

Abused Children: VAWA Self-Petition & SIJS

| | VAWA SP | SIJS |
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| Abuse requirement | experienced battery or extreme cruelty during the qualifying relationship | experienced abuse, abandonment, neglect, or similar basis under state law by one or both parents <i>juvenile court order findings required*</i> |
| Relationship to abusive parent(s) | abusive parent is the biological parent, stepparent, or adoptive parent of the child <i>see INA 101(b)(1) for definitions</i> | reunification to one or both parents not possible because of the abuse <i>juvenile court order findings required*</i> |
| Immigration status of abusive parent(s) | must be USC or LPR | immigration status irrelevant |
| Abusive stepparent relationship qualifies? | yes, if abuse occurred during stepparent/stepchild relationship. eligibility continues, even if marriage between child's natural parent and abusive stepparent ends in divorce. | only if the stepparent is recognized as the child's legal parent under state law, such as when the stepparent adopted the child |
| Age requirements for child petitioner | - generally, must be under 21 at time of filing the VAWA I-360 - may remain eligible after 21 but before 25 if they are unmarried <u>and</u> can show they were eligible to file on the day before they turned 21 AND the abuse was one central reason for the delay in filing | must be under 21 at time of filing of the SIJS I-360 |



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| <p>Other requirements</p> | <ul style="list-style-type: none"> - joint residence with abuser - USCIS states that the abuse must have occurred while the petitioning child was residing with or visiting the abusive parent* - good moral character (presumption of GMC for children under 14) | <ul style="list-style-type: none"> - petitioning child must be dependent on the juvenile court, or in the custody of an agency or department of a state, or in the custody of a person appointed by a state or juvenile court - it must be in the best interests of the child to not be returned to their/their parents' country of nationality or last habitual residence - petitioner did not seek the juvenile court order primarily to obtain an immigration benefit <p><i>juvenile court order findings required*</i></p> |
| <p>Can petitioner child marry?</p> | <p>must be unmarried at time of filing & remain unmarried through the adjudication of VAWA I-360</p> | <p>must be unmarried at time of filing & remain unmarried through the adjudication of the SIJS I-360</p> |
| <p>Derivatives possible?</p> | <p>petitioner's children can be included as derivative beneficiaries</p> | <p>no derivatives permitted with SIJS I-360</p> <p>note: they can petition for other family members as an LPR but cannot petition for parents, even the non-abusive/custodial parent</p> |
| <p>Physical presence in US required?</p> | <p>yes, unless petitioner can demonstrate abuser is employed abroad by US government; is a member of the US uniformed services stationed outside the US; or the abuse occurred in the US</p> | <p>yes</p> |
| <p>*Additional Considerations</p> | <ul style="list-style-type: none"> - practitioners should argue that the statute, which doesn't require that the abuse occurred while child resided with the abusive parent, supersedes the outdated regulation - VAWA SP is covered under confidentiality provisions at 8 USC 1367 | <ul style="list-style-type: none"> - in some states, juvenile court process is only available to children up to age 18 - notice requirements for juvenile court case will likely alert abusive parent to the process - SIJS petition is not covered by confidentiality provisions at 8 USC 1367 |

Note: This is not intended as an exhaustive description of requirements for VAWA/SIJS or for VAWA/SIJS-based AOS.

