychological abuse, financial abuse, sexual abuse, and immigration-related threats.[5][14][17] Emotional and psychological abuse includes patterns of insulting the applicant, humiliation, gaslighting, intimidation, and controlling behavior.[17] Immigration-related abuse-threats to report the applicant to immigration authorities, threats to call ICE, withholding of immigration petitions as punishment, or sabotage of immigration proceedings-represents particularly strong evidence of extreme cruelty because it directly exploits the applicant's immigration vulnerability.[17] Financial abuse encompasses preventing the applicant from working, controlling access to bank accounts, preventing access to family finances, or using financial dependence as a control mechanism.[17][14] Isolation and coercive control-monitoring the applicant's phone, tracking location, restricting movements, blocking access to friends and family, controlling daily decisions, or demanding constant check-ins-constitute extreme cruelty even absent any physical violence.[17]

The regulatory framework explicitly recognizes that "other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but are a part

of an overall pattern of violence." [3] This language establishes that adjudicators must examine abuse within the context of relationship dynamics and patterns; isolated incidents may not constitute qualifying abuse, while patterns of controlling, threatening, or coercive behavior satisfying the extreme cruelty standard.

The "any credible evidence" standard codified in [8 U.S.C. § 1154(a)(1)(J)] [16] permits USCIS to consider diverse evidence types in evaluating abuse claims. USCIS explicitly recognizes that abuse victims may not have had opportunity to document abuse while experiencing it, and therefore does not require particular types of evidence. [14] Acceptable evidence types include the applicant's personal declaration describing abuse, dated screenshots of threatening communications, journal entries documenting abuse, therapist notes, saved text message or email conversations, police reports and incident documentation, medical records, photographs of visible injuries or property damage, court records including restraining orders or protective orders, domestic violence shelter documentation, statements from friends and family members with personal knowledge of the abuse, and psychological evaluations assessing trauma and abuse impact. [14] [17]

Critically, VAWA cases succeed every day with zero physical evidence when supported by strong declarations, psychological evaluations, and corroborating witness testimony. [17] The applicant's own credible testimony, if detailed, consistent, and corroborated by circumstantial evidence, may constitute sufficient proof under the "any credible evidence" standard. [14] Police reports, while helpful, are not mandatory; many domestic violence survivors never report abuse to law enforcement due to fear, immigration status concerns, or cultural factors. Adjudicators are expected to consider the full context and recognize that credible evidence need not be documentary.

## **Good Moral Character Assessment and Conduct-Related Admissibility Issues**

Every VAWA self-petitioner must demonstrate "good moral character" as a prerequisite to approval. [5] [20] [23] The good moral character inquiry focuses on conduct during the three years immediately preceding petition filing, though adjudicators may investigate character beyond this three-year window when reason exists to believe that a character bar applies. [20] Good moral character determination requires that the self-petitioner has not committed acts or acquired convictions that place them within statutory classes of persons statutorily ineligible to be considered persons of good moral character under [INA § 101(f)] [20].

INA § 101(f) identifies numerous conduct categories rendering a person statutorily ineligible for good moral character findings. These categories include habitual drunkenness, prostitution and commercialized vice, criminal conviction involving moral turpitude, prostitution procurement, serious criminal convictions, and multiple criminal convictions for which aggregate sentence exceeds five years. Prior to the enactment of the Battered Immigrant Women Protection Act, good moral character could not be found if the applicant had committed any act listed in INA § 101(f), regardless of circumstances or causation. [20] However, the Battered Immigrant Women Protection Act amendments to INA § 204(a)(1)(C) provide USCIS with discretion to make a good moral character finding despite an act or conviction that would ordinarily be disqualifying, provided two conditions are met: (1) the act or conviction is waivable for purposes of determining inadmissibility or deportability under [INA § 212(a)] [20] or § 237(a); and (2) the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty. [20] [23]

This framework creates a meaningful pathway for VAWA applicants with criminal histories, provided the criminal conduct bears nexus to the abuse. For example, an applicant arrested for writing fraudulent checks to purchase groceries because the abuser controlled all finances and denied the applicant food access may argue that the fraud conviction is "connected to" the extreme financial abuse. An applicant with a minor drug possession conviction acquired while under the abuser's coercive control may establish connection between

the conviction and abuse dynamics. An applicant charged with violation of probation due to inability to maintain employment because the abuser prevented working may demonstrate causation. The nexus inquiry requires factual investigation into whether the abusive relationship dynamics, control, coercion, or circumstances directly contributed to the criminal conduct.[20][23]

The specific standard requires that "the battering or extreme cruelty was a significant factor in the commission of the crime of violence." [20] Stated differently, the applicant must establish that the abuse was not merely a contextual factor but rather a significant cause of the criminal conduct. This inquiry permits meaningful discretionary findings on behalf of abuse survivors whose criminal records reflect survival strategies or responses to abuse rather than independent criminal propensity.

Additionally, applicants in removal proceedings may benefit from VAWA cancellation of removal provisions that provide supplementary good moral character relief: cancellation under VAWA requires a more lenient good moral character showing than standard cancellation because certain criminal grounds applicable to standard cancellation are waivable for VAWA cancellation applicants.[50][53]

## **The Abuser's Immigration Status: Implications for Eligibility and Processing**

The immigration status of the abuser—specifically whether the abuser is a U.S. citizen, lawful permanent resident, or has lost status—fundamentally affects VAWA eligibility, visa availability, priority date treatment, and adjustment of status timing. Understanding these distinctions is essential to comprehensive case evaluation.

### **Battered Spouse of U.S. Citizen Abuser**

If the abuser is a U.S. citizen, the VAWA applicant qualifies as an immediate relative of a U.S. citizen.[5][19][40][48][49] Immediate relative status means that no visa number is required; visas are always available, and the applicant may proceed to adjustment of status immediately upon I-360 approval or file concurrently with I-360.[40][48][49] Immediate relative VAWA beneficiaries are not subject to family preference category waiting periods and can transition directly from I-360 approval to I-485 filing without regard to visa bulletin priority dates.[40][49]

The immediate relative classification also provides other advantages: immediate relative VAWA beneficiaries of citizens are exempt from certain bars to adjustment of status, including the entry-without-inspection bar under [INA § 245(a)][37] and bars under [INA § 245(c)][37]. These exemptions mean that an applicant who entered the United States without inspection and would ordinarily be ineligible for adjustment of status may nonetheless adjust based on approved VAWA petition as an immediate relative of a U.S. citizen.[37][40]

### **Battered Spouse of Lawful Permanent Resident Abuser**

If the abuser is a lawful permanent resident, the VAWA applicant falls into the Family Second Preference (F2A) category, rather than the immediate relative category.[40][41] This distinction introduces substantial complexity: F2A beneficiaries are subject to numerical limitations, meaning that visa availability depends on priority date progression according to the State Department's monthly Visa Bulletin.[40][41] Until the priority date becomes current (when the Visa Bulletin advances to the applicant's priority date), the applicant cannot file Form I-485 and cannot adjust status, regardless of I-360 approval status.[40][41]

For example, an applicant who files I-360 on January 1, 2026 receives a priority date of January 1, 2026. If F2A is not current until March 1, 2027, the applicant must wait fourteen months after I-360 filing before becoming eligible to file I-485, even if I-360 is approved within the normal timeframe. During this waiting

period, the applicant cannot adjust status but may remain in the United States on deferred action or other interim relief if available.[40][41]

The F2A visa category includes multiple subcategories with different wait times: F2A-1 (spouse of LPR with no children) and F2A-2 (unmarried children of LPR) ordinarily have shorter waits than F2B categories (unmarried sons and daughters of LPR).[40][41] Current visa bulletin information is available through the State Department's monthly Visa Bulletin.[59]

### **Abuser Who Lost Status Within Two Years**

The statute provides an important exception: if the abuser was a U.S. citizen or lawful permanent resident but has lost immigration status "related to" or "due to" domestic violence within the two years immediately preceding the VAWA petition filing, the applicant may still qualify for VAWA protection provided the petition is filed within that two-year window.[2][5][19] This provision recognizes that abusers may lose status through criminal conviction or other means directly connected to the domestic violence, and permits victims to obtain protection even if the abuser no longer holds citizen or permanent resident status at the time of petition filing.[2][5]

### **Northern California-Specific Context and Practice Considerations**

VAWA adjudication in Northern California occurs within a specific procedural and judicial environment that shapes case strategy and expectations. Since April 2024, all VAWA filings originating from Northern California are processed at the HART Service Center in Nebraska rather than at any regional USCIS facility, meaning that applicants cannot expect expedited processing based on local office proximity or personalized contact with adjudicators.[43]

San Francisco Immigration Court occasionally encounters VAWA-related issues when applicants are in removal proceedings. An applicant with pending VAWA petition who is also in removal proceedings before the San Francisco Immigration Court may request stays of removal proceedings pending I-360 adjudication, or may file VAWA cancellation of removal (a separate remedy available in immigration court proceedings) if the I-360 petition is unsuccessful.[35][50] The San Francisco Immigration Court has experience with VAWA matters, and judges assigned to VAWA-related removal cases generally understand the procedural complexities and timing issues inherent in VAWA cases. However, neither the immigration court nor the San Francisco office can accelerate processing of pending I-360 petitions, as that authority vests exclusively with the HART Service Center in Nebraska.

Northern California immigration practitioners have observed that cases involving applicants from Central America (Guatemala, El Salvador, Honduras, Nicaragua) comprise a substantial portion of the VAWA caseload due to high prevalence of gender-based violence in those countries, high rates of intimate partner violence, and significant emigration patterns bringing these populations to Northern California. Practitioners familiar with Central American country conditions are well-positioned to develop evidence of persecution and risk on return that may strengthen VAWA claims and support concurrent asylum or withholding of removal applications if the applicant faces danger on return to the country of origin.[5]

California state law provides certain protections for VAWA applicants, most notably [PC § 1473.7][5], which permits applicants to vacate criminal convictions that have immigration consequences. A criminal conviction with immigration consequences may be vacated even after sentence completion if the conviction resulted from a trial or guilty plea in which the defendant was not advised of immigration consequences or received ineffective assistance of counsel regarding immigration consequences.[5] For applicants with criminal

histories affecting good moral character or admissibility, PC 1473.7 relief may be available to reframe or eliminate the immigration consequences of the conviction, thereby improving the applicant's immigration law eligibility or good moral character showing.[5]

## **Request for Evidence: Common Patterns and Strategic Response**

RFEs represent a critical inflection point in VAWA adjudication; how the applicant responds to an RFE substantially affects adjudication outcome. Common RFE patterns reflect particular areas where adjudicators identify evidentiary insufficiency or need for clarification.

Insufficient evidence of abuse constitutes the most frequent RFE basis.[4][16] When adjudicators find the applicant's narrative unconvincing, inconsistent, or lacking adequate corroboration, they issue RFE requests for additional evidence of specific abuse incidents, witness statements from persons with personal knowledge of the abuse, medical or psychological documentation substantiating abuse impact, or additional detail regarding perpetrator identity, timing, and specific abusive acts.[4][16] In responding to insufficiency RFEs, applicants should provide detailed, supplemental declarations explaining specific abuse incidents with dates, locations, witnesses present, and evidence of impact. Witness letters from friends, family members, clergy, or counselors who knew the applicant during the marriage and observed changes in behavior, signs of fear, or effects of abuse should be obtained and submitted.[17]

Questions about the qualifying relationship frequently prompt RFEs requiring documentary proof of marriage, residence together, legitimate marital intent, and relationship status at time of petition filing.[4][16][32] Responding applicants should submit additional documentary evidence such as joint financial accounts, property deeds, shared lease or mortgage documents, testimony from community members regarding the couple's public presentation as spouses, wedding photographs, or correspondence mentioning the relationship.[3]

Good moral character concerns raise RFEs when the applicant's conduct during the three-year lookback period appears problematic.[4][16] Responding applicants should obtain character reference letters from employers, community leaders, clergy, or other respected community members attesting to the applicant's positive character, rehabilitation efforts, and community contributions. If the concern involves criminal conduct, the applicant should explain the circumstances, establish connection to abuse (if applicable), and demonstrate rehabilitation and current law-abiding status.[20][23]

Missing documents frequently trigger RFEs requiring submission of identity documents, birth certificates, marriage certificates, divorce decrees, police reports, medical records, or other evidence initially not submitted with the petition.[4][16][32] Timely response requiring substantial document gathering should begin immediately upon RFE receipt; applicants should not wait until near the eighty-seven-day deadline to commence gathering materials, as time pressure may result in incomplete responses.[32]

The critical rule for all RFE responses is to address each enumerated concern comprehensively with supporting evidence for every point raised.[32] Partial responses addressing only some of the listed concerns are typically insufficient; adjudicators expect point-by-point responses with specific evidence addressing each identified deficiency.[32]

## **Notice of Intent to Deny: Escalation and Response Strategies**

If USCIS determines that the applicant is not eligible for VAWA protection based on the evidence presented, adjudicators may issue a Notice of Intent to Deny (NOID) rather than a simple RFE.[32] A NOID indicates

that the adjudicating officer intends to deny the petition unless the applicant provides evidence or argument addressing the stated deficiencies within thirty days.[32] A NOID is generally less favorable than an RFE because it reflects a preliminary negative determination rather than mere information insufficiency; responding to a NOID requires not only providing additional evidence but also mounting legal arguments explaining why the applicant meets statutory requirements despite the agency's identified concerns.[32]

The applicant receiving a NOID should immediately contact counsel to develop a response strategy addressing both the specific factual deficiencies identified and the legal arguments supporting eligibility.[32] The response must address each reason stated in the NOID with supporting evidence and legal argument; incomplete or partial responses risk automatic denial.[32] If the applicant cannot overcome the concerns raised in the NOID, other options include filing a motion to reopen if new evidence becomes available, pursuing alternative immigration remedies if available, or accepting the denial and evaluating appeal options through the Administrative Appeals Office (AAO).

## **Appeal Options and Post-Denial Remedies**

If USCIS denies a VAWA I-360 petition, the applicant retains limited but meaningful appeal and post-denial options. Unlike some immigration benefit categories, VAWA I-360 denials are not directly appealable to an immigration judge; however, applicants may pursue administrative appeals with the Administrative Appeals Office (AAO), file motions to reopen or reconsider, or file a new petition if circumstances permit.

### **Administrative Appeals Office Review**

An applicant whose I-360 petition is denied may appeal that denial to the AAO by filing Form I-290B (Notice of Appeal or Motion) within thirty calendar days of service of the denial notice.[34][35] The AAO conducts de novo review of the USCIS decision, meaning the appellate office examines the case anew and may identify legal issues the original adjudicator overlooked.[34] AAO appeals do not typically permit submission of new evidence; rather, the appeal focuses on whether the record supports approval based on existing documentation and whether the USCIS adjudicator applied law and policy correctly.[34] Recent data indicate that approximately 91.9% of AAO determinations for I-360 VAWA petitions are completed within 180 days (roughly six months), providing reasonably predictable appellate timelines.[1][35]

However, the low reversal rate for AAO appeals merits serious consideration: only 2.8% of AAO-reviewed cases result in reversal of the original USCIS decision, meaning the vast majority of denials are upheld on appeal.[31] This low reversal rate reflects the substantial deference afforded to adjudicators' factual findings and credibility determinations, as well as the stringency of appellate review. Applicants should carefully evaluate whether AAO appeal represents the most strategic path or whether alternative remedies offer better prospects.

### **Motion to Reopen**

Alternatively, an applicant may file a motion to reopen, requesting that USCIS reconsider the denial with new evidence not previously submitted.[34][35] A motion to reopen is appropriate when new evidence has become available that substantially strengthens the case or addresses deficiencies identified in the denial.[34][35] Unlike appellate review, a motion to reopen allows submission of new evidence, providing opportunity to cure evidentiary deficiencies or strengthen weak areas of the case.[34][35] The applicant must state that the motion to reopen presents new facts and include the new evidence with the motion; generalized arguments without supporting evidence are insufficient.[34][35]

### **Motion to Reconsider**

A motion to reconsider is appropriate when the applicant believes the USCIS adjudicator misapplied law or policy, made factual errors, or overlooked evidence already in the file.[34][35] Unlike motion to reopen, reconsideration does not introduce new evidence but rather points out legal or factual error in the original decision.[34][35] For example, if the USCIS decision incorrectly states that the applicant divorced more than two years before filing (when the facts show divorce occurred within the two-year window), a motion to reconsider identifying this factual error would be appropriate.[34][35]

### **Filing a New I-360 Petition**

If the initial I-360 petition is denied and the applicant believes the case can be strengthened, the applicant may file a new I-360 petition.[35] This approach is particularly suitable when the applicant has obtained psychological evaluation not included in the original petition, secured additional witness statements, or resolved criminal or character issues affecting the original petition.[35] Filing a new petition (rather than appealing or reopening) permits comprehensive case reconstruction with new evidence and strategic repositioning.[35] The new petition will be assigned a new priority date and will process through the complete six-stage procedure.

### **In-Court VAWA Relief for Applicants in Removal Proceedings**

An applicant with pending VAWA I-360 whose removal proceedings are initiated in immigration court may pursue additional options including VAWA cancellation of removal or VAWA suspension of deportation if the applicant meets statutory requirements.[35][50][53] An immigration judge may grant these forms of relief even if the I-360 petition has been denied, providing an alternative pathway to lawful permanent residency for eligible applicants in removal proceedings.[35][50][53] VAWA cancellation and suspension have distinct eligibility requirements from I-360 self-petitioning, and may be available to applicants who do not qualify for I-360 protection or whose I-360 petitions have failed.[35][50][53]

### **Confidentiality Protections and Information Disclosure Limitations**

The confidentiality regime governing VAWA cases under [8 USC § 1367][12] imposes strict limitations on information disclosure and creates obligations on USCIS and other government agencies to protect VAWA applicant information. Understanding the scope and operation of these protections is essential for applicants concerned about disclosure to abusers or others.

Under section 1367(a)(1), no official or employee of the Department of Justice, DHS, or Department of State may use information relating to a VAWA self-petitioner for immigration enforcement purposes or disclose such information to third parties without appropriate authorization.[12] Information relating to a VAWA self-petitioner includes not only information contained in the VAWA petition file itself but also information regarding the existence of the VAWA petition, the existence of a prima facie determination, or information contained in the VAWA self-petition.[9][12]

The prohibition on disclosure to third parties is sweeping: no information relating to an alien who is the beneficiary of an application for VAWA relief may be disclosed to anyone other than a sworn officer or employee of the government for legitimate government purposes.[12] The statute imposes fines and job sanctions for knowing violations of these restrictions.[12] Exceptions to the confidentiality regime are narrowly drawn and include only limited circumstances: (1) authorization by the Secretary of Homeland Security or Attorney General following census-like procedures; (2) disclosure to law enforcement officials for legitimate law enforcement purposes, provided confidentiality is protected; (3) disclosure in connection with judicial review, provided confidentiality is protected; (4) waiver by all battered individuals in the case if all are

adults; (5) disclosure to agencies providing benefits for eligibility determination; (6) government employees carrying out mandated duties; (7) communications with nonprofit victim service providers with written consent; and (8) disclosure to national security officials for security purposes.[12]

Critically, information obtained by USCIS during VAWA adjudication cannot ordinarily be shared with the abuser, cannot be disclosed to ICE for enforcement purposes, and cannot be used to initiate removal proceedings against the applicant. The confidentiality regime recognizes that disclosure could place the applicant at heightened risk of retaliation or abandonment of abuse by the abuser.

However, applicants should understand that VAWA confidentiality protections have limits. If the applicant is interviewed as part of VAWA adjudication, the applicant's address and specific statements regarding abuse will be documented in government files and may be subject to future subpoena if litigation ensues. Applicants in removal proceedings may find that VAWA petition information becomes relevant in immigration court proceedings. Additionally, applicants should not assume that confidentiality protections extend to information provided by the applicant to third parties; information shared with friends, family members, employers, or other non-government persons may be disclosed absent confidentiality agreement.

### **Conclusion: Strategic Framework for VAWA I-360 Petitioners**

The VAWA I-360 self-petition process represents a meaningful but complex pathway to immigration relief for abused spouses of U.S. citizens and lawful permanent residents. As of February 2026, the process encompasses six distinct procedural stages spanning an average of forty-one and one-half months for eighty percent of cases, with substantial variation based on RFE issuance, interview requirements, and individual case complexity. Success requires careful attention to evidentiary standards, strategic positioning regarding concurrent filing and work authorization, and proactive response to procedural requirements and requests for information.

The distinction between prima facie determination and final approval remains critical: prima facie status, while conferring meaningful interim benefits and confirming basic eligibility, does not guarantee eventual approval and does not terminate USCIS review authority. Applicants must remain vigilant regarding RFE responses and potential denials even after prima facie determination.

The applicant's immigration status, the abuser's immigration status (citizen versus permanent resident), criminal history, good moral character record, and available abuse evidence collectively determine case strategy, timeline expectations, concurrent filing feasibility, and appeal prospects. Cases involving U.S. citizen abusers offer immediate relative pathways with visa availability advantages; cases involving permanent resident abusers introduce visa preference category limitations and waiting periods that may extend total processing timelines.

For Northern California practitioners, the centralization of VAWA processing at the HART Service Center in Nebraska eliminates local expediting options but ensures specialized adjudicator training and consistent policy application. The introduction of interviews for concurrent filers as of December 2024 represents a significant procedural addition requiring special preparation and trauma-informed representation.

Applicants should engage experienced immigration counsel early to evaluate eligibility, develop comprehensive evidentiary strategies, determine optimal filing approaches (concurrent or sequential), anticipate potential RFEs or denials, and prepare for post-approval procedures including I-485 adjustment and naturalization. The stakes in VAWA cases are profoundly human—applicants seek protection from ongoing abuse, independence from abusers, and pathway to lawful permanent residency—rendering competent

representation essential to achieving favorable outcomes.

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