



Executive Summary: VAWA Self-Petition Policy Updates

On February 10, 2022, USCIS released several VAWA Self-Petition policy changes.¹ The changes include the nationwide implementation of two circuit court decisions and changes in USCIS’s interpretation of the joint residence requirement for VAWA Self-Petitioners.²

This document contains short summaries of USCIS’s VAWA Self-Petition policy changes, with corresponding page number references to the more detailed Practice Advisory for those who are interested in further reading.

Chapter 1 - Purpose and Background

- USCIS has produced a chart that summarizes the statutory changes to the VAWA Self-Petition process from 1994 through 2013.³ Please see pages 1-2 of the Practice Advisory for more information.
- USCIS has recognized that the VAWA regulations, which were promulgated in 1996, “have not been updated to include superseding statutory provisions.”⁴ Please see page 2 of the Practice Advisory for more information.

Chapter 2 - Eligibility Requirements and Evidence

- USCIS has included additional documents that may establish an abuser’s U.S. citizenship, including an approval notice for a Form I-

¹ See generally USCIS Policy Alert, PA-2022-09 (Feb. 10, 2022), 3 USCIS-PM D.

² See *id.*

³ *Id.*

⁴ 3 USCIS-PM D.1(C), footnote 11.

130 filed in an immediate relative category and a marriage certificate that lists the abuser's birth in the United States.⁵ Please see page 3 of the Practice Advisory for more information.

- USCIS provided some examples of identifying information for the abuser that self-petitioners may provide to aid USCIS's search of its records to establish an abuser's immigration status. The information includes the abuser's name, date of birth, place of birth, country of birth, and Social Security number.⁶ Please see page 3 of the Practice Advisory for more information.
- USCIS has clarified that abused spouses and children of U.S. nationals are eligible to file VAWA Self-Petitions.⁷ Please see page 4 of the Practice Advisory for more information.
- USCIS has stated that "a common law marriage may be considered a legally valid marriage" for VAWA purposes.⁸ Please see page 4 of the Practice Advisory for more information.
- USCIS has stated that if it is available, self-petitioners should submit evidence of termination of the abuser's previous marriages.⁹ Please see pages 5-6 of the Practice Advisory for more information.
- USCIS has stated that a marriage termination document must be issued by a civil authority to be considered valid.¹⁰ USCIS has also stated that it will consult the U.S. Department of State's Foreign Affairs Manual and the U.S. Visa: Civil Reciprocity and Civil Documents by Country webpage "for country-specific information regarding the legal termination of any marriage that occurred or was terminated outside the United States."¹¹ Please see page 6 of the Practice Advisory for more information.

⁵ See 3 USCIS-PM D.2(B)(1).

⁶ *Id.*

⁷ See *id.*

⁸ 3 USCIS-PM D.2(B)(2).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

- USCIS interprets the “intended spouse” provision of the VAWA Self-Petition statute as follows: the self-petitioner must have believed that they entered a legal marriage with a U.S. Citizen or LPR “who was not already married and therefore free to enter into a valid marriage.”¹² Please see pages 6-7 of the Practice Advisory for more information.
- USCIS has clarified that a self-petitioning child who legally terminated all prior marriages may be considered unmarried.¹³ Therefore, divorced noncitizens who are under 21 (or under 25 and can establish that “the abuse was at least one central reason” for the delay in filing) and otherwise meet the requirements for a VAWA Self-Petition based on parental abuse may file if they submit evidence that any prior marriages were legally terminated.¹⁴ Please see page 8 of the Practice Advisory for more information.
- USCIS has stated that if a parent used Assisted Reproductive Technology “and does not have a genetic relationship to the self-petitioning child”, the child may still demonstrate a “a qualifying parent-child relationship in certain circumstances.”¹⁵ Please see page 9 of the Practice Advisory for more information.
- USCIS has provided examples of the types of evidence that biological child and parent self-petitioners should submit to demonstrate their parent-child relationship with the abusive relative. Please see pages 9-11 and 18 of the Practice Advisory for more information.
- USCIS has provided examples of the types of evidence that stepchild and stepparent self-petitioners should submit to demonstrate the stepchild/stepparent relationship. Please see pages 11-12 and 18 of the Practice Advisory for more information.
- USCIS has implemented the Seventh Circuit’s decision in *Arguijo v. USCIS*¹⁶ nationwide.¹⁷ For practice pointers and more information

¹² 3 USCIS-PM D.2(B)(2)

¹³ See 3 USCIS-PM D.2(B)(3).

¹⁴ Cf. *id.*

¹⁵ See *id.*

¹⁶ 991 F. 3d 736 (7th Cir, 2021).

¹⁷ USCIS Policy Alert, PA-2022-09, Feb. 10, 2022, p. 2.

about *Arguijo* and the implications of its adoption for self-petitioning stepparents and stepchildren, please see pages 12-14 of the Practice Advisory.

- To establish eligibility for a VAWA Self-Petition as an abused stepchild or stepparent when the self-petitioner’s *biological/legal relative* has *died*, USCIS requires the self-petitioner to demonstrate a “relationship in fact” with the abusive step-relative.¹⁸ For more information on this requirement, please see pages 15-16 of the Practice Advisory and ASISTA’s [Comment](#) on the VAWA updates to the USCIS Policy Manual.
- USCIS has clarified that VAWA Self-Petitioners are subject to INA §§204(a)(2) (limitation on family petition(s) for subsequent spouse(s)), (c) (marriage fraud bar), and (g) (bar or heightened standard for marriages entered while in removal proceedings).¹⁹ For more information, please see the following pages of the Practice Advisory: pages 19-20 (INA §204(a)(2)); pages 34-36 (INA §204(g)); and pages 36-38 (INA §204(c)).
- USCIS has stated that “The definitions for battery and extreme cruelty are flexible and broad.”²⁰ USCIS has also adopted a definition of “extreme cruelty” that is analogous to the definition of “extreme cruelty” in *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2002).²¹ USCIS has also created a non-exhaustive list of possible examples of extreme cruelty, including “threats of deportation” and “[t]hreats to remove a child from the self-petitioner’s custody.”²² For more information and practice pointers on USCIS’s policy on extreme cruelty, please see pages 21-23 of the Practice Advisory.
- USCIS *no longer requires* the self-petitioner to have resided with the abuser during the qualifying relationship.²³ USCIS also does not require that the self-petitioner lived with the abuser in the United

¹⁸ See 3 USCIS-PM D.2(B)(3) (citing *Matter of Pagnerre*, 13 I&N Dec. 688 (BIA 1971)) (self-petitioning stepchildren); see 3 USCIS-PM D.2(B)(4) (self-petitioning stepparents).

¹⁹ See 3 USCIS-PM D.2(D).

²⁰ See 3 USCIS-PM D.2(E)(1).

²¹ See *id.*

²² See *id.*

²³ See 3 USCIS-PM D.2(F), USCIS Policy Alert, PA-2022-09 (Feb. 10, 2022).

States.²⁴ In adopting the holdings of *Hollingsworth v. Zuchowski*²⁵, *Bait It v. McAleenan*²⁶, and *Dartora v. U.S.*²⁷, USCIS applied the holdings to all self-petitions, not just spousal self-petitions. For more information on USCIS's policy on residence with the abusive relative, please see pages 23-24 of the Practice Advisory.

- USCIS has implemented nationwide the Third Circuit's decision on good moral character in the VAWA Self-Petition context, *DaSilva v. Attorney General*, 948 F.3d 629 (3rd Cir. 2020).²⁸ For more information about *DaSilva*, the implications of USCIS's nationwide adoption of this decision, and practice pointers, please see pages 25-29 of the Practice Advisory.
- In cases where a self-petitioner's actions would be a conditional bar to good moral character but fall outside the 3-year period, USCIS will consider "all evidence in the record to make an individualized determination as to whether the self-petitioner has established good moral character."²⁹ For more information on USCIS's good moral character analysis when an act enumerated in INA §101(f) occurs outside the 3-year period, please see pages 29-30 of the Practice Advisory.
- USCIS has clarified that, when evaluating whether a self-petitioner who has a conditional bar to good moral character within the 3-year period preceding the filing of the self-petition is eligible for the INA §204(a)(1)(C) exception to the good moral character requirement, there is no requirement that a waiver of inadmissibility or deportability would be *granted*.³⁰ For more information, please see pages 30-31 of the Practice Advisory.
- In its discussion of whether an act is "connected to" the battery or extreme cruelty, USCIS has stated that the self-petitioner is not required to demonstrate that the act or conviction occurred during the

²⁴ See 3 USCIS-PM D.2(F).

²⁵ 437 F. Supp. 3d 1231 (S.D. Fla. 2020)

²⁶ 410 F. Supp. 3d 874 (N.D. Ill. 2019)

²⁷ No. 4:20-CV-05161-SMJ (E.D.Wa. June 7, 2021)

²⁸ See 3 USCIS-PM D.2(G)(4).

²⁹ 3 USCIS-PM D.2(G)(3).

³⁰ Cf. 3 USCIS-PM D.2(G)(4).

qualifying relationship.³¹ For more information, please see page 31 of the practice advisory.

- USCIS’s interpretation is that “Whether a self-petitioner is a person of good moral character under the exception at INA 204(a)(1)(C) is a discretionary determination made by USCIS.”³² For more information, please see page 32 of the Practice Advisory.

Chapter 3 - Effect of Certain Life Events

- USCIS has stated that it considers the following to be “conditions of eligibility for which no waiver or equitable tolling is available”: the requirement that a self-petitioner files within 2 years of divorce from the abusive spouse; the requirement that a self-petitioner files within 2 years of the U.S. citizen abuser’s death; and the requirement that the petitioner file within 2 years of the abusive spouse’s loss or renunciation of status.³³ For more information and arguments that equitable tolling should be available, please see pages 32-33, 38, and 40 of the Practice Advisory.
- USCIS has stated that while self-petitioners are required to submit evidence that there was a connection between the divorce and “the battery or extreme cruelty”³⁴, there is no requirement that the legal ground for the divorce (or annulment) was abuse.³⁵ For more information, please see page 33 of the Practice Advisory.
- USCIS has clarified that a survivor is not eligible to file a VAWA Self-Petition if their abusive LPR relative dies before the self-petition is filed.³⁶ For more information on strategies when the abusive LPR relative has died *while the self-petition is pending*, please see pages 38-39 of the Practice Advisory.

³¹ See 3 USCIS-PM D.2(G)(4).

³² See *id.*

³³ See 3 USCIS-PM D.3(A)(1) (divorce), 3 USCIS-PM D.3(D)(1) (abusive U.S. citizen abuser’s death), 3 USCIS-PM D.3(E)(1) (abuser’s loss or renunciation of status.)

³⁴ 3 USCIS-PM D.3(A)(1) (citing INA §204(a)(1)(A)(iii)(ii)(aa)(CC)(ccc) and INA §204(a)(1)(B)(ii)(II)(aa)(CC)(bbb)).

³⁵ See 3 USCIS-PM D.3(A)(1)

³⁶ See 3 USCIS-PM D.3(D)(2).

- USCIS has stated that it may approve, “as a matter of discretion”, a self-petition or adjustment application *for derivatives* under INA §204(l) if *the self-petitioner* dies while the self-petition or adjustment application is pending.³⁷ For more information, please see pages 39-40 of the Practice Advisory.
- USCIS has stated that derivative children and child self-petitioners may marry after the VAWA Self-Petition is approved, and that after marriage the noncitizen will be moved to the preference category that best matches their situation.³⁸ However, according to USCIS, child self-petitioners and derivative children lose protection under the Child Status Protection Act (“CSPA”) and the VTVPA if they marry.³⁹ For more information, please see page 40 of the Practice Advisory.

Chapter 4 - Filing Requirements

- USCIS has clarified that if a self-petitioner is the beneficiary of a Form I-130 family petition filed by the abuser, the self-petitioner “may retain the priority date from the Form I-130” for purposes of determining eligibility to file for Adjustment of Status.⁴⁰ In addition, USCIS has stated that derivatives “may retain” the self-petitioner’s priority date associated with the previously filed family petition.⁴¹ For more information, please see pages 41-42 of the Practice Advisory.

Chapter 5 - Adjudication

- USCIS ***will*** now issue Prima Facie Determinations (“PFDs”) to eligible self-petitioning abused parents of U.S. citizens.⁴² For more information, please see pages 42-43 of the Practice Advisory.

³⁷ 3 USCIS-PM D.3(D)(3).

³⁸ See 3 USCIS-PM D.3(G)(2) (citing INA §204(a)(1)(D)(i)).

³⁹ See 3 USCIS-PM D.3(G)(2) (citing Pub. L. 107-208, 116 Stat. 927 (August 6, 2002) and Title V of Pub. L. 106-386, 114 Stat. 1464 (October 28, 2000)).

⁴⁰ See 3 USCIS-PM D.4(A)(1) (citing 8 C.F.R. §204.2(h)(2)).

⁴¹ See 3 USCIS-PM D.4(A)(1) (citing 8 C.F.R. §204.2(c)(4) (states that derivatives “may” retain the same priority date as the principal.))

⁴² See 3 USCIS-PM D.5(A).

- USCIS has recognized, as a matter of agency policy, the difficulties that self-petitioners may have “obtaining specific documentation” due to the abuser controlling access to or destroying documentation or the self-petitioner fleeing an abusive situation.⁴³ For more information, please see page 43 of the Practice Advisory.
- USCIS has acknowledged that approval of a VAWA Self-Petition “is not discretionary” under the statute.⁴⁴ For more information, please see page 44 of the Practice Advisory.
- USCIS has stated that derivative beneficiaries are required to submit two documents with their deferred action request: 1) a copy of the self-petition approval notice; and 2) “evidence of the qualifying derivative relationship.”⁴⁵ For more information, please see page 44 of the Practice Advisory.
- If the VAWA Self-Petitioner has a family-based I-485 pending with USCIS, USCIS allows the self-petitioner to notify the USCIS office where the I-485 is pending of the pending self-petition, to request that USCIS holds the adjudication of the pending I-485, and to request a change in the underlying basis of the pending I-485.⁴⁶ For more information, please see page 45 of the Practice Advisory.
- If the survivor intends to file a self-petition but has not yet done so, USCIS allows the survivor to contact the USCIS office where the family-based I-485 is pending to notify them of the intent to file a VAWA Self-Petition and to request that USCIS holds the adjudication of the pending I-485.⁴⁷ For more information, please see page 45 of the Practice Advisory.
- USCIS has clarified that it considers the confidentiality protections at 8 U.S.C. §1367 to apply to noncitizens with pending VAWA Self-Petitions *and* to noncitizens who have notified USCIS that they *intend*

⁴³ See 3 USCIS-PM D.5(B)(2).

⁴⁴ See 3 USCIS-PM D.5(C)(1) (citing INA §204(b)).

⁴⁵ 3 USCIS-PM D.5(C)(2).

⁴⁶ See 3 USCIS-PM D.5(D).

⁴⁷ See *id.*

to file a self-petition.⁴⁸ For more information, please see pages 45-46 of the Practice Advisory.

- Practitioners should advise their survivor clients that USCIS may determine that the confidentiality protections do not apply if the survivor never files the self-petition or any other victim-based application for relief. For more information, please see pages 45-46 of the Practice Advisory.

Chapter 6 - Post-Adjudicative Matters

- USCIS has stated that a VAWA Self-Petition may be revoked if a self-petitioner is “no longer a person of good moral character.”⁴⁹ For more information, please see page 46 of the Practice Advisory.
- USCIS has clarified that “service center officers have the sole authority to revoke the approval of a self-petition.”⁵⁰ For more information, please see pages 46-47 of the Practice Advisory.
- USCIS has clarified that officers in USCIS field offices who adjudicate an approved self-petitioner’s Adjustment of Status application “generally may not inquire about instances of abuse or extreme cruelty or attempt to re-adjudicate the merits of the underlying approved self-petition.”⁵¹ For more information, please see page 47 of the Practice Advisory.
- USCIS has stated that officers are forbidden from “making an adverse determination using information provided solely by an abuser.”⁵² For more information, please see page 47 of the Practice Advisory.

⁴⁸ See 3 USCIS-PM D.5(D) (citing DHS Directive, “Implementation of Section 1367 Information Provisions,” Instruction Number: 002-02-001, issued November 1, 2013).

⁴⁹ 3 USCIS-PM D.6(A).

⁵⁰ See 3 USCIS-PM D.6(A)(1).

⁵¹ See 3 USCIS-PM D.6(A)(2).

⁵² *Cf. id.*

This project was supported by Grant No. 15JOVW-21-GK-02240-MUMU, awarded to ASISTA by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.