

Battered Spouse Petition?

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IMMIGRATION

So what if you are a man? Just like women, men can be victims of domestic abuse. It may be a little embarrassing for men to acknowledge such abuse publically but the truth is that they can be as much of a victim as women.

In this article I will write about the immigration relief for persons who are victims of abuse and cruelty at the hands of their U.S citizen or LPR spouses or parents. Such victims can self petition for themselves as Battered spouse/child and eventually get their green cards, if the petition is approved.

Indeed I chose this topic to clarify certain misunderstandings about battered spouse petitions. In the recent past, I came across a fair number of "men" that had the misconception that the battered spouse petition can only be filed by women.

Perhaps this misunderstanding is rooted in the general perception of the stereotyped roles our society has for both men and women. The fact is that either husband or wife can be a victim of abuse at the hands of their better half, well may be not so better in such cases. The US Immigration Law allows both men and women to file the petition as a battered spouse, if they qualify.

In 2005 Congress enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), which expanded various protections for aliens seeking immigration benefits as battered spouses.

Any person who is married to or is a child (under 21 years) of a US citizen or a legal permanent resident (green card holder), and who has been subjected to abuse by their US citizen or legal permanent resident spouse or parent may consider availing the benefit of this law. There is no requirement for a person to have maintained valid non immigrant status in order to file. In other words, if an alien came to the United States legally, but subsequently failed to maintain his/her status and accumulated unlawful presence, the Alien may still self petition as battered spouse or child if the alien meets the set criteria detailed below. Upon approval you can get your status adjusted to that of a Legal Permanent Resident.

Green card applications may be filed simultaneously with the battered spouse petition. This category is not subject to any priority dates. They adjust in the same manner as an immediate relative.

Following criteria must be met by the Alien if trying to qualify as battered spouse:

- Alien entered into the marriage in good faith;
- During the marriage, the alien spouse or her or his child was battered or subjected to extreme cruelty by the citizen or LPR spouse;
- Past or present residence with the U.S. citizen or LPR;
- Current residence in the United States or if living abroad, abusive spouse is U.S. government employee or member of uniformed services, or subjected the alien to battery or extreme cruelty in the United States;
- Alien is a person of good moral character; and

But, I am a Man!

- Abusing spouse is a U.S. citizen or LPR at the time of petition by the battered spouse and at the time of its approval, or was a U.S. citizen or LPR and lost such status as a result of domestic violence.

Bigamous marriages, death of the abuser, and remarriage of the self-petitioner are no longer bars to relief. The law also preserved eligibility to file even though the alien may have divorced the abuser at the time of filing the petition. However, the spouse must show the battering or cruelty "led to" or caused the divorce and must file the petition within two years of divorce.

In addition the standard of evidence required to establish abuse is not as strict as we generally see. USCIS understands the difficulty a person may have to face to gather the evidence of abuse as such they accept any credible evidence. The evidence is also weighed in light of the totality of circumstances. While the direct evidence of physical abuse clearly meets the standard but indirect evidence of physical, mental, economic or emotional abuse/torture in any combination can also qualify.

Battered alien children are subject to protection under VAWA where:

- Abusing parent is a U.S. citizen or LPR at time of petition by the battered child and at the time of its approval, or was a U.S. citizen or LPR and lost such status as a result of domestic violence;
- The abusive parent is currently residing in the United States, or if living abroad, is a U.S. government employee or member of uniformed services, or subjected the alien to battery or extreme cruelty in the United States;
- The child resides or resided with the U.S. citizen or LPR parent;
- During the residence, the alien was battered or subjected to extreme cruelty by the citizen or LPR parent;
- Alien is a person of good moral character; and
- Alien must be unmarried, less than 21 years of age.

Unlike the Battered Spouse, there is no requirement by USCIS for a self-petitioner child to file within 2 years of the divorce of the parents. This is because the relationship of the child with the abuser is ongoing and does not end with divorce.

Readers, if you are or any one that you know is in need to get legal status in the U.S. and is being abused at the hands of his/her US citizen or Green Card Holder Spouse/Parent, it is your moral responsibility to give them the information about the battered spouse/child relief under this law. It is also important that an experienced Attorney be contacted to handle such cases. Email us any questions that you may have!

Ms. Syed is a practicing attorney with Perez and Associates, specializing in immigration law. Please send your questions concerning immigration issues to legal@citymasala.com



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