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Immigration Relief for Survivors of Domestic Abuse, Sexual Assault, Human Trafficking, and Other Crimes: A Violence Against Women Act 2005 Update

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The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), which President Bush signed into law on January 5, 2006, built on the 1994 Violence Against Women Act (Title IV of the Violent Crime Control and Law Enforcement Act of 1994) and the 2000 Battered Immigrant Women Protection Act (part of the Victims of Trafficking and Violence Protection Act) by expanding immigration relief to new categories of crime victims.¹ In this article we discuss the eligibility requirements for VAWA self-petitioning, VAWA cancellation of removal, “U” interim relief for certain immigrant crime victims, and the “T” visa for immigrants who have been trafficked, with special attention to new provisions in VAWA 2005.

VAWA 2005 requires the U.S. attorney general, secretary of homeland security, and secretary of state to promulgate regulations, no later than July 5, 2006, to implement VAWA 2000 and VAWA 2005.² To date, none of these agencies has complied; no regulations have even been proposed.

VAWA 2005 includes amendments that directly affect programs funded by the Legal Services Corporation; the amendments allow such programs to represent any victim of domestic abuse, sexual assault, human trafficking, or other crime, regardless of the victim’s marital status or immigration status.³

I. VAWA Self-Petitions

Most legal immigrants legalize their status in the United States through the family immigration system; a U.S. citizen or permanent resident (the petitioner) files a family visa petition on behalf of a family member seeking to immigrate (the beneficiary).⁴ As a rule, a U.S. citizen may file visa petitions on behalf of a beneficiary spouse, children, parents, siblings, and married or unmarried adult sons or daughters.⁵ A perma-

¹Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA), Pub. L. No. 109-162, 119 Stat. 2960 (2006).

²*Id.* § 828.

³*Id.* § 106. For more information on the amendments, see Amanda Baran, *The Violence Against Women Act Now Ensures Legal Services for Immigrant Victims*, in this issue.

⁴Until recently, Congress placed no restraints on petitioners’ ability to file visa petitions for qualifying family members. However, on July 27, 2006, President Bush signed into law the Adam Walsh Child Protection and Safety Act of 2006. Title IV of this Act prohibits petitioners who have been convicted of any “specified offense against a minor” from filing a family immigrant petition or fiancé or fiancée petition on behalf of any beneficiary unless the secretary of homeland security determines, in his sole and unreviewable discretion, that the petitioner poses no risk to the beneficiary.

⁵Immigration and Nationality Act (INA) § 204(a)(1)(A)(i), 8 U.S.C. § 1154(a)(1)(A)(i) (2006).

nent resident may file visa petitions on behalf of a beneficiary spouse, children, and unmarried adult sons or daughters.⁶

Thus the petitioner controls the family immigration process, and the beneficiary has no power to initiate or to complete it. In families with healthy relationships, the petitioner typically files the necessary immigration application and cooperates with the U.S. Departments of Homeland Security and State to ensure that the beneficiary may immigrate to the United States. However, in families where domestic abuse is present, the petitioner commonly refuses to cooperate in order to control and subjugate the beneficiary—e.g., by refusing to file a visa petition on the beneficiary's behalf; filing a petition and then withdrawing it; attending the Homeland Security interview and telling the immigration officer that the marriage is a sham; or calling Homeland Security and reporting that the beneficiary is in the United States without status.

Cognizant of the ways in which batterers abuse immigrant family members, Congress passed the Violence Against Women Act in 1994 to allow certain domestic abuse survivors to obtain permanent resident status without notifying or relying on an abusive family member who had legal status and would normally be the petitioner. The 1994 Act allows certain abused spouses and children—those in removal or deportation proceedings and those who have already had contact with U.S. Citizenship and Immigration

Services as well as those who have not—to file their own petitions, or “self-petition,” for permanent resident status.

II. The 2005 Amendments

VAWA 2005 significantly expanded the categories of family violence survivors who may self-petition. For the first time, *parents* who have been subjected to battery or extreme cruelty by an adult U.S. citizen son or daughter and who meet other eligibility requirements (see table, page 548) may self-petition.⁷ Once a parent's self-petition is approved, the parent may immediately apply for permanent resident status.

Second, in the past, abused children had to self-petition before age 21. VAWA 2005 extended the filing deadline until the self-petitioner's 25th birthday so long as the child abuse was at least one central reason for the filing delay.⁸

Third, VAWA 2005 created a new statutory definition of “VAWA self-petitioner” within the Immigration and Nationality Act to encompass many domestic abuse survivors who seek immigration relief.⁹ These newly eligible self-petitioners include persons who file VAWA self-petitions and their children, conditional residents applying for an abused spouse waiver, and abused spouses eligible for relief under the Haitian Refugee Immigrant Fairness Act, the Cuban Adjustment Act, and the Nicaraguan Adjustment and Central American Relief Act.¹⁰

⁶INA § 204(a)(1)(B)(i), 8 U.S.C. § 1154(a)(1)(B)(i).

⁷INA § 204(a)(1)(A)(vii), 8 U.S.C. § 1154(a)(1)(A)(vii).

⁸INA § 204(a)(1)(D)(v), 8 U.S.C. § 1154(a)(1)(D)(v).

⁹INA § 101(a)(51), 8 U.S.C. § 1101(a)(51).

¹⁰Haitian Refugee Immigration Fairness Act, Pub. L. No. 105-277, 112 Stat. 2681 (1998), amended by Pub. L. No. 109-162, § 811, 119 Stat. 2960 (2006); INA § 902. To be eligible under the Haitian Refugee Immigration Fairness Act, an applicant must be a citizen or national of Haiti and have been in the United States continuously since December 31, 1995. The applicant must also (1) be an orphan or an abandoned or unaccompanied minor at the time of entry into the United States, (2) be a minor who was orphaned or abandoned after entering the United States and determined to have had a credible fear of persecution and thus legally permitted to be in the United States, (3) have applied for asylum before December 31, 1995, or (4) have been paroled into the United States for emergent reasons or for reasons deemed to be in the national interest. The Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966), establishes a special procedure under which the attorney general has discretion to grant permanent residence to Cuban natives or citizens and their accompanying spouses and children who seek adjustment of status, provided that the applicants have been present in the United States for at least one year after admission or parole and are admissible as immigrants. The Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, 111 Stat. 2160 (1997), affects Salvadorians, Guatemalans, and nationals of former Soviet bloc and Eastern European nations who entered the United States and applied for benefits under the settlement agreement in *American Baptist Churches v. Thornburgh*, 760, F. Supp 796 (N.D. Cal. 1991), by a certain date. The Nicaraguan Adjustment and Central American Relief Act allows them to apply for suspension of deportation based on their date of entry. Pub. L. No. 105-139, 111 Stat. 2644 (1997).

And, fourth, VAWA 2005 protects abused children and children of battered immigrants from losing protection because they turn 21. VAWA 2005 ensures that child self-petitioners and their derivative children have access to aging-out protections and any Child Status Protection Act relief for which they qualify.¹¹

III. Cancellation of Removal or Suspension of Deportation

In the 1994 Violence Against Women Act Congress created suspension of deportation, a special form of relief for certain domestic abuse survivors in deportation proceedings. After passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress created the analogous VAWA cancellation of removal for certain domestic abuse survivors in immigration removal proceedings. When an applicant is granted suspension of deportation or cancellation of removal, the government cancels or suspends the deportation or removal proceedings and the applicant becomes a permanent resident. Cancellation of removal and suspension of deportation under VAWA are only for people who are already in removal or deportation proceedings.

Those who qualify for VAWA cancellation of removal are

- certain spouses and children who have been battered or subjected to extreme cruelty by a U.S. citizen or permanent resident spouse or parent;
- the parent of a child who was battered or subjected to extreme cruelty by the child's other parent who is a citizen or permanent resident, even if the parents are not married to each other; and
- victims of battery or extreme cruelty who intended to marry the abusive U.S. citizen or permanent resident but whose marriage is not legitimate because of the abuser's bigamy.¹²

The applicant for VAWA cancellation of removal must have been physically present in the United States for a continuous period of at least three years immediately preceding the date of the cancellation application and have been a person of good moral character during that period.¹³ Removal from the United States must result in extreme hardship to the applicant, the applicant's child, or the applicant's parent.¹⁴ The applicant must not

- be inadmissible under certain Immigration and Nationality Act sections that exclude immigrants on the basis of crimes involving moral turpitude and other grounds;¹⁵
- be deportable under other sections that cover marriage fraud, crimes of moral turpitude, and other drug and criminal offenses, subject to the Act's domestic violence waiver;¹⁶ or
- have been convicted of an aggravated felony.¹⁷

¹¹Pub. L. No. 109-162, § 805(a)-(b); Pub. L. No. 107-728 (Child Status Protection Act).

¹²INA § 240A(b)(2)(A)(i)-(iii), 8 U.S.C. § 1229b(b)(2)(A)(i)-(iii).

¹³INA § 240A(b)(2)(A)(ii)-(iii), 8 U.S.C. § 1229b(b)(2)(A)(ii)-(iii). "Physical presence" is defined in INA § 240A(b)(2)(B), 8 U.S.C. § 1229b(b)(2)(B); issuance of a notice to appear does not toll the period of continuous physical presence. "Good moral character" is defined in INA § 240A(b)(2)(C), 8 U.S.C. § 1229b(b)(2)(C).

¹⁴INA § 240A(b)(2)(A)(v), 8 U.S.C. § 1229b(b)(2)(A)(v).

¹⁵INA §§ 212(a)(2)-(3). These inadmissibility grounds include crimes involving moral turpitude, controlled substance violations, prostitution, commercialized vice, religious freedom violations, human trafficking, money laundering, espionage, sabotage, export violations, terrorist activity, totalitarian party membership, Nazi persecution, genocide, torture, extrajudicial killing, overthrow of the U.S. government, and association with terrorist organizations.

¹⁶INA §§ 237(a)(1)(G), 237(a)(2), 237(a)(3), 237(a)(4). Other deportability grounds in these sections include multiple convictions, aggravated felony, high-speed flight from an immigration checkpoint, controlled-substance violations, firearm convictions, espionage, sabotage, treason and sedition, failure to file change of address with the immigration agency, falsification of documents, falsely claiming U.S. citizenship, export violations, endangering public safety or national security, overthrow of the U.S. government, terrorist activities, Nazi persecution, genocide, torture, extrajudicial killing, religious freedom violations, and certain domestic abuse crimes. See INA §§ 237(a)(2)-(4). The domestic violence waiver is in INA § 237(a)(7).

¹⁷INA § 240A(b)(2)(A)(iv), 8 U.S.C. § 1229b(b)(2)(A)(iv).

VAWA 2005 improved the earlier provisions for cancellation of removal through technical amendments to ensure that immigration judges have authority to grant domestic violence waivers.¹⁸

IV. The "U" Visa

In VAWA 2000 Congress created the new "U" visa for certain victims of crime in order to provide humanitarian immigration relief to crime victims and assist law enforcement in investigating or prosecuting crime. Because Homeland Security has not yet issued regulations implementing the "U" visa, it is not granting "U" visas at this time. Instead it has created interim relief for "U" visa applicants.

To qualify for "U" interim relief an applicant must

- have suffered substantial physical or mental abuse from being a victim of certain criminal activity;¹⁹
- have information concerning that criminal activity;
- have been, be, or likely be helpful in the investigation of or prosecution for the criminal activity.²⁰

The criminal activity described must have violated U.S. laws or occurred in the United States.

The crimes covered by "U" interim relief are not limited to domestic violence. Advocates should interview a noncitizen client thoroughly to determine whether the client has been the victim of one of the specified crimes. Immigrants who may qualify for "U" interim relief, but not for VAWA self-petitioning or VAWA cancellation of removal, include, among others,

- victims subject to intimate partner violence in gay or lesbian relationships;
- dating violence victims;
- domestic violence victims who are not married to the abuser;
- domestic violence victims whose abuser is not a U.S. citizen or permanent resident;
- child victims abused by siblings, aunts, uncles, cousins, nannies, babysitters, teachers, coaches, clergy, or others;
- sexual assault victims attacked by strangers or acquaintances; and
- students forced to have sex by instructors, teaching assistants, or resident assistants.

VAWA 2005's significant improvements on the "U" visa include

- expanding the definition of "U" derivatives to include unmarried and under 18 siblings of a child "U" applicant under 21;²¹
- eliminating the extreme hardship or government official certification requirements that applied to family members seeking to join "U" visa applicants in the United States;²²
- extending duration of the "U" visa to four years or longer if a law enforcement official, prosecutor, judge, or other authority investigating or prosecuting the crime certifies that the "U" visa applicant's presence in the United States is required to assist in the criminal investigation or prosecution;²³ and

¹⁸Pub. L. No. 109-162, § 813(c).

¹⁹Victimization must be due to one or more of the following crimes or any similar activity in violation of federal, state, or local criminal law: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of these crimes. INA § 101(a)(15)(U)(iii), 8 U.S.C. § 1101(a)(15)(U)(iii).

²⁰INA § 101(a)(15)(U)(i), 8 U.S.C. § 1101(a)(15)(U)(i).

²¹The siblings must be under 18 on the date that the child "U" applicant applied for "U" status. See INA § 101(a)(15)(U)(ii)(I), 8 U.S.C. § 1101(a)(15)(U)(ii)(I).

²²Pub. L. No. 109-162, § 801(b).

²³INA § 214(p)(6), 8 U.S.C. § 1184(p)(6).

- permitting the following categories of nonimmigrants who entered the United States to change to "U" status: "C" (transit), "D" (crewmen), "K" (fiancé or fiancée, spouse, child), "S" (criminal informant), "J" (exchange visitor), visitors under the visa waiver program, or Guam visitors.²⁴

V. The "T" Visa

In VAWA 2000 Congress created the "T" visa for non-U.S. citizens who have been trafficked. Like the "U" visa, the "T" visa provides humanitarian immigration relief to human trafficking victims and to assist law enforcement in investigating or prosecuting human trafficking. A "T" visa is available to a non-U.S. citizen who

- has been the victim of a severe form of trafficking in persons;
- is physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or a port of entry thereto on account of the trafficking;
- has complied with any reasonable request for assistance in the investigation or prosecution of trafficking acts if the visa applicant is 18 or older; and
- would suffer extreme hardship involving unusual and severe harm upon removal.²⁵

VAWA 2005 amended the "T" visa provisions to

- permit the secretary of homeland security, in consultation with the attorney general, to exempt a "T" visa applicant from being required to cooperate with an unreasonable request for assis-

tance in a trafficking investigation or prosecution if the applicant is unable to cooperate due to psychological or physical trauma;²⁶

- eliminate the requirement that a "T" visa applicant's spouse, children, and parents show extreme hardship to be eligible to accompany or join the applicant, thereby paving the way for family reunification in the United States;²⁷
- create an exception to the unlawful presence rules for victims who demonstrate that the trafficking was at least one central reason for their unlawful presence in the United States, thereby allowing them to obtain permanent resident status;²⁸
- permit "T" visa applicants to apply for permanent residence if the attorney general determines that the trafficking investigation or prosecution is complete and the applicant has been physically present in the United States for a continuous period during the investigation or prosecution;²⁹
- state that "T" visa applicants who cooperate with requests for evidence and information meet the requirement for complying with requests for assistance;³⁰
- state that federal, state, and local law enforcement officials are authorized to certify that a "T" visa applicant has complied with requests for assistance in the criminal investigation or prosecution;³¹
- expand the scope of qualifying criminal cases beyond trafficking to include cases where trafficking acts are at least

²⁴INA § 248(b), 8 U.S.C. § 1258(b).

²⁵INA § 101(a)(15)(T)(i), 8 U.S.C. § 1101(a)(15)(T)(i). "Severe form of trafficking in persons" is defined in VAWA 2000 § 103. See INA 101(a)(15)(T)(i)(I), 8 U.S.C. 1101(a)(15)(T)(i)(I).

²⁶INA § 101(a)(15)(T)(iii), 8 U.S.C. § 1101(a)(15)(T)(iii).

²⁷Pub. L. No. 109-162, § 801(a)(2).

²⁸INA § 212(a)(9)(B)(iii)(V), 8 U.S.C. § 1182(a)(9)(B)(iii)(V).

²⁹INA § 245(l)(1)(A), 8 U.S.C. § 1225(l)(1)(A).

³⁰Pub. L. No. 109-162, § 804(b)(3)(C).

³¹INA § 214(o)(6), 8 U.S.C. § 1184(o)(6).

one central reason for the commission of the crime;³²

- instruct that, for continued presence certification, the U.S. Department of Health and Human Services must consult with Homeland Security and the Justice Department before certifying a “T” visa;³³
- extend duration of the “T” visa to four or more years if a law enforcement official, prosecutor, judge, or other authority investigating or prosecuting the trafficking certifies that the “T” visa applicant’s presence in the United States is required to assist in the trafficking investigation or prosecution;³⁴ and
- permit the following categories of nonimmigrants to change to “T” status: “C” (transit), “D” (crewmen), “K” (fiancé or fiancée, spouse, child), “S” (criminal informant), “J” (exchange visitor), visitors under the visa waiver program, or Guam visitors.³⁵

VI. Other VAWA 2005 Amendments— Employment Authorization

VAWA 2005 grants employment authorization to domestic abuse victims of spouses working as diplomats, foreign government representatives, Australian investors, or fashion models or specialty

occupation workers.³⁶ This provision will enable many battered spouses to earn income independently of their abuser, thereby enhancing their and their children’s economic and physical security.³⁷

VAWA 2005 also guarantees automatic employment authorization to people with approved VAWA self-petitions or “T” visa applications.³⁸

VII. Domestic Abuse Survivors Who Have Been Ordered Removed or Deported

VAWA 2005 expands and strengthens the basis for motions to reopen removal or deportation orders to permit applicants to seek VAWA-based adjustment of status, cancellation of removal, or suspension of deportation without being subject to the standard rules regarding numerical limits and filing deadlines.³⁹ The applicant must be physically present in the United States when the motion to reopen is filed, and filing triggers a stay of removal provided that the applicant is a “qualified alien.”⁴⁰ VAWA motions to reopen were also extended to suspension-of-deportation and adjustment-of-status applicants in deportation or exclusion proceedings and to abused spouses and children of Haitian Refugee and Immigrant Fairness and Cuban Adjustment Act applicants.⁴¹

³²INA § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa).

³³Pub. L. No. 109-162, § 804(b).

³⁴INA § 214(o)(7), 8 U.S.C. § 1184(o)(7).

³⁵INA § 248(b), 8 U.S.C. § 1258(b).

³⁶Pub. L. No. 109-162, § 814(c). Diplomats include ambassadors, public ministers, career diplomatic or consular officers, officials accredited by a foreign government recognized *de jure* by the United States, and domestic workers of diplomatic families. See INA § 101(a)(15)(A), 8 U.S.C. § 1101(a)(15)(A). Foreign government representatives include international organization officers and their domestic workers. See INA § 101(a)(15)(G), 8 U.S.C. § 1101(a)(15)(G). “Specialty occupations” generally require that the employee have the equivalent of a four-year U.S. university degree.

³⁷The abused spouse’s employment authorization is contingent on (1) the marriage to the abusive spouse not legally terminating and (2) the abusive spouse not quitting or being terminated from his prescribed employment.

³⁸Pub. L. No. 109-162, § 814(b).

³⁹INA § 240(c)(7)(c)(iv), 8 U.S.C. § 1229a(c)(7)(c)(iv).

⁴⁰The grant of a stay of removal means that the applicant may not be removed from the United States physically unless the Board of Immigration Appeals denies or dismisses the applicant’s appeal of an immigration judge’s decision denying the VAWA motion to reopen. Removal is to be stayed pending final disposition of the motion to reopen, including exhaustion of all appeals. See INA 240(c)(7)(c)(iv)(IV), 8 U.S.C. 1229a(c)(7)(c)(iv)(IV). “Qualified alien” is defined in 8 U.S.C. §§ 1641(c)(1)(B), 431(c)(1)(B).

⁴¹*Id.* §§ 825(b), 814(a).

VAWA 2005 allows applicants to self-petition immediately or to apply for VAWA cancellation of removal or suspension of deportation, even if the applicant overstayed a voluntary departure grant, so long as extreme cruelty or battery was at least one central reason for the overstay.⁴² VAWA 2005 also expands the definition of “exceptional circumstances” to include battery or extreme cruelty to the applicant or her child or parent. This expanded definition allows rescission of removal orders affecting domestic abuse survivors who were ordered removed *in absentia* if the battery or extreme cruelty caused their failure to appear at the removal hearing.⁴³

VIII. Other VAWA 2005 Amendments

VAWA 2005 resolves a filing deadline problem for VAWA applicants by allowing abused spouses and children eligible for legal immigration status as a Nicaraguan or Cuban under the Nicaraguan Adjustment and Central American Relief Act of 1998 to apply even if the abuser did not apply for status and the filing deadline has passed.⁴⁴ VAWA 2005 grants permanent resident status to the spouse of a Cuban eligible for adjustment under the Cuban Adjustment Act during a two-year period after the Cuban spouse died or the marriage was terminated if the abused spouse demonstrates a connection between the termination and being battered or being subject to extreme cruelty by the Cuban.⁴⁵

VAWA 2005 allows an abused adopted child to obtain permanent residency even if the child has neither been in the legal custody of nor resided with the adoptive parent for two years if the child was battered or subject to extreme cru-

elty by the adoptive parent or by a family member of the adoptive parent.⁴⁶ VAWA 2005 prohibits the federal government from requiring minors applying for special immigrant juvenile status to contact the abusive family member at any stage of the special immigrant juvenile status application.⁴⁷

VAWA 2005 protects driver's license information regarding certain crime victims when confidentiality is critical for their safety. In developing regulations and guidance governing identification cards and drivers' licenses, Homeland Security and the Social Security Administration must give special consideration to domestic abuse, sexual assault, stalking, or trafficking victims who are entitled to enroll in state address confidentiality programs and to have their addresses suppressed under state or federal law, VAWA confidentiality guarantees, or a court order.⁴⁸

IX. VAWA 2005 Immigration Confidentiality

VAWA 2005 strengthens confidentiality enforcement.⁴⁹ For domestic violence survivors, Congress in 1996 passed confidentiality protections from immigration agency disclosure of information and agency use of abuser-provided information. In the past some abusers were able to obtain confidential information about their victims from Homeland Security (e.g., that the victim had self-petitioned under VAWA). Some of the new provisions in VAWA 2005 ensure that abusers and criminals cannot use the immigration system against their victims. These amendments include

⁴²INA § 240B(d)(2), 8 U.S.C. 1231(d)(2).

⁴³INA § 240(e)(1), 8 U.S.C. 1229(e)(1).

⁴⁴*Id.* § 815.

⁴⁵*Id.* § 823.

⁴⁶*Id.* § 805(d).

⁴⁷*Id.* § 826.

⁴⁸*Id.* § 827.

⁴⁹*Id.* § 817.

- extension of VAWA confidentiality to trafficking victims;
- application of VAWA immigration confidentiality rules to Homeland Security, the State Department, and the Justice Department;
- facilitating congressional oversight by permitting disclosure, in a manner that protects victim confidentiality and safety, to the chairmen or -women and ranking members of the House and Senate Judiciary Committees, including the Immigration Subcommittees;
- giving the specially trained Citizenship and Immigration Services' VAWA Unit the discretion to refer victims to non-governmental legal and other service providers who have expertise in serving immigrant victims;
- creation of a system to verify that removal proceedings are not based on information prohibited by VAWA confidentiality laws (when removal proceedings are initiated on the basis of immigration enforcement actions at a domestic violence shelter, a rape crisis center, or a courthouse where the victim is appearing in connection with a protection order or child custody case, Homeland Security must disclose these facts in the notice to the alien to appear and must certify to not having violated VAWA confidentiality laws);⁵⁰ and
- a requirement that Homeland Security and the Justice Department offer guidance to their officers and employees on the harm that could result from inappropriate disclosure of information.

X. Impact of VAWA 2005 on All Noncitizens

VAWA 2005 includes provisions that apply to all noncitizens, not just those

who are survivors of domestic abuse or human trafficking. It amends the definition of good moral character to clarify that a prior removal order does not bar someone from establishing good moral character.⁵¹ This amendment affects most immigration applicants, including those seeking cancellation of removal or voluntary departure.

VAWA 2005 reaffirms that Homeland Security, the State Department, and the Justice Department have discretion to consent to any noncitizen's reapplication for admission to the United States after the noncitizen has been removed, deported, or excluded.⁵² In general, anyone who is ordered removed, deported, or excluded, and who then physically leaves the United States and reenters, is subject to reinstatement of removal. In the event of reinstatement, the noncitizen is barred from applying for all forms of relief other than withholding of removal. The only way around the reinstatement of the removal order is for the noncitizen to file a Form I-212 seeking a waiver of the removal order. If the waiver is granted, the noncitizen may then apply for many forms of immigration relief.

In VAWA 2005 Congress urged special consideration for applicants seeking VAWA relief, "T" visas, or "U" interim relief—a policy recently signed into law. But whether the federal agencies will grant waiver applications remains unclear. Citizenship and Immigration Services recently issued field guidance on the impact of Form I-212s for people subject to reinstated removal orders and instructed immigration officers to deny I-212 applications where ten years have not elapsed since the noncitizen's last departure from the country.⁵³ Reinstatement of removal has been the subject of federal litigation in many courts; the U.S.

⁵⁰INA § 239(e), 8 U.S.C. § 1229(e).

⁵¹Pub. L. No. 109-162, § 822(b).

⁵²*Id.* § 813(b).

⁵³U.S. Citizenship and Immigration Services Interoffice Memorandum re Effect of *Perez-Gonzalez* on Adjudication of Form I-212 Applications Filed by Aliens Who Are Subject to Reinstated Removal Orders Under INA 241(a)(5), from Michael Aytes, Acting Associate Director for Domestic Operations (March 31, 2006).

Supreme Court addressed the issue in 2006 in *Fernandez-Vargas v. Gonzales*.⁵⁴

XI. Regulation of International Marriage Brokers

VAWA 2005 includes a provision to protect future fiancées or spouses of abusive U.S. citizens.⁵⁵ The International Marriage Broker Regulation Act prevents abusive U.S. citizens from sponsoring multiple foreign fiancées or spouses. It prohibits the State Department from issuing a fiancée or spouse visa (with a limited waiver and exception) to a U.S. citizen who filed two fiancée or spouse petitions, the more recent of which was within the previous two years. Homeland Security may waive this bar, provided that the U.S. citizen has no history of committing domestic abuse or other violent crimes.⁵⁶

VAWA 2005 mandates the creation of a database to track serial fiancé or spouse petitions filed by the same U.S. citizen; the database will be used to notify the foreign fiancée or spouse of the earlier petitions if the U.S. citizen filed three petitions within the past ten years.

Federal agencies must develop, for distribution to all foreign fiancées and spouses, a domestic abuse pamphlet that includes information on domestic violence laws and resources in the United States. The International Marriage Broker Regulation Act prohibits international marriage brokers from sharing information on minors with any person

or entity and from giving U.S. clients information on a foreign national before the brokers have searched sex offender registries, collected criminal and family background information, distributed the domestic abuse pamphlet to the foreign national, and received written consent from the foreign national to share her contact information. Violation of these requirements can result in civil penalties up to \$25,000.

International marriage brokers must collect and disclose, both to Homeland Security and to foreign women using the services, criminal background information about U.S. citizens who use marriage broker services.⁵⁷ Relevant criminal history includes domestic abuse and other violent crimes and multiple convictions for substance abuse.

Authors' Note

Joanne Lin and Leslye Orloff drafted and negotiated the Violence Against Women and Department of Justice Reauthorization Act of 2005 immigration amendments and led the effort to get the amendments passed by Congress. Ericka Echavarria, a 2002 graduate of Albany Law School, is studying at the Columbia University School of Social Work. She interned with Legal Momentum between January and July 2006. For technical assistance, attorneys representing noncitizen survivors of domestic abuse, sexual assault, or human trafficking may contact the Legal Momentum Immigrant Women Program at 202.326.0040 or iwp@legalmomentum.org; or ASISTA, www.asistaonline.org.

⁵⁴*Fernandez-Vargas v. Gonzales*, 126 S. Ct. 2422 (2006). Attorneys representing clients subject to reinstatement of removal should contact Beth Werlin, American Immigration Lawyers Foundation, bwerlin@aifl.org.

⁵⁵Pub. L. No. 109-162, § 832.

⁵⁶*Id.*

⁵⁷*Id.* § 832(a).

Eligibility Criteria for Self-Petition Under the Violence Against Women Act of 2005

An immigrant spouse, child, or parent of an abuser may self-petition to legalize immigration status, provided that the immigrant meets certain additional eligibility requirements as shown below:

	SPOUSE	CHILD	PARENT
Self-petitioner's requisite family relationship with U.S. citizen or permanent resident family member	(a) Married to U.S. citizen ¹ or permanent resident; ² or (b) Formerly married to U.S. citizen or permanent resident, and marriage was legally terminated ³ or citizen spouse died, ⁴ or lost citizenship within past two years, ⁵ or (c) Participated in marriage ceremony with U.S. citizen or permanent resident, which self-petitioner believed was valid but was invalid solely because of U.S. citizen or permanent resident's bigamy ⁶	Child ⁷ of U.S. citizen ⁸ or permanent resident; ⁹ or child of former U.S. citizen or permanent resident, where former citizen or permanent resident lost status within past two years in connection with a domestic violence incident ¹⁰	Parent of adult U.S. citizen (citizen must be at least 21); ¹¹ or parent of former adult U.S. citizen, where former citizen, within past two years, lost citizenship in connection with a domestic violence incident ¹²
Good-faith marriage¹³	Self-petitioner married or intended to marry, in good faith, U.S. citizen or permanent resident ¹⁴		
Battery or extreme cruelty	Self-petitioner was battered or subjected to extreme cruelty by U.S. citizen or permanent resident spouse or intended spouse ¹⁵	Child was battered or subjected to extreme cruelty by U.S. citizen or permanent resident parent ¹⁶	Parent was battered or subjected to extreme cruelty by U.S. citizen adult son or daughter ¹⁷
Good moral character¹⁸	Self-petitioner is person of good moral character ¹⁹	Child is person of good moral character ²⁰	Parent is person of good moral character ²¹
Cohabitation with abuser	Self-petitioner has resided with U.S. citizen or permanent resident spouse or intended spouse ²²	Child has resided with U.S. citizen or permanent resident parent ²³	Parent has resided with U.S. citizen adult son or daughter ²⁴
Qualifying classification to immigrate	Self-petitioner is eligible to be classified as immediate relative or spouse of permanent resident ²⁵	Child is eligible to be classified as immediate relative or as child of permanent resident ²⁶	Parent is eligible to be classified as immediate relative ²⁷

¹Immigration and Nationality Act (INA) § 204(a)(1)(A)(ii)(II)(aa)(AA), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(aa)(AA).

² INA § 204(a)(1)(B)(ii)(II)(aa)(AA), 8 U.S.C. 1154(a)(1)(B)(ii)(II)(aa)(AA).

³Self-petitioner must demonstrate a connection between legal termination of marriage and abuse by the U.S. citizen or permanent resident spouse. See INA § 204(a)(1)(A)(ii)(II)(aa)(CC)(ccc), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(aa)(CC)(ccc); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb); 8 U.S.C. 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

⁴INA § 204(a)(1)(A)(ii)(II)(aa)(CC)(aaa), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(aa)(CC)(aaa).

⁵INA § 204(a)(1)(A)(ii)(II)(aa)(CC)(bbb), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(aa)(CC)(bbb); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa), 8 U.S.C. 1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa).

⁶See INA § 204(a)(1)(A)(ii)(II)(aa)(BB), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(aa)(BB), INA § 204(a)(1)(B)(ii)(II)(aa)(BB), 8 U.S.C. 1154(a)(1)(B)(ii)(II)(aa)(BB).

⁷Child must be under 25 when self-petition is filed.

⁸INA § 204(a)(1)(A)(iv), 8 U.S.C. (a)(1)(A)(iv).

⁹INA § 204(a)(1)(B)(iii), 8 U.S.C. 1154(a)(1)(B)(iii).

¹⁰See INA § 204(a)(1)(A)(iv), 8 U.S.C. 1154(a)(1)(A)(iv); INA § 204(a)(1)(B)(iii), 8 U.S.C. 1154(a)(1)(B)(iii).

¹¹INA § 204(a)(1)(A)(vii)(I), 8 U.S.C. 1154(a)(1)(A)(vii)(I).

¹²The loss of U.S. citizenship must be due to a domestic violence incident. See INA § 204(a)(1)(A)(vii)(I), 8 U.S.C. 1154(a)(1)(A)(vii)(I).

¹³To prove good-faith marriage, the self-petitioning spouse must prove that she did not enter into the marriage with the U.S. citizen or permanent resident solely for the purpose of obtaining immigration status.

¹⁴See INA § 204(a)(1)(A)(ii)(II)(aa), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(aa); INA § 204(a)(1)(B)(ii)(II)(aa), 8 U.S.C. 1154(a)(1)(B)(ii)(II)(aa).

¹⁵The battery or extreme cruelty must have occurred during the marriage or during the relationship intended by the self-petitioner to be a legal marriage. See INA § 204(a)(1)(A)(ii)(II)(bb), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(bb); INA § 204(a)(1)(B)(ii)(II)(bb), 8 U.S.C. 1154(a)(1)(B)(ii)(II)(bb).

¹⁶See INA § 204(a)(1)(A)(iv), 8 U.S.C. 1154(a)(1)(A)(iv); INA 204(a)(1)(B)(iii), 8 U.S.C. 1154(a)(1)(B)(iii).

¹⁷INA § 204(a)(1)(A)(vii)(V), 8 U.S.C. 1154(a)(1)(A)(vii)(V).

¹⁸INA § 101(f), 8 U.S.C. 1101(f).

¹⁹See INA § 204(a)(1)(A)(ii)(II)(bb), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(bb); INA § 204(a)(1)(B)(ii)(II)(bb), 8 U.S.C. 1154(a)(1)(B)(ii)(II)(bb).

²⁰See INA § 204(a)(1)(A)(iv), 8 U.S.C. 1154(a)(1)(A)(iv); INA § 204(a)(1)(B)(iii), 8 U.S.C. 1154(a)(1)(B)(iii).

²¹INA § 204(a)(1)(A)(vii)(II), 8 U.S.C. 1154(a)(1)(A)(vii)(II).

²²See INA § 204(a)(1)(A)(ii)(II)(dd), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(dd); INA § 204(a)(1)(B)(ii)(II)(dd), 8 U.S.C. 1154(a)(1)(B)(ii)(II)(dd).

²³See INA § 204(a)(1)(A)(iv), 8 U.S.C. 1154(a)(1)(A)(iv); INA § 204(a)(1)(B)(iii), 8 U.S.C. 1154(a)(1)(B)(iii).

²⁴INA § 204(a)(1)(A)(vii)(IV), 8 U.S.C. 1154(a)(1)(A)(vii)(IV).

²⁵"Innocent spouses" who would have been classified as an immediate relative or spouse of permanent resident, but for the bigamy of the U.S. citizen or permanent resident spouse, meet this definition. See INA § 204(a)(1)(A)(ii)(II)(cc), 8 U.S.C. 1154(a)(1)(A)(ii)(II)(cc); INA § 204(a)(1)(B)(ii)(II)(cc), 8 U.S.C. 1154(a)(1)(B)(ii)(II)(cc).

²⁶See INA § 204(a)(1)(A)(iv), 8 U.S.C. 1154(a)(1)(A)(iv); INA § 204(a)(1)(B)(iii), 8 U.S.C. 1154(a)(1)(B)(iii).

²⁷INA § 204(a)(1)(A)(vii)(III), 8 U.S.C. 1154(a)(1)(A)(vii)(III).