Chapter 27: Adjustment of Status based on VAWA

This chapter will help you prepare an application with USCIS for adjusting your client's status from approved VAWA self-petitioner to lawful permanent resident (commonly referred to as "green card holder").

For this service, HRI only assists clients who previously worked with HRI to do their VAWA self-petitions. Prior to agreeing to assist them with their adjustment of status applications, HRI does a screening interview and asks the clients to provide the necessary documents. Accordingly, by the time an adjustment of status case is assigned to a pro bono attorney, the client has provided the preliminary documentation necessary to file, and HRI is confident that the client is eligible to adjust status. However, it is always possible that events have occurred to make a client inadmissible and therefore ineligible to adjust status. If you are unsure of whether your client might be unable to adjust status, or if unexpected issues arise with the case, please contact your HRI mentoring attorney.

A note about terminology – a person who files an I-360 petition as a battered spouse of a U.S. citizen or lawful permanent resident is called a "VAWA self-petitioner." However, the form on which a VAWA self-petitioner seeks to adjust status to become a lawful permanent resident is an I-485 Application to Adjust Status. Accordingly, the terms "VAWA self-petitioner" and "applicant" may be used interchangeably throughout this chapter. In addition, a U.S. Citizen may be referred to as a "USC" and a lawful permanent resident may be referred to as an "LPR."

Once the VAWA self-petition is approved, most self-petitioners may then proceed to obtain lawful permanent resident status for themselves and their derivatives by filing an application with the USCIS for VAWA adjustment of status.[1] However, adjustment of status is granted in the discretion of USCIS,[2] so it is never guaranteed. The special provisions for VAWA self-petitioners are less rigorous than those applied to other immigrants, but there are some obstacles that may prevent an approved VAWA self-petitioner from adjusting status. Throughout the status adjustment process, there are some important issues to keep in mind, including: safeguarding any priority dates from a previous petition[3], ensuring the VAWA self-petitioner satisfies the adjustment requirements, and noting special issues regarding derivatives' age.

Typically, there are three main issues in a VAWA adjustment proceeding:

- Is the VAWA self-petitioner's abuser a US Citizen (USC) or a legal permanent resident (LPR)?
- Is the VAWA self-petitioner admissible?
- Does the VAWA self-petitioner have derivatives?

[1] INA § 245(a).

[2] USCIS Policy Manual, Volume 7, Chapter 10 available at: https://www.uscis.gov/policy-manual/bolume-7-part-a-chapter-10.

[3] Such as I-130 filed by petitioner's spouse.

1 **Consular processing versus adjustment of status**. Acquiring lawful permanent residence (LPR) may be accomplished either by applying for consular processing at a US. Consulate abroad or by remaining in the U.S. and filing an I-485 Application to Register Permanent Resident or Adjust Status ("Application") with USCIS.

A. Adjustment of status cases. Most VAWA self-petitioners and their derivatives will be able to adjust their status to LPR without going abroad for consular processing. This chapter applies to that majority of cases.

B. Exceptions that require consular processing. If the VAWA self-petitioner filed a petition from outside the US or currently is living outside the US, s/he will need to abide by the consular process instead. Because HRI only assists VAWA self-petitioners who live in the U.S., as a pro bono attorney, you will not be asked to do a consular process case.

2 **Availability of LPR Visa.** A VAWA self-petitioner will be immediately eligible to obtain an LPR visa if he/she is or was married to a USC because this makes the VAWA self-petitioner an "immediate relative" of a USC (see definition below). If the VAWA self-petitioner is or was married to an LPR, then the VAWA self-petitioner falls under the "family preference categories" and must wait for an immigrant visa to become available. Immediate relatives are not subject to the annual quota limits of family-based immigration, thus there is no wait for an immigrant visa for them.

A. Immediate relative definition. "Immediate relatives" are defined as the spouses and children (unmarried and under 21 years old) of USCs, and parents of USCs who are 21 or older.

**B. "Family preference categories." ** Spouses and children of LPRs and adult (over 21 years or married) children of USCs fall into the "family preference" category and must wait until a visa is available for them.

3 **Waiting period for a visa if in "family preference" category.** This waiting period begins on what is called the "priority date." The priority date is the date a petition requesting family-based immigration is properly filed.

A. Priority date when abuser has <u>already</u> filed I-130 petition. Sometimes a VAWA self-petitioner's abusive spouse has already filed an I-130 Petition for Alien Relative before the VAWA self-petitioner comes to HRI. In this instance, the priority date will be the date the I-130 was initially filed, in a process whereby VAWA self-petitioners can "recapture" an old priority date.

B. Priority date when I-360 self-petition is first petition filed. In this instance, the priority date will be the date when the Vermont Service Center (VSC) received the I-360 VAWA self-petition.

C. Defining the "currency" of priority date. An individual's priority date is considered "current" when an immigrant visa is available for that individual, according to the current month's Visa Bulletin. Make sure to check the Department of State's website for currency information: http://travel.state.gov). Typically, applicants must wait several years for a priority date to become current.

4 Safeguarding I-130 Priority Dates for Recapture and Use in I-360 Adjustment or Consular Process. If the self-petitioner fails to apply for an immigrant visa within a year after the self-petitioner has been notified of that a visa is available for him/her, then the National Visa Center might consider the self-petitioner to have abandoned the visa application process, and the self-petitioner might not be able to recapture the priority date of a previously-approved I-130. In this case, the receipt date of the I-360 then becomes the new priority date.

A. Steps to safeguard I-130 Priority Dates.

1. **Documenting visa steps taken**. To avoid losing an earlier priority date, HRI recommends that the client or attorney contact the National Visa Center (NVC) or Consulate every six months documenting the steps taken toward immigrant visa or adjustment of status processing.

2. **Types of documentation.** Documentation may include the following: receipt notices for I-360, submission of I-864W, and/or civil documents (if consular processing), or receipt notices or ASC or interview notices (if adjusting status).

3. **Protecting client after "auto-termination" letter**. After one year has passed since the priority date's currency and an interview has been scheduled or the process has begun, NVC and/or Consulate may issue an "auto-termination" letter. In this case, contact NVC or Consulate with a letter and documentation outlining the steps taken in the case. Indicate that the beneficiary is still planning on applying for an immigrant visa or adjustment of status. If necessary, carefully document any extenuating factors to explain why the process has taken so long. In response, the NVC or consulate may send beneficiary a form letter to fill out and return.

B. Changes to the immigration status of the abusive spouse or parent. If the abusive spouse/parent naturalizes during the VAWA self-petitioner's application process, then his or her application category will be reclassified. In this case, the self-petitioner should notify in writing the Vermont Service Center (VSC) or local UCSIS.

C. **Divorce from abuser or abuser's loss of permanent resident status after VAWA self-petition is filed**. Neither of these conditions adversely affects the adjustment of status or consular processing based on an approved VAWA self-petition.

5 Adjustment of Status for VAWA Self-Petitioners. VAWA self-petitioners are eligible for adjustment of status under special provisions that are less rigorous than those applied to other immigrants but still have many requirements.

A. Applicants for VAWA adjustment of status must satisfy the following requirements:

1. **VSC approved the I-360 VAWA self-petition**. Or, the applicant must be a VAWA self-petitioner's derivative beneficiary. For HRI clients, a derivative would be the child of the VAWA self-petitioner.

2. **There must be a visa currently available**. Either applicant is immediate relative of USC or priority date has become current.

3. **Applicant must be admissible under INA §212.** This means that the applicant does not fall under any of the INA § 212 inadmissibility grounds or applicant is eligible for a waiver of ground that applies.

   i. **<u>Note</u>: Bars to adjustment under §245(c) <u>do not apply</u> to VAWA self-petitioners adjusting under §245(a).**

   ii. **Thus**:

      1. **VAWA self-petitioners need not have been inspected or admitted to US**. That is, EWIs ("entry without inspection" or "present without admission or parole") are eligible for VAWA adjustment of status.[4]

      2. **Having worked without authorization is ok**. Working without authorization is not grounds for inadmissibility for VAWA self-petitioners adjusting their status.[5]

      3. **Having overstayed nonimmigrant status or violated terms of nonimmigrant status is ok.** Overstaying one's visa or violating the terms of one's nonimmigrant status will not be not grounds for inadmissibility for VAWA self-petitioners adjusting their status.[6]

[4] USCIS Policy Manual Chapter 3 (citing INA § 245(c)(2)).

[5] INA § 245(c).

[6] INA § 245(c).

iii. <u>However</u>, some inadmissibility standards still apply.

1. **Health-related grounds apply. INA §212(a)(1)(A)-(C).** During the adjustment of status, the applicant will have to do a medical exam.

   (i) Communicable diseases and vaccination. An applicant with a communicable disease of public health significance, or without documentation of vaccination, is inadmissible. There is a waiver available to VAWA self-petitioners.[7]

   (ii) Physical and mental disorders including drug abuse. An applicant with a physical or mental disorder whose behavior may pose a threat, or who is a drug abuser or addict, is also inadmissible.

2. **Criminal and related grounds apply**. **INA §212(a)(2) (A)-(I)**. Crimes of "moral turpitude" render the applicant inadmissible. Such crimes include trafficking in controlled substances or persons, prostitution, money laundering and possibly even use of fake documents to work. There is a waiver available to VAWA self-petitioners.[8]

   (i) Exceptions. If the crime was committed before the petitioner turned 18 and more than 5 years before the date of the adjustment of status application, or the maximum penalty did not exceed one year of imprisonment and the petitioner was not sentenced to a term of more than 6 months, then the applicant might still be admissible.

3. **Security and related grounds apply. INA §212(a)(3) (A-G)**. Applicants are inadmissible if they violated laws or have engaged in terrorist activity, or if their entry would have "serious adverse foreign policy consequences" to the U.S. Membership in the Communist or "other totalitarian party" may render the applicant inadmissible (there are some exceptions to this rule).

4. **Public charge grounds <u>do not</u> apply. INA § 212(a)(4).** The typical public charge inadmissibility factors **do not** apply to approved VAWA self-petitioners.[9]

5. **Most illegal entrance and immigration violations <u>do</u> apply. INA § 212(a)(6).**

   1. **Aliens present without inspection or parole is not a ground for inadmissibility for VAWA self-petitioners. INA § 212(a)(6)(A).** VAWA

[7] INA § 212(g)(I).
[8] INA § 212(h)(1)(C).
[9] INA § 212(a)(4)(E).

self-petitioners are exempt from the "Aliens present without admission or parole" inadmissibility ground.[10]

2. **Failure to attend removal proceeding is grounds for inadmissibility. INA § 212(a)(6)(B).**
   If a VAWA self-petitioner has failed to attend a removal proceeding, he/she is inadmissible.

3. **Fraud and willful misrepresentation are grounds for inadmissibility. INA § 212(a)(6)(C).** Fraudulent documents included in any immigration petitions or false claims of citizenship might render the alien inadmissible. Only willful misrepresentations of material facts will make an applicant inadmissible, and, for misrepresentations to be willful, they must have been made deliberately with knowledge of the falsity of the statement.

   a. **In case of misrepresentation, submit a waiver.** INA§212(a)(6)(C)(iii) authorizes a waiver. The VAWA Self-petitioner can submit a separate I-601 form and seek to have the misrepresentation inadmissibility factor waived. INA § 212(i).[11]

   b. **In case of a false claim of U.S. citizenship, contact HRI.** There is a very a limited exception to this ground in INA § 212(a)(6)(C)(ii)(II). Otherwise, the applicant is not admissible, and the adjustment of status application should not be filed.

4. **Entering the US as a stowaway is grounds for inadmissibility. INA § 212 (a)(6)(D).**

5. **Assisting in smuggling an alien is grounds for inadmissibility**. **INA § 212 (a)(6)(E)**. There is a waiver available to applicants who have smuggled only a spouse, son or daughter.[12]

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[10] *See* USCIS Policy Memorandum April 11, 2008 which interpreted the exemption of VAWA self-petitioners from the inspection and admission or parole requirement for adjustment under INA § 245(a) as effectively waiving inadmissibility under INA § 212(a)(6)(A). *See also* USCIS Policy Manual, Volume 7, Part B, Chapter 3 available at: https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-3.

[11] On waivers, see §212(i): "(i) (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that [. . .] **in the case of a VAWA self-petitioner 6aa/ , the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.** (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1)."

[12] INA § 212(d)(11).

6. **Subject of civil penalty does apply**. **INA § 212(a)(6)(F).** There is a waiver authorized.

7. **Student visa abuse does apply**. **INA § 212 (a)(6)(G).**

6. **The absence of valid documents does apply. INA §212(a)(7)(A-B).** The absence of valid entry documents is grounds for inadmissibility, but the applicant may apply for a waiver.

7. **Evading draft or having status of permanently ineligible immigrant is grounds for inadmissibility. INA §212(a)(8).** Immigrants permanently ineligible or draft evaders are inadmissible.

8. **Aliens previously removed or unlawfully present does apply. INA § 212(a)(9)(A)-(C).**

(i) VAWA self-petitioners who have been ordered removed are inadmissible for a set period of time based on the statute pursuant to which the person was removed. If you learn that your client has a prior order of removal or has been turned back at the border (which could be an expedited removal), contact HRI. INA § 212(a)(9)(A).

(ii) VAWA self-petitioners who were unlawfully present for a period of time and then left the U.S. may be inadmissible. Unlawful presence starts accruing on April 1, 1997. Applicants are subject to a three-year bar if they were unlawfully present for more than 180 days but less than year, and then left the U.S. Applicants are subject to a 10-year bar if they had been unlawfully present for a year or more and then left the U.S.[13] But there is VAWA exception if the reason they left the U.S. was to escape the abuse. INA § 212(a)(9)(B)(iii)(IV).

(iii) VAWA self-petitioners who have re-entered the U.S. without authorization after removal or after one year of unlawful presence may be inadmissible. There is a waiver available if the VAWA self-petitioner can prove that there is a connection between the battery or extreme cruelty and the departure and reentry. INA § 212(a)(9)(C)(iii).

[13] See Field Manual on Adjustment, Chapter 40: "Only periods of unlawful presence spent in the US after the April 1, 1997, effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Div. C of Departments of Commerce, Justice, and State, and the Judiciary Appropriations Act of 1997, PL 104-208 (September 30, 1996) (IIRIRA), count towards unlawful presence for purposes of §212(a)(9)(B) and (C)(I)(I) of the Act."

6 VAWA, Aging Out, and the Child Status Protection Act. When a child reaches 21 years old, the child no longer meets the immigration definition of child; in family-based immigration scenarios, "aging out" may preclude a person's immigration.

A. Both VAWA and the Child Status Protection Act (CSPA) contain provisions to minimize the adverse effects of aging out.

1. **Under VAWA, turning 21 may delay immigration**. If self-petitioning children or VAWA derivative children were under 21 when the self-petition was filed, then turning 21 does not prevent adjustment of status, but it may change the applicant's preference category and visa availability date (for example, a child may be reclassified 2B instead of 2A). Upon turning 21, VAWA derivatives will be deemed to be self-petitioners in their own right, with the priority date assigned to the self-petition.

2. **CSPA contains special provisions for calculating "aging out" which depend on the individual's "preference category."** CSPA applies to visa petitions, applications for adjustment of status, immigrant visa applications pending on August 6, 2002 (Act's effective date). If you represent a self-petitioner or derivative beneficiary who is about to turn 21 and whose priority date is current or will be current prior to that time, consider requesting that the adjudication of the self-petition be expedited.

    a. **Unmarried child of USC who filed petition before turning 21**. A child in this scenario remains an immediate relative, not subject to preference quota and waiting period.

    b. **Minor child who has been included as a derivative beneficiary in the self-petition by an abused spouse of a USC**. This child has pre-VAWA 2005 benefit of not aging out of derivative eligibility. Also, under CPSA, this child will not move from immediate relative category to any preference category upon turning 21.

    c. **Children of LPR's and derivatives of VAWA self-petitioners**. CSPA's age calculation in these cases is more complicated: the person's age is determined to be age as of the date the beneficiary's priority date becomes current, less the number of days that petition was pending before adjudication.

B. To take advantage of CSPA benefits, beneficiary must "seek to acquire" LPR status within one year of priority date becoming current.

C. For individuals aging out of the 2A preference category, CSPA allows the beneficiary to retain the priority date of the principal beneficiary. This alternative benefit only applies to sons and daughters of LPRs.

7 Where to File Adjustment Application. Generally, VAWA applications for adjustment of status are filed with USCIS Vermont Service Center (where the original VAWA self-petition was filed) unless the applicant is in removal proceedings.

A. VAWA self-petitioners who are <u>immediate relatives</u> or who have a current priority date. These persons are immediately eligible to adjust status and may file their adjustment applications together with the I-360 self-petition to the VSC.

B. VAWA self-petitioners whose priority dates are <u>not yet</u> current. They cannot file their adjustment applications with the VSC until their priority dates become current or they have a current filing date (in situations where USCIS has authorized use of the "Filing Date Chart").

C. VSC process. The VSC will adjudicate fee waiver request filed with the applications. Following adjudication of the self-petition, VSC will forward the adjustment application to the National Benefits Center, which will schedule interviews and forward the file to the local USCIS district.

D. Mailing address for the Vermont Service Center (VSC):

1. USCIS, Vermont Service Center, Attn: CRU, 75 Lower Welden Street, St. Albans, Vermont 05479-0001.

E. Note: Although I-485 adjustment applications are filed with the VSC, the VSC does not actually adjudicate the I-485s. Instead, the VSC forwards them to the National Benefits Center (NBC), which conducts name and fingerprint checks and issues Requests for Evidence (RFEs) as needed, then distributes the application to the district office (at the applicant's place of residence). The applicant will be required to attend a USCIS interview at that district office.

8 Adjustment of Status for Derivative Beneficiaries. Children of the VAWA self-petitioner who were listed on the I-360 are eligible to adjust their status to lawful permanent residents under the same requirements and procedures as apply to their parent. VAWA derivatives may adjust status even if the principal VAWA self-petitioner never adjusts his/her status.

9 Documents Required for an Adjustment of Status Application[14]

All documents that are not in English must be accompanied by a certified translation. Please contact HRI to have any documents translated and notarized.

- **A.** Cover letter with index of documents included in package
- **B.** G-28 Notice of Entry of Appearance as Attorney or Accredited Representative
- **C.** I-485 Application to Register Permanent Residence or Adjust Status
- **D.** I-864W Request for Exemption for Intending Immigrant's Affidavit of Support
- **E.** I-693 Report of Medical Examination and Vaccination Record
- **F.** Either the I-360 (if filing simultaneously with the I-485) or the notice of approval for the I-360
- **G.** I-765 Application for Employment Authorization in category (c)(9)
  Also include any copies of previously issued Employment Authorization Documents.
- **H.** Filing fee or fee waiver with documentary support
  If filing a fee waiver, be sure to redact any social security numbers on pay stubs, tax returns or transcripts.
- **I.** Copy of passport (all pages)
- **J.** Copy of birth certificate, with certified translation, if necessary
- **K.** For derivatives, copies of evidence of family relationship to the VAWA self-petitioner, with certified translations
- **L.** Documents supporting a positive exercise of discretion

10 Optional documents:

- **A.** I-131 Application for Travel Document
  1. Please note that having an advance parole document does not guarantee that the holder will be allowed to reenter the United States. At the airport or border, a U.S. Customs and Border Protection (CBP) officer will make the final decision about whether to allow someone to reenter the United States.
  2. Please also note that, if the VAWA self-petitioner has accrued unlawful presence, leaving the United States could trigger a three-year, ten year or permanent bar. Please contact HRI before advising the VAWA self-petitioner to depart the United States using a travel document.

Note: Please ensure that all copies of birth certificates, passports and other documents are legible. If all page numbers are not visible on the copies, you may receive a request for evidence for better copies, and this will delay your client's receipt of his or her green card.

11 Completing the Form I-485[15]

- **A. Part 1**
  1. Social Security Number – Include only a social security number that was lawfully obtained by a VAWA self-petitioner from the Social Security Administration. Many

[14] See Appendix 17-1 for a redacted copy of a complete VAWA Adjustment of Status Application.

[15] USCIS publishes instructions for use with the Form I-485 at https://www.uscis.gov/i-485.

HRI clients have purchased fake social security numbers, so be sure to ask your client if a social security number on a pay stub or tax return is valid before entering that number on the form.

2. Date of last arrival – Refer to the I-94 entry document if there is one. Otherwise write the date that the client entered the U.S., legally or illegally. Be sure to check the date written on the previously submitted Form I-360 VAWA self-petition and corresponding affidavit to ensure consistency. If the VAWA self-petitioner entered legally on a visa but remained in the U.S. past the authorized date, write "visa overstay." If the VAWA self-petitioner entered without inspection or admission, write "EWI" or "entry without inspection."

B. Part 2

1. 1.a. Check the box for VAWA self-petitioner.
2. "Are you applying for adjustment based on the Immigration and Nationality Act (INA) section 245(i)?" Check the box for "No."
3. Receipt Number of Underlying Petition (if any). Enter the receipt number from the I-797 receipt notice indicating that the I-360 was filed with USCIS.
4. Priority Date from Underlying Petition (if any). Unless the VAWA self-petitioner's abuser had filed an I-130 for him or her, enter the date that the I-360 was received by USCIS as indicated on the I-797 receipt notice.

C. Part 3

1. Ask your client each question carefully. The client will sign the form under penalty of perjury and may be asked the same questions at the interview, so it is important that the client read and understand each question. The client may need a day or two to compile a list of all address and employers for the past five years.

D. Part 4

1. Ensure that the names of parents match the spellings on the VAWA self-petitioner's birth certificate**.**

E. Part 5

1. If there is any explanation required, please add an explanation in Part 14 and refer to this question by number, page number and part number.

F. Part 6

1. Enter information about all children. Use Part 14 if VAWA self-petitioner has more than three children.

G. Part 7

1. Ask client to complete biographic information.

H. Part 8

1. Ask client each question carefully. The client will sign the form under penalty of perjury and may be asked the same questions at the interview, so it is important that the client read and understand each question. If client answers "Yes" to any of the questions, mark with an asterisk and hand write "see Part 14" and then write an explanation in Part 14.
2. For the public assistance questions, only check "Yes" for assistance that VAWA self-petitioner received for himself or herself. Check "No" for public assistance that VAWA self-petitioner's children received.

3. For the questions pertaining to illegal entries and other immigration violations, removal, unlawful presence or illegal reentry after previous immigration violations, refer to INA § 212(a).

I. Part 9

1. Ask client each question carefully.

J. Part 10

1. Read the Penalties section of the Form I-485 Instructions to your client. Currently, that section is on page 18 of the Instructions and provides: "If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-485, we will deny your Form I-485 and may deny any other immigration benefit. In addition, you will face sever penalties provided by law and may be subject to criminal prosecution.
2. Complete the appropriate sections regarding an interpreter and have client sign and date.

K. Part 11

1. If an interpreter was used to complete the form, enter the interpreter's information and have interpreter sign and date.

L. Part 12

1. Enter your information as preparer, sign and date**.**

M. Part 13

1. **LEAVE BLANK!**

N. Part 14

1. Enter any explanations.

APPENDIX