

Qualifications for VAWA Cancellation of Removal

In Deportation Proceedings

You cannot get VAWA cancellation from Immigration. Instead, VAWA cancellation is something that you ask an immigration judge to give you as a defense to deportation. You can ask for VAWA cancellation only if you are in removal proceedings.

Family Relationship

Like the VAWA self-petition, VAWA cancellation is available to both men and women who are victims of domestic violence. According to the Immigration Nationality Act:

“The Attorney General may grant cancellation of removal if: (i) a person has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (USC) or lawful permanent resident (LPR) (or is the parent of a child of a USC or LPR and the child has been battered or subject to extreme cruelty by the USC or LPR).”

This means that VAWA cancellation may be granted to an immigrant who:

- **Is married to an abusive LPR or USC;**
- **Is the biological, adopted, or step-child of an abusive LPR or USC.** To qualify as an adopted child the adoption must have been completed before the child turned 16. To qualify as a step-child, the parent and step-parent must have married before the child turned 18;
- **Has a child in common with an abusive LPR or USC who has abused the child.** In this situation, you do not need to be married to the abusive LPR or USC. It also does not matter what the abused child’s immigration status is;

- **Is the ex-spouse of an abusive LPR or USC.** Fortunately, to qualify for VAWA cancellation, it does not matter how long ago you were divorced. Unlike the VAWA self-petition, which must be filed within two years of a divorce, you can ask an immigration judge for VAWA cancellation regardless of how long you have been divorced from your abuser; or
- **Is the intended spouse of an abusive LPR or USC.** This protects people who think that they are married, but their spouse did not divorce a previous spouse, and therefore the spouse is a bigamist.

Physical and Emotional Violence

Abuse does not need to be physical. It can be emotional abuse, too. For example, someone who constantly berates you, undermines your self-esteem, and curses you is emotionally abusive. The United States characterizes any similar behavior as abuse, regardless of the fact that these actions may be culturally acceptable or expected in other countries. As a result, many people are victims of domestic violence and do not realize it. Alternatively, many immigrants who are victims of domestic violence do not report the abuse because they fear the police as much as they fear their abuser. However, the United States takes domestic violence very seriously, and your right to report your abuser is protected by law.

Show Extreme and Unusual Hardship

To qualify for VAWA cancellation, you must show that your deportation would cause extreme and unusual hardship to you or at least one eligible family member. An eligible family member can include your:

- Child who is either an LPR or USC;
- Parent who is either an LPR or USC; or
- Spouse who is either an LPR or USC.

Immigration courts have said that extreme and unusual hardship must be more than the typical hardship that you might expect of someone's deportation. You or your family member cannot just struggle after your hypothetical deportation, but must truly face extreme and unusual hardship. For example, one court ruled that losing your home and all family ties is not considered extreme or unusual because anyone should expect to lose their home and all family ties with a deportation. Don't take

this lightly. Look for any and all of the evidence that you can possibly find.

Acceptable forms of extreme and unusual hardship will vary depending on who your deportation would affect:

Hardship to yourself:

- Education
 - Would you have access to the same quality of education if you went back to your home country?
 - Would you lose scholarships if you left your education in the United States?
- Employment
 - Are your job skills transferable to your home country? For example, we may need bilingual Spanish/English workers here, but there is not the same kind of demand in Mexico.
 - Would your age make it difficult to start a new job or career? Some workers as young as 50 are considered older workers in some countries, which would make landing a job in your field exceedingly difficult, if not impossible.
- Health
 - Do you have any medical conditions which would not be adequately addressed in your home country?
Would you have access to a therapist to help you cope with trauma from being a victim of domestic violence?
- Family Connections
 - Do you have children who cannot leave the United States? Is there a court order keeping them in the United States?
 - If you could take your children to your home country, would your abusive spouse pay child support? Would you be able to support your children financially by yourself?
 - Do you have all of your family in the United States? Do you take care of your parents? Are all of your brothers and sisters here? Do you have a strong social network here?
- Culture
 - Do you speak the language in your home country?

Hardship to your child:

- General
 - If you were deported, who could care for the child or pay for childcare? Would your spouse be able to afford caring for your child if you were deported?
How old is your child? Are they settled in school? Do they have lots of ties to the community and friends? Are all their friends and family in the United States? Are they close to their cousins, grandparents, and aunts and uncles?
 - Does your child have any illness for which they are being treated? Does your child qualify for health insurance in your home country?
- Education
 - Does your child have any special education needs? Is there an Individualized Education Plan (IEP)? Would this special education be available in your home country?
 - Is your child trying to go to college? Could they pay for it without your presence in the United States? If your child went with you back to your home country, could they get the same quality of education there?
 - Does your child have activities, sports and hobbies here in the United States? For example, do they play varsity soccer or participate in intramural academic programs? Would any of these activities lead to a college scholarship?
- Culture
 - Does your child speak the language in your home country?
 - Does your child have permission to enter and live in your home country? If not, your child might have to be an undocumented person in your home country.

Hardship to your parent:

- Care Plan
 - Is your parent older and, as a result, you help care for them? Do you take your older parent to medical appointments, assist with banking, and with paying bills?
 - Do you live with your parent in order to better take care of them?

- Are you your parent's only child in the United States? Is there anyone else who could help to care for them?
- Does your parent have any illnesses, or are they beginning to have any cognitive problems?
- Financial
 - Is your parent economically dependent on you?
 - Would your parent be able to get their pension or social security payments sent to another country?
 - Is Medicare your parent's only option for health insurance?

Hardship to your spouse:

- Employment
 - Does your spouse have a job that requires some kind of license? For example, a law license from Wisconsin cannot be used in Burkina Faso, nor could a realtor's license from Wisconsin be used in Mexico. In other words, if your spouse was required to move to another country, would their ability to make a living be severely harmed?
 - Are your spouse's job skills transferable to your home country? For example, we may need bilingual Spanish/English social workers here, but there is not the same kind of demand in Mexico.
 - Would your spouses' age make it difficult to start a new job or career? Some workers as young as 50 are considered older workers in some countries, which would make landing a job in their field exceedingly difficult, if not impossible.
- Health
 - Does your spouse have any medical conditions which would not be adequately addressed in your home country?
- Family Connections
 - Does your spouse have children from a previous relationship who cannot leave the United States? Would your spouse be required to choose between living with you or raising their children?
 - Does your spouse have all of their family in the United States? Do they take care of their parents, are all of their brothers and sisters here, or do they have a strong social network here?
- Culture

- Would your spouse be eligible to live in your home country, or would they become an undocumented immigrant there?
- Does your spouse speak the language in your home country?

YOUR CHILD MUST REMAIN UNMARRIED AND STILL BE UNDER THE AGE OF 21

Children can only be used as qualifying relatives for VAWA cancellation of removal as long as they are under the age of 21 and remain unmarried. Until the day the judge grants you lawful permanent residency, your child must continue to meet these two requirements. Make sure you stay on top of your application so that your child does not age out during the process. Also, make sure your child understands that they must wait to get married until the day you are granted lawful permanent residency.

Other Requirements

In addition to the requirements outlined above, you must show the immigration judge that:

- You are a person of good moral character. Read our [Good Moral Character](#) article to learn more;
- You have been physically present in the United States for three years. Within the past three years, if you have left the United States for less than 90 days at any time or less than 180 days altogether, you meet this requirement. If you spent too much time outside of the United States, you can still convince a judge to give you VAWA cancellation if you can show that you left because of the abuse;
- You do not have anything on your record which would prevent you from getting a green card, such as criminal activity or border-crossing problems. If you have one of these problems, work with your immigration attorney to see if you qualify for a waiver. You can still convince a judge to give you VAWA cancellation if you can show that a crime you committed is tied to you being a victim. If you have any serious criminal convictions, have your immigration attorney work with a criminal attorney.

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