

Immigration Help for Individuals Surviving Domestic Violence

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Unfortunately, domestic abuse and domestic violence occur far too frequently in homes all around the world, including here in the U.S. In 2001, the Bureau of Justice Statistics reported that more than half a million American women (588,490 women) were victims of nonfatal violence committed by an intimate partner. When the violence is not stopped, it can eventually turn fatal. On average, more than three women are murdered by their husbands or boyfriends in this country every day. While nearly 85% of abuse happens to women, men can also be victims of abuse and violence from their partners.

This article will discuss some specific immigration options for some individuals leaving violent relationships, as well as some general concerns individuals in violent and abusive situations may have about pursuing this relief.

Anyone interested in pursuing immigration relief based on domestic violence should see a qualified immigration attorney before proceeding with *any* application to Citizenship and Immigration Services (“CIS”) because of the risk of being removed from the United States if CIS does not grant relief.

It is also critical to work with an organization that helps individuals escaping domestic violence and abuse, such as a battered women’s shelter. The organization can help secure individual and group counseling, shelter and food, as well as other benefits. Most importantly, the organization will help create a safety plan to make sure that battered partners and their children can try to leave abusers in the safest way possible because leaving an abuser often leads to an increased risk of violence.

What are domestic violence and domestic abuse?

Many people think that domestic violence refers only to physical violence. However, domestic violence and abuse include much more than just physical abuse. While the emotional and psychological abuse is often accompanied by physical violence, that is not always the case. Here are some examples of non-physical abuse that often occur in an abusive relationship:

- The abuser doesn’t let you visit your friends and family;
- The abuser won’t let you work, look at the monthly bills and analyzes all of your receipts;
- The abuser threatens to hurt you, but hasn’t hurt you yet;
- The abuser harms the family pets;
- The abuser insults you constantly and tells you that “you’re nothing;” and
- The abuser insults your parenting and threatens to take the children.

These are just a few examples. Moreover, over time, abusive relationships can evolve into violent relationships.

Immigration Options for Immigrants Surviving Domestic Violence The Violence Against Women Act (“VAWA”)

These series of laws allow victims of domestic violence, spouses, children, and now, in some cases, parents who suffer abuse at the hands of U.S. citizen (“USC”) and legal permanent resident (“LPR” or “green card holder”) family members to pursue immigration status on their own. In other words, these individuals' immigration status now or in the future no longer depends on the abuser. Unfortunately, individuals experiencing abuse from someone with another type of status or no status cannot apply for VAWA relief.

To apply for relief under VAWA, you must show

1. a qualifying relationship, which includes:
 - a. a legally valid marriage to a USC or LPR;
 - b. a qualifying bigamy to a USC or LPR;
 - c. a recognized parent/child relationship where the abusive parent is USC or LPR; or
 - d. a recognized parent/son or daughter relationship where abusive son or daughter is USC;
2. a history of abuse, which includes physical battery and non-physical abuse, called “extreme cruelty;”
3. a shared residence with the abuser; and
4. good moral character.

It is possible to apply for VAWA relief either with CIS or in Immigration Court. Relief under VAWA enables recipients to stay in the U.S. and get a green card independent of the abuser.

U Visa

U visas are available to individuals who have been victims either of serious crimes in the U.S. *or* crimes that violate U.S. law. Some examples of crimes covered include rape, torture, trafficking, incest, domestic violence, sexual assault, involuntary servitude, kidnapping, abduction, false imprisonment, extortion, perjury, and other offenses. To qualify, you show that you:

1. Suffered substantial physical or mental abuse as a result of having been a victim of criminal activity;
2. Possess information concerning the criminal activity; and
3. Have been helpful, are helpful, or are likely to be helpful to law enforcement or prosecutors.

It is possible to get derivative status for the children, spouse, and, in some cases, the parent of a “U” visa holder. The U visa is granted for three years. At the end of three years, it is possible to apply for a green card. “U” visa holders may also be eligible for employment authorization under existing regulations. Please note that there are no regulations yet for U visas, so CIS is only giving temporary relief until those regulations come out.

Asylum

In some circumstances, survivors of domestic violence may be eligible to apply for asylum. Possible scenarios include fleeing the home country due to an abusive relationship, or fearing return to the home country because the abusive spouse was deported from the United States. The United States grants asylum to individuals located in the country that experienced past persecution or have a “well-founded fear” of future persecution because of their race, religion, nationality, political opinion or “membership in a particular social group.” This area of law is not settled regarding domestic violence-based claims, but people have won cases based on domestic violence claims.

First, it is necessary to demonstrate that the abuse experienced constitutes persecution. It is very important to be as specific and thorough as possible in detailing the abuse. Second, the abuse must be linked to one of the five bases for asylum, typically membership in a particular social group. Third, it is necessary to show that the authorities in the home country are not willing or not able to protect the individual from the abusive situation. This element can be satisfied by showing, for example, that the country lacks any laws against domestic violence, or that the police and other government officials do not enforce the laws they do have.

It is difficult to prove a case for asylum due to fear of domestic violence because judges are afraid that giving one person asylum on this ground means that they will have to give asylum to thousands and thousands of people. Consequently, it is essential to demonstrate how a particular case is specific and unique. For the same reason, it is also important to try and provide as many documents as possible corroborating the story.

Common Survivor Concerns

“I never called the police, so I don’t have any proof he hurt me. It’s just my word against his.”

Police reports, court records, protection orders, medical records and other documents are helpful, but they are not required evidence. There are other ways to document the abuse. Survivors can write the story of their abuse, which will be the most important document in any immigration application. Also, statements from family members who know about the abuse, or from ex-girlfriends of the abuser who also experienced violence from him make good evidence. A survivor should not be deterred from seeking help just because she thinks she cannot “prove” it.

“Won’t I lose any hope of getting legal immigration status if I leave my partner? He says he can have me deported.”

Many abusers who are citizens or have some valid immigration status often threaten to have the person they are abusing deported. This is powerful

threat because often times the person experiencing the violence depends on the abuser for her immigration status.

These types of threats are simply another way for abusers to exercise control and extend their reign of terror. Individuals who have actually experienced violence or other forms of abuse, including psychological and emotional abuse, may be eligible to apply for the different kinds of immigration relief delineated above *without* relying on the abuser.

“What if I am out of status right now?”

As noted above, valid immigration status is not necessary to apply for many types of relief as an individual who has experienced domestic violence and/or abuse. There are ways to apply without relying on the abuser. There is a risk of not receiving status and being placed in removal proceedings, so it is extremely important to work with a qualified immigration attorney.

How to get help?

Survivors can call, email or visit a battered women’s shelter or crisis center. Centers often offer you counseling and many other services that can facilitate leaving the abusive relationship. Such organizations will also help formulate a safety plan and emergency plans to try and ensure the safety of the survivor and her family. The organization can also refer survivors to a competent immigration attorney. In certain cases, survivors may also be able to contact the attorney helped them enter the country, although she may not be able to represent survivors in cases where the attorney previously represented both the survivor and abuser. Survivors should absolutely avoid approaching CIS or any other branch of Department of Homeland Security for help without the help of an immigration attorney. The risk of removal from the United States is too high.

Leaving an abusive relationship is never easy. It takes a lot of time and support. With help from friends, family, domestic violence advocates and a good immigration attorney, it may be able to start over with an independent, safe life.