

Glossary of Terms ¹
September 18, 2013

Adjustment of Status – An eligible individual, such as a non-citizen holding a U-visa for at least three years may, under certain circumstances, file an application (Form I-485) for permanent resident status without leaving the United States. This process is called adjustment of status. In all cases, DHS has discretion whether or not to grant lawful permanent residence. If DHS grants adjustment of status, the individual will then receive a Resident Alien Card (*commonly referred to as a “green card”, see definition below*) and will become a lawful permanent resident.

Alien –The Immigration and Nationality Act defines the term ‘alien’ as any person who is not a citizen or national of the United States. Practically speaking, this term covers a broad group of people including but not limited to permanent residents, refugees, asylees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

Battery or Extreme Cruelty – This is the term used in United States immigration law to define domestic violence. Victims of battery or extreme cruelty can be eligible to receive the special immigration relief available to victims of domestic violence. “*Battery or extreme cruelty*” is a form of abuse inflicted upon another person that includes, but is not limited to, any actions that cause or threaten to cause physical, mental, psychological, or emotional harm, and any actions or inaction that is a part of an overall pattern of abuse, power, or control.² These include acts that destroy the peace of mind and happiness of the injured party or cause distress and humiliation to the injured party. Rape, molestation, forced prostitution, incest, and other forms of sexual abuse are also considered forms of battery.³

Child – Under immigration laws the definition of child is different that under many state family law statutes. The immigration law definition of child is important because children can be eligible to receive legal immigration status based upon their relationship to a parent who is a citizen or lawful permanent resident or who received legal immigration status. Under immigration law a person qualifies as a child of someone if they are:

- Under the age of 21;
- Unmarried; and
- Biologically the child, whether legitimated or not;
- A stepchild as long as the marriage creating the step-relationship occurred before the child attained 18 years of age; or
- A child adopted while under the age of 16; or when the child was an orphan.⁴

Customs and Border Patrol (CPB) – This is the division of the Department of Homeland Security that oversees borders and ports.

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²See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (holding any act of physical abuse constitutes domestic violence while “extreme cruelty” refers to “all other nonphysical manifestations of domestic abuse)

³ See 8 C.F.R. § 204.2(c)(1)(vi) for CIS regulations defining “battery and extreme cruelty. See also Chapter 3.5 of the Breaking Barriers Manual, “Additional Remedies Under VAWA: Battered Spouse Waiver”

⁴ INA §101(b)(1), 8 U.S.C. §1101(b)(1) Not only are these terms of art as defined in the statute, but there is substantial case law interpretation with respect to these different categories.

Department of Homeland Security – Formerly the Immigration and Nationality Service, this agency administers and enforces immigration laws. United States Citizenship and Immigration Service (“USCIS”), a division of DHS, oversees adjudications of immigration benefits, such as the U-visa. Another division of DHS, called the United States Immigration and Customs Enforcement (“ICE”), handles immigration enforcement, detention, and removal. United States Customs and Border Patrol (“CBP”) is the division that oversees borders and ports.

Deportation – This term was used prior to 1996 to describe what is now called removal. (See “removal” explanation below).

Documented immigrants – They reside in the U.S. pursuant to a valid visa, and either entered the U.S. with valid visas or obtained status after entry. Those entering on immigrant visas are often petitioned for by a family member or an employer. Some obtain visas to become lawful permanent residents. Other examples of documented immigrants⁵ include individuals holding tourist visas, student visas, exchange visitor visas, or employment visas.

Employment Authorization – All non-U.S. citizens and those who are not lawful permanent residents are required to receive permission from the Department of Homeland Security in order to accept employment. Some temporary forms of legal immigration statuses, such as H-1B visas, T-visas, and U-visas allow the status holder to work. Some other forms of temporary legal immigrant statuses, such as tourist visas and student visas, do not allow for employment. If an immigrant is in a status that allows for work only with a specific employer, he or she will not need anything other than the visa approval notice as evidence of employment authorization. If he or she is in a status that allows for work without restrictions, he or she generally may obtain an employment authorization card by filing a request on a Form I-765. Employment authorization documents are normally valid for one year. Employment authorization is not a “stand alone” benefit. It is only granted to a person who has demonstrated eligibility for some type of temporary or pending immigrant status.

Green Card (Lawful Permanent Resident Card) – Popular term for the I-551, the card that shows a person is a lawful permanent resident. Lawful permanent residency cards may expire after 10 years. Although these cards on their face state that they expire in 10 years, lawful permanent residency does not end at that time. The immigrant with lawful permanent residency needs only to file to receive a new card once every 10 years. Some immigrant victims seeking help will have a lawful permanent residency card with an end date two years after the card was issued.

Immigration and Customs Enforcement (ICE) – This is the largest investigative arm of the Department of Homeland Security. Its officers are involved with immigration enforcement, detention, and removal within the interior of the nation. ICE is composed of functions of the former Customs Service, Federal Protective Service, and the investigative and enforcement functions of the former INS (other than those border functions assumed by CUSTOMS AND BORDER PROTECTION (CBP). Additionally, trial attorneys who represent DHS in removal proceedings before immigration judges are ICE employees.

Lawful Permanent Residency (LPR) – A lawful permanent resident is a foreign-born individual who has the right under U.S. immigration law, to live and work permanently in the United States. Lawful permanent residents can still be put in removal proceedings and deported, particularly if they are convicted of crimes. An individual who has a green card is either a lawful permanent resident or a conditional permanent resident. See “adjustment of status.”

Naturalization – This is the process by which foreign-born persons, including lawful permanent residents, obtain citizenship. Requirements include a period of continuous residence in the U.S. and physical presence in the United States, an ability to read, write, and speak English, and good moral character. Some requirements can be waived

⁵ Immigration experts may refer to immigrants with these visas as “non-immigrants.”

depending on the circumstances. Immigrants married to U.S. citizens can apply for Naturalization after 3 years in lawful permanent residency.

Removal – Removal, also known as deportation, is the process through which a non-citizen who is determined to be unlawfully in the U.S. is ordered to leave the United States and is returned to his or her country of origin by U.S. immigration officials. In some cases the person is removed to a third country that agrees to accept them.

Self-Petition – Under the Violence Against Women Act, certain abused spouses, children, or parents or parents of abused children can file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of an abusive spouse, parent, or son or daughter if the abuser is a U.S. citizen or lawful permanent resident. Victims of elder abuse, battered spouse waiver applicants, VAWA Cuban adjustment applicants, VAWA HRIFA (Haitian), VAWA NACARA (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners. Children of the self-petitioner can also obtain legal immigration status by being included in their parent's self-petition. Undocumented immigrant children included in their parent's self-petition are called "derivatives" or "derivative beneficiaries" because they derive a benefit from their parent's application for legal immigration status.

Undocumented – Undocumented immigrants are individuals that do not have lawful immigration status granting them permission to reside in the United States. Some are individuals who entered the United States without being inspected by immigration authorities (i.e. illegally crossed the border). Others entered the U.S. on valid immigration visas but they stayed beyond their period of authorized stay. Some forms of temporary legal immigration status also place restrictions on the holder's activities while in the United States, such as barring them from working in the U.S. or requiring them to attend a particular school or maintain employment with a particular employer. Individuals who fail to comply with the terms of their visa (i.e. working when they are not allowed or failing to attend school when they are required) become undocumented.

Unlawful Entrants – Individuals who entered the U.S. without admission are unlawful entrants and may be inadmissible. Depending on their date of entry and the relief they apply for, applicants, such as victims of domestic violence, may qualify for an exception to this inadmissibility criteria for unlawful entry.⁶

U.S. Citizen (USC) – An individual may become a U.S. citizen through several means. An individual born in the United States or in certain U.S. territories such as Guam, U.S. Virgin Islands, and Puerto Rico is automatically a citizen at birth. Additionally, an individual born abroad may acquire or derive U.S. citizenship through a U.S. citizen parent or parents. Many lawful permanent residents apply through the naturalization process to become a U.S. citizen. Finally, certain people serving in active-duty status for the U.S. military may qualify for expedited U.S. citizenship.

United States Citizenship and Immigration Services (CIS) –The division of the Department of Homeland Security (DHS) responsible for adjudicating immigration benefits. CIS adjudicates a range of applications filed for immigrants seeking legal immigration status including: visas, asylum, and naturalization applications. Cases of immigrant victims filing VAWA self-petitions, U and T visa applications, battered spouse waivers and battered spouse work authorizations are all adjudicated by CIS.

Violence Against Women Act (VAWA) – In 1994, Congress enacted the Violence Against Women Act. This was the first piece of federal legislation that articulated the role of the federal government in stopping violence against women. VAWA brought about far-reaching reforms in the criminal and civil justice system's approach to domestic violence, sexual assault, stalking, dating violence and trafficking. VAWA's dual goals were to enhance protection and help for victims and to hold perpetrators accountable for their crimes. VAWA provides grants to governmental

⁶ INA § 212(a)(6)(A); 8 U.S.C. § 1182(a)(6)(A).

and non-governmental programs helping victims, creates federal crimes, enforces state issued protection orders, provides immigration relief and offers confidentiality and privacy protections to victims. VAWA was designed to offer protection to all victims of violence against women, explicitly including underserved victims (e.g. immigrants, women of color, disabled, rural victims). To further this goal and remove control over immigration status and threats of deportation as tools that could be used by abusers, traffickers and crime perpetrators to avoid or undermine criminal investigations and prosecutions, VAWA 1994, 2000 and 2005 each contained immigration relief.

VAWA Confidentiality – VAWA created this provision to prevent batterers and crime perpetrators from accessing VAWA self-petitioners' information through DHS. Under VAWA confidentiality, immigration enforcement agents are also prohibited from using information from an abuser to act against an immigrant victim. Additionally, VAWA confidentiality bars enforcement actions at protected locations including shelters, victim services programs, rape crisis centers, courthouses, family justice centers, supervised visitation centers and community based organizations.

Visa – The term visa has two meanings. A person who has attained legal immigration status in the United States is colloquially called a “visa” holder. A “visa” is also an official document issued by the U.S. Department of State at an embassy or consulate abroad. A visa grants an individual permission to request entry into the United States at a port of entry. If permission is granted, the applicant is admitted into the United States in a particular status, such as U nonimmigrant status. Visas may be *immigrant* visas that allow the individual who qualifies to live and work permanently in the United States – lawful permanent residency. Or they may be nonimmigrant visas. An individual having a residence in a foreign country that he or she has no intention of abandoning, who wishes to enter the United States temporarily, will be issued a temporary visa referred to in immigration law as a *non-immigrant* visa. Nonimmigrant visas include, but are not limited to:

T-visa – This visa is available to individuals who are victims of severe forms of trafficking in persons and who are willing to assist in the investigation and prosecution of their traffickers. Severe forms of trafficking include sex trafficking and transporting, harboring, or obtaining a person for labor by force, fraud, or coercion. For an immigrant under 21, the spouse, children, unmarried siblings under 18, and parents can receive T-visas as derivative beneficiaries. For T-visa applicants 21 years of age or older, the spouse and children of the individual can qualify to derive protection as T-visa recipients.⁷ At the end of three years in T nonimmigrant status or if the Attorney General certifies that the investigation has concluded, T-visa recipients may apply for lawful permanent residency.

U-visa – This visa is available to individuals who are victims of substantial physical or mental harm as a result of having been a victim of criminal activity. In order to receive a U-visa, victims must provide a certification from a federal, state, or local law enforcement official, prosecutor, judge, or other certifying agency establishing that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of criminal activity. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution as long as they are helpful in an investigation. For a non-citizen under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U-visas based upon the immigrant crime victim's receipt of U-visa. For a non-citizen 21 years of age or older, the spouse and children of the non-citizen can receive U-visas as derivatives.⁸

⁷ INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T).

⁸ INA § 101(a)(15) (U), 8 U.S.C. § 1101(a)(15)(U).



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The Women's Legal Defense
and Education Fund

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