Know Your VAWA Options: Self-Petition Compared with "Special Rule" Cancellation of Removal[i]

VAWA Self-Petition (INA § 204) (Form I-360)	VAWA Cancellation of Removal (INA § 240A(b)(2)) (Form 42B)
Petitioner has **qualifying relationship** with a USC or LPR as their: • Spouse/accidentally bigamous intended spouse, or ex-spouse, or widow(er) of USC where marriage ended in last 2 years • Child under 21 (or 25, if late filing under INA § 204(a)(1)(D)(v)) • Parent (where son/daughter is USC and 21 or older)	Applicant has **qualifying relationship** with a USC or LPR as their: • Spouse/accidentally bigamous intended spouse, ex-spouse, or widow(er) • Abused child's other parent • Child or son or daughter of any age
Subjected to **battery or extreme cruelty** during relationship (and, for child self-petitioners, while "residing" with abusive parent)	Subjected to **battery or extreme cruelty** during relationship
If spouse, **good faith marriage**	Statute does **not** require good faith marriage, but ideal to show it
Resides/d with abuser at some point	**No** joint residency requirement
Applying from within US **or** has qualifying circumstances under INA §§ 204(a)(1)(A)(v) or (a)(1)(B)(iv) (including abuser being US Government or uniformed services member, or abuse occurring in US)	Applying from within US, after **3 years of continuous physical presence**
3 years of good moral character (or can overcome conditional bar by showing connection to abuse and corresponding inadmissibility waiver available)	**3 years of good moral character** (or can overcome conditional bar by showing connection to abuse, as long as bar does not trigger another bar to cancellation)
No hardship element	Removal would cause **extreme hardship** to self, child, or parent
If **inadmissible**, will either need a waiver or exception to obtain LPR status. Otherwise, inadmissible self-petitioner cannot be granted LPR status, but, as long as the inadmissibility ground is not an unwaivable bar to good moral character, can still receive I-360 approval, VAWA work permit, and possibly deferred action.	Eligible even if **inadmissible**, except ineligible under § 240A(b)(2)(iv) if ever convicted of aggravated felony, or if: • Never admitted and inadmissible for criminal history or security/terrorism grounds, **OR** • Admitted but removable for criminal history, security, marriage fraud, false claim to citizenship, a few other listed grounds
Available outside proceedings, **USCIS has sole jurisdiction**	Subject to **IJ jurisdiction** for INA § 240 proceedings
Derivatives can be included if they are "child" under INA § 101(b) at filing,[1] but abused parents cannot include derivatives	**No derivatives**, but if approved, government must **parole** children and sometimes parents, who can then seek VAWA adjustment.
Approval **non-discretionary** if all elements satisfied	Positive **discretion**

[1] Child turning 21 after filing may remain derivative under Child Status Protection Act or automatically convert to self-petitioner under INA § 204(a)(1)(D)(i)(III).

Common Reasons to Prefer VAWA Self-Petition[2]

- Survivor **not in INA § 240 proceedings**, or, if in proceedings, would prefer to seek termination for processing by USCIS
- Survivor filing as an **abused parent** (abuser was survivor's USC son or daughter)
- Survivor wants to include **derivative children**[3]
- Survivor does not have **3 years of continuous physical presence** in US
- Survivor's inadmissibilities make them **ineligible for cancellation** but not self-petition (especially common with **crimes involving moral turpitude (CIMTs)**)
- **No filing fee** nor fee waiver request needed
- **No discernable hardship factors at all** (but note: VAWA cancellation requires only extreme hardship, not exceptional and extremely unusual hardship, so this should rarely be deciding factor)
- USCIS more likely than EOIR to recognize **battery or extreme cruelty** this particular survivor suffered, whether because assigned IJ is not known to understand cycle of violence, or negative cancellation case law exists in jurisdiction
- Spousal abuse occurred only when **spouse did not hold qualifying LPR or USC status**[4]
- Enables **advance parole application** if survivor not in removal proceedings and I-485 is pending. Actual travel may be risky.[5]
- May be faster, depending on USCIS processing times and court scheduling at time/location of filing, because **not subject to 10,000/year cap** for grants of cancellation of removal (but note: unless survivor can concurrently file I-485 with I-360, cancellation is likely to be faster route to work permit)

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[2] It is sometimes best for a respondent to apply for *both* a VAWA self-petition *and* VAWA cancellation!

[3] If status for children is a concern, it is notable that children of cancellation recipients and parents of children granted cancellation must be paroled. INA § 240A(b)(4)(A). Once paroled, they can then seek adjustment as VAWA Self-Petitioners under INA § 245(a). *See* INA § 240A(b)(4)(B).

[4] As of publication, ASISTA is not aware of official USCIS policy or precedential cases on this question for self-petitions. For VAWA Cancellation of Removal, the abuse must have occurred when the abuser held the relevant status. *Matter of L-L-P-*, 28 I&N Dec. 241 (BIA 2021). However, the statutory language for self-petitioners is different in a potentially significant way, and the regulations arguably require the status only at the time of the petition's filing and approval. *Compare* INA § 240A(b)(2)(A) (requiring, for cancellation, that the noncitizen "has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident [emphasis added]") *with, e.g.,* INA § 204(a)(1)(B)(ii)(I)(bb) (requiring, for self-petition, only that the noncitizen have been "battered by, or ha[ve] been the subject of extreme cruelty perpetrated by the [noncitizen]'s spouse or intended spouse" and not defining the spouse's required immigration status until a separate statutory subsection); *see also* 8 CFR § 204.2(c)(2)(iii) ("The abusive spouse must be a citizen . . . or a lawful permanent resident of the United States when the petition is filed and when it is approved."). *But see* INA §§ 204(a)(1)(A)(iv) & (a)(1)(B)(iii) (requiring, for self-petitioning child, that the abuse be "perpetrated by the [noncitizen]'s citizen parent" or "permanent resident parent" [emphasis added]; of course, the purpose of this specification could arguably be to differentiate one parent from the other, rather than to impose a requirement as to the abusive parent's status at the time of abuse). At least one ASISTA member has reported succeeding with a spousal VAWA petition where the abuse occurred before the abuser held LPR status, but ASISTA has not independently verified this report nor the agency's official position on it. Applicants may wish to try, if informed of the risks of denial.

[5] Case facts and the general enforcement context matter. See Appendix B of ASISTA's practice advisory on U-based advance parole for more considerations.

Common Reasons to Prefer VAWA Cancellation of Removal

- Survivor/child has **aged out** or **married out** of VAWA self-petition or derivative status
- Eligibility rests on **spousal relationship that ended more than two years ago**
- Survivor has **limited good faith marriage evidence** (especially relevant where survivor subject to heightened standard under INA § 245(e)(3) due to marrying while in removal proceedings)
- Survivor **never married abuser** but has child who was abused by them (includes USC children)
- Survivor **never resided with abuser** (or cannot prove joint residence)
- Survivor **child was not residing with abuser at time of abuse** (and abuse did not occur during period of visitation)[6]
- Survivor has **good moral character bar that is not waivable under INA § 212** but is connected to the abuse and does not bar cancellation (e.g., giving false testimony, being a habitual drunkard, or being confined 180 days during lookback period)
- Survivor inadmissible for **noncitizen smuggling** (and lacks family relationship for waiver under INA § 212(d)(11))
- Survivor subject to **permanent and/or 10-year bar** (INA §§ 212(a)(9)(C) and/or (a)(9)(B)), with **no connection** between immigration violation(s) and abuse
- Survivor **inadmissible for false claim to citizenship** (but note: survivors who made a false claim to citizenship and are subject to INA § 237, as opposed to INA § 212, are ineligible for cancellation)
- **IJ unlikely to grant continuances** or administrative closure for VAWA self-petition to be adjudicated by USCIS
- May provide **faster route to work authorization**, especially if VAWA self-petition could not be concurrently filed with I-485
- May be **faster overall**, depending on USCIS processing times, cancellation numeric cap backlog, and court scheduling at time/location of filing, because **no requirement to wait for priority date** to become current

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[6] This requirement for child self-petitioners is found in the regulations, at 8 CFR 204.2(e)(1)(vi), but not the statute. Accordingly, ASISTA has urged USCIS to change its policy to follow the statute instead. Still, until such change or a federal court ruling, USCIS is likely to follow the regulation for child self-petitioners.