SPECIAL VISAS

Special Visas that are issued to particularly vulnerable individuals and people with special circumstances. These include:

1. Special Immigrant Juvenile Status (SIJS)
2. VAWA
3. U Visa

- VAWA (Violence Against Women Act)
  - VAWA
  - VAWA Cancellation
- Special Immigrant Juvenile Status
  - SIJS Generally
  - INA §101(a)(27)(J) - Special Immigrant Juvenile
- U Visas
  - U Visa Certification Through the Department of Labor
  - Statutes, Regulations, Legislative Records, Policy Memorandum
  - Derivative Children
- Deferred Action for Labor Enforcement (DALE) or Deferred Action for Workers in Labor Dispute

VAWA (Violence Against Women Act)

VAWA

WHO IS ELIGIBLE TO APPLY FOR VAWA?

You may be eligible to apply for VAWA if you:

- are married to that U.S. Citizen or Lawful Permanent Resident
- are the child of a U.S. Citizen or Lawful Permanent Resident
- are the parent of a child who was abused by their U.S. Citizen or Lawful Permanent Resident parent
- are a parent of a U.S. Citizen son or daughter

  AND

  you were abused by them.

WHAT BENEFITS DOES VAWA PROVIDE?

An individual who is approved for VAWA:

- receives protection from deportation
- can work lawfully
- becomes eligible to apply for a green card
- can include certain family members in your VAWA petition

WHAT DO I HAVE TO SHOW TO APPLY FOR VAWA?

There are several requirements that need to be met and proven when applying for VAWA. You will need to demonstrate that you:

1. are the spouse or child of a U.S. Citizen or Lawful Permanent Resident or the parent of a U.S. Citizen adult son or daughter,

2. were abused by the U.S. Citizen or Lawful Permanent Resident family member,
a. Threatening to beat or terrorize you b. Emotionally abusing you, such as insulting you at home or in public c. Forcing you to engage in sexual activities d. Threatening to deport you or turn you over to immigration authorities e. Controlling where you go, what you can do, and who you can see

1. lived with the abuser at some time,
2. with some exceptions, are currently living in the United States,
   AND
3. are a person of good moral character.

IF YOU ARE APPLYING AS A SPOUSE THEN YOU MUST ALSO SHOW THAT YOU

1. are legally married and in a *bona fide* marital relationship

VAWA Process

The VAWA self-petition is filed on the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). An approved Form I-360 provides self-petitioners with immigrant classification as either immediate relatives or under a family-based preference category and allows them to apply

for LPR status. An approved I-360 will work the same way as an approved I-130 petition from a US citizen spouse or adult son or daughter.

VAWA Cancellation

VAWA Cancellation of Removal

Under the Violence Against Women Act (VAWA), certain foreign-born victims of domestic violence who are in U.S. removal (deportation) proceedings can apply in front of an immigration judge to remain in the United States with a green card. This is what's called VAWA-based "cancellation of removal." (See 8 U.S.C. Section 1229(b).)

In order to qualify for it, you must show that:

- you have been subject to battery or extreme cruelty by a U.S. citizen or legal permanent resident (LPR) spouse, child, or parent
- you have been in the U.S. more than three years before you were put into removal proceedings
- you have had good moral character for at least the past three years
- your removal would cause extreme hardship to you, your children or your parents, and
- you are not subject to any of the grounds of inadmissibility found in U.S. immigration law.

You can also qualify for VAWA cancellation of removal if you are a parent of an abused child of a U.S. citizen or LPR, even if you are not married to the child's other parent.
If your VAWA application is based on a spousal relationship, you must also show that you entered into your marriage in good faith, with the true intention to create a life together (as opposed to merely trying to get a green card).

VAWA Cancellation of Removal Compared to Standard VAWA Relief

VAWA cancellation of removal requirements are very similar, yet distinct from the affirmative VAWA application with United State Citizenship and Immigration Services (USCIS) that some abused foreign nationals can file using Form I-360.

The biggest difference is that you must already be in removal proceedings (in immigration court) to apply for VAWA cancellation. The application must be filed with the court on Form EOIR 42-B.

Some other differences include that a broader set of persons is eligible for VAWA cancellation then for affirmative VAWA. For example, adult (over-21) children of U.S. citizens and LPRs are not eligible for affirmative VAWA, but are eligible for VAWA cancellation. Spouses of citizens and LPRs who have been divorced for more than two years, and parents of an abused child of a U.S. citizen or LPR who is not married to the other parent, can also qualify for VAWA cancellation of removal but not affirmative VAWA.

On the other hand, affirmative VAWA applicants do not have the three-year residency requirement that VAWA cancellation applicants do. If you are not sure whether you qualify for affirmative VAWA or VAWA cancellation, consult an immigration attorney.

Both affirmative VAWA and VAWA cancellation waive (overlook) many of the grounds of immigrant inadmissibility, including unlawful presence and public charge. In order to apply for VAWA cancellation, however, you must have a pending immigration court case and not a final removal order. If you have a removal order you might be still be able to apply for affirmative VAWA with a waiver, or you could file a motion to reopen if you want to pursue VAWA cancellation.

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (defined properly at Immigration and Naturalization Act, § 101(a)(27)(J) (codified at **8 U.S.C. § 1101(a)(27)(J)**) is a minor (under the age of 21) who has been separated from one or both of their parents due to abandonment, neglect, or abuse, and who gets a guardianship/custody and special findings order issued by the State Family Court. After getting the requisite State Court Orders the minor can file a Form I-360 Self-Petition for classification as a Special Immigrant Juvenile, which will later permit them to file for adjustment of status to a legal permanent resident.

SIJS Generally

WHO IS ELIGIBLE FOR SIJS?

To be eligible for SIJS, you must be:

1. **Under 21;**
2. **Unmarried;**
3. **Have a case or be able to open a case in a state juvenile court;** *
4. **The juvenile court must determine that you are not able to live with one or both of your parents because they abandoned, abused, or neglected you;**
5. **The juvenile court must determine that it would not be in your best interest to be returned to your country of origin.**

* Family court custody proceedings is the most common way this is done but it could also be probate guardianship proceedings, juvenile justice (delinquency) proceedings, or juvenile dependency (child welfare) proceedings).

How to Apply for SIJS Benefits

After obtaining the required State Court Orders demonstrating eligibility for SIJS the juvenile must submit a Form I-360 Self-Petition to the United States Citizenship.

Form I-360

INA §101(a)(27)(J) - Special Immigrant Juvenile

INA §101(a)(27)(J)

(codified at 8 U.S.C. § 1101(a)(27)(J)

(a) As used in this chapter—

(27) The term “special immigrant” means—

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or

placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

U Visas

U Visas for the victims of qualifying crimes.

U Visa Certification Through the Department of Labor

U or T Visa Certification Requests from the DOL

U Visas

Forms

Form I-918

Form I-918 Supplement B

Requesting U Visa Certification from the NYS DOL

The U Visa provides immigration status for victims of certain serious crimes, who have suffered substantial physical or mental harm, and are helpful to law enforcement, including the NYS DOL, in the detection, investigation, or prosecution of the criminal activity. The U Visa was created to encourage immigrants who may be wary of interacting with law enforcement to come forward and report when they have been a victim of a crime.

U visa eligibility criteria can be found on the USCIS website U Visa page. An applicant must submit certification from a law enforcement agency establishing that they:

- were helpful, or
- are helpful, or
- will be helpful to law enforcement in the detection, investigation, or prosecution of the crime (unless the applicant is under the age of 16 or unable to provide information due to a disability).

T Visas

The T visa provides immigration status to victims of severe forms of human trafficking who assist law enforcement in the detection, investigation, or prosecution of human trafficking cases.
A law enforcement certification **is not** required in a T visa application, however it is considered very helpful as evidence of a victim's cooperation.
For questions about T visa endorsements call the Division of Immigrant Policies and Affairs at 877-466-9757 or E-mail trafficking@labor.ny.gov.

Requesting U or T Visa Certification

For questions about U or T visa certification or endorsements, please call the Division of Immigrant Policies and Affairs at 877-466-9757 or E-mail uandtvisa@labor.ny.gov.
Please note that while the Department may issue U or T Visa certifications, the certification is one piece of the entire application which must then be submitted to U.S. Citizenship and Immigration Services (USCIS), who will determine whether or not to approve the application and grant immigration status.

Statutes, Regulations, Legislative Records, Policy Memorandum

Statutes, Regulations, 9 FAM, Legislative Records, Policy Memorandum

VAWA 2000 Legislative History

Wilberforce Amendments

Wilberforce Amendments on Bona Fide Work Authorization.

9 FAM

Field Adjudicator's Manual for Department of State with information on U visas.

U and T Visas Adjustment of Status Regulations With Preamble

VAWA 2013 and TVPRA: What Practitioners Need to Know

The Violence Against Women Act of 2013 (VAWA 2013), combined with the Trafficking Victims Protection Act (TVPRA), was signed into law on March 7, 2013.

USCIS Policy Memorandum: Extension of Status for U and T Nonimmigrants (Corrected and Reissued, October 4, 2016)

This policy memorandum (PM) provides guidance about extension of status for T and U nonimmigrants, including any related I-485, application to adjust status. This PM rescind and replaces PM 602-0032.1. This PM revises chapters 39.1 and 39.2 of the Adjudicator's Field Manual.

USCIS Policy Memorandum: U Adjustment and Failure to Voluntary Departure (May 13, 2016)

This policy memorandum (PM) designates the attached decision of the Administrative Appeals Office (AAO) in *Matter of L-S-M-* as an Adopted Decision.

USCIS Policy Memorandum: Changes to U Nonimmigrant Status and Adjustment of Status Provisions (June 15, 2014)

This Policy Memorandum (PM) provides guidance on new legislation that amends the Immigration and Nationality Act (INA) affecting U nonimmigrant status programs and related adjustment of status applications.

Group Comment to USCIS VAWA 2013 Guidance (August 8, 2014)

This comment was submitted by 32 national, state, and local organizations in responses to USCIS Guidance Implementing U visa provisions of VAWA 2013.

Comments on USCIS U Derivative Guidance (January 10, 2013)

USCIS Policy Memorandum: Age-Out Protections for Derivative U Status Holders: Petitions, Initial Approvals and Extension of Status (October 24, 2012)

This Policy Memorandum (PM) provides guidance relating to certain U-3 derivative nonimmigrant petitions that are being held for final adjudication or have had their prior approvals limited in time due to derivative aging-out. This PM also authorizes the approval of U-3 derivative nonimmigrant petitions for the full eligibility period of four years, allowing the U-3 derivative to remain in U nonimmigrant status past his or her 21st birthday, if necessary. This PM updates the Adjudicator's Field Manual (AFM) by adding Chapters 39.1 (f)(4)(v-viii)- AFM Updated AD11-41.

DOJ & INS Memorandum: Unlawful Presence and Authorized Periods of Stay (June 12, 2012)

This memorandum (PM) provides a list of situation in which a person would qualify for an authorized period of stay, temporary protective status (TPS), or deferred enforcement departure (DED).

USCIS Policy Memorandum: Extension of Status for T and U Nonimmigrants (March 8, 2011)

This policy memorandum (PM) provides guidance about extensions of status for T and U nonimmigrants, including any related applications for adjustment of status.

USCIS Policy Memorandum: Extension of Status for T and U Nonimmigrants (February 23, 2011)

This Policy Memorandum (PM) provides guidance about extensions of status for T and U nonimmigrants, including any related application for adjustment of status.

USCIS Policy Memorandum: Extension of U Nonimmigrant Status for Derivative Family Members Using Form I-539

(June 22, 2010)

This policy memorandum (PM) allows extension of status for U derivative family members due to consular processing delays, and for other reasons as well.

Virtue Memo on Any Credible Evidence Standard (and Extreme Hardship) (Oct. 16, 1998)

This old memo has excellent language near the end on the "any credible evidence" standard -- "Documentary Requirements" -- and why it exists. The discussion of "extreme hardship" is no longer relevant to VAWA self-petitions but may be helpful to those seeking VAWA cancellation, where that requirement still exists. Here for Virtue Memo on Any Credible Evidence Standard (and Extreme Hardship) in Word Version.

Adjustment of Status

ASISTA I-485 Comments (Nov. 7, 2023)

On September 8, 2023, USCIS published a revision of Form I-485 Application to Register Permanent Residence or Adjust Status greatly expanding the number and type of questions for applicants to complete. On November 7, 2023, ASISTA submitted a comment emphasizing the impact of these form changes on beneficiaries of survivor-based relief.

Advanced Issues in U Visas and U Adjustment of Status (Updated August 2023)

This practice advisory addresses a recent case law development regarding derivative eligibility for U visa qualifying family members, the use of discretion in waivers of inadmissibility for U visas, as well as common issues in U-based adjustment of status, such as addressing unwaived grounds of inadmissibility and negative discretionary factors.

AIC Practice Advisory on Child Status Protection Act (November 4, 2009)

The Child Status Protection Act (CSPA), provides relief to children who “age-out” as a result of delays by the U.S. Citizenship and Immigration Services (USCIS) in processing visa petitions and asylum and refugee applications.

U Visa Adjustment of Status Summary of Regulations (January 12, 2009)

U Visa Adjustment of Status Fact Sheet and Guidance (January 12, 2009)

9-NIJC U AOS RFE Response Re: Records of Conviction

AOS Processing Cover Sheet for Families with U Visas

Derivative Children

DERIVATIVE CHILDREN

Derivative Child In The United States	**U Not Yet Filed & Child Not 21**	**Under 21 At Time Of Filing But Turned 21 While App Pending**	**Under 21 At Time Of Approval But Turning 21 Before The 3 Years**
	FILE NOW Mail application as soon as possible, even if no I-918B Certification yet Request VSC NOT to deny, flagging age-out issue as reason for filing. Do not wait ***VSC's VAWA unit does not receive Friday mail until Monday!!!***	**DO NOT ADJUST THE PRINCIPAL** BEFORE THE DERIVATIVE IS APPROVED Ask for an extension citing U extensions Memo for principals p.3 Request deferred action and EAD under 8 CFR ß274a.12(c)(14) unless in removal proceedings.	FILE EXTENSION OF U on form II 539. Can be filed 6 months before but VSC will not start adjudicating until 90 days of expiration Request deferred action and EAD under 8 CFR ß 274a.12(c)(14) File to adjust principal once derivative accrues 3 years in continuous presence, request EAD for principal based on 8 CFR ß274a.12(c)(9)

Derivative Child Not In United States	ABOUT TO TURN 21 **U NOT YET FILED**	**UNDER 21 AT TIME OFAPPROVAL BUT TURNED 21 WHILE APPLICATION PENDING**	**UNDER 21 AT TIME OFAPPROVAL BUT TURNING 21 BEFORE 3 YEARS CONTINUOUS PRESENCE**

	FILE INMEDIATELY TO PRESERVE DATE Explore alternative remedies such as family relative petition, humanitarian parole, asylum	**DO *NOT* ADJUST PRINCIPAL** Ask for an extension citing U extensions memo p. 3 If denied, file an appeal to preserve potential eligibility after age-out memorandum	**PROCESS DERIVATIVE INTO US INMEDIATELY** *AFTER* derivative in US proceed with extension and EAD request based on deferred action, 8 CFR ß 274a.12(c)(14)

Deferred Action for Labor Enforcement (DALE) or Deferred Action for Workers in Labor Dispute

Deferred Action for Labor Enforcement (DALE)

What exactly is DALE?

DALE, if granted, is a commitment from DHS to protect its recipient from deportation for four years, with a possibility to renew that protection for an additional two years. During this time, a DALE recipient is considered to be lawfully present in the United States and is able to apply for work authorization.

It is important to understand that DALE is *only a temporary protection* that does not offer any pathways to a permanent legal status in the U.S. Also, applying for DALE does notify DHS that you are in the United States, with the possibility that DHS could try to deport you after your legal status expires — even though DHS has stated it has taken steps to prevent this from happening. We strongly recommend talking to an immigration attorney before requesting DALE, especially if you have a criminal record or outstanding warrants.

How can workers apply for DALE?

The DALE application is typically made with the assistance of an immigration lawyer or a U.S. Department of Justice (DOJ) Accredited Representative. The Immigration Advocates Network has an updated list of free or low-cost immigration service providers that may be able to support workers with their applications. Additionally, in California, a new pilot program is in development that will provide free immigration legal assistance to ~~undocumented~~ agricultural workers involved in investigations by the Division of Labor Standards Enforcement.

DHS has a list of materials and forms that should be included with the DALE application on its website. Although the application for DALE is free, an applicant will also need to submit an application for employment authorization with their application, which requires a processing fee ($520, as of Sept. 2024). But this fee can be waived if the applicant is eligible for a fee waiver. Importantly, before applying for DALE, workers must first request and receive a Statement of Interest (SOI) from the relevant labor agency.

From USCIS

The U.S. Department of Homeland Security plays an important role in ensuring that our nation's workplaces comply with our laws by supporting federal, state, and local labor and employment agencies to accomplish their important work enforcing wage protections, workplace safety, labor rights, and other laws and standards. See the Oct. 12, 2021, DHS Policy Statement 065-06, "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual."

FROM NYS DOL

Undocumented workers involved in workplace labor investigations by the NYSDOL may submit, or have an advocate or attorney submit on their behalf, a Statement of Interest request to NYSDOL supporting prosecutorial discretion from DHS. The Worker Protection Unit will evaluate the request

and render a determination within 30 days. Separately, the worker would need to submit a concurrent filing for deferred action to DHS. Each application is reviewed by DHS and, if approved, the worker may be granted deferred action, which protects them from removal for two years, or longer in the case of ongoing investigations or subsequent payouts from employers. New York State has granted 32 Statements of Interests since the launch of this process, impacting more than 100 workers.

Once a Statement of Interest letter has been accepted by DHS, all workers at a worksite impacted by the investigation are eligible to apply for deferred action. For more information about the process, visit the prosecutorial discretion webpage.

Process for Requesting a Statement of Interest from the NYS DOL Website

Workers who are experiencing a labor dispute at their worksite can notify DOL of the labor dispute and request that DOL submit a “Statement of DOL Interest” in support of a request to DHS for immigration-related prosecutorial discretion. Requesters should send the request to statementrequests@dol.gov with the subject line “Request for Statement of DOL Interest.” In the emailed request, requesters are encouraged to provide enough information for the Department to identify the worksite that is the subject of the labor dispute.

Additionally, requesters are invited to include facts that support any factors listed in FAQ #3 that DOL may consider in responding to these requests, including but not limited to:

• A description of the labor dispute and how it is related to the laws enforced by DOL;

• A description of any retaliation or threats workers at the worksite may have witnessed or experienced related to labor disputes; and

• A description of how fear among workers at the worksite of potential immigration-related retaliation or other immigration enforcement in the future is likely to deter workers from reporting violations related to the labor dispute to DOL or otherwise cooperating with DOL. As relevant,

please specify the time, place, and manner of any such facts.
DOL may contact the requester with questions or for additional information necessary to evaluate the request, so it will be helpful to include reliable contact information for the requester. A request may be made by a worker or by an advocate or representative. Requests may be made on behalf of a group of workers.
NOTE: DOL will evaluate requests to determine whether a labor dispute related to a law enforced by DOL exists at a particular worksite and whether and how immigration-related prosecutorial discretion for workers at the worksite would help DOL carry out its enforcement mission and priorities. For more information, see FAQ #3. Disclosure of individual worker names may not be necessary to establish that a labor dispute exists, depending on, for instance, DOL's additional corroborating information.
In the emailed request, requesters should not disclose: • Individual workers' particular immigration histories or needs; • Sensitive personally identifiable information, including dates of birth, Social Security Numbers, or Alien Registration Numbers.
Questions about the process outlined above may also be directed to statementrequests@dol.gov before a request is submitted

What factors will the Department consider when deciding whether to provide a Statement of DOL Interest in a worksite's labor dispute?

DOL will assess each request on a case-by-case basis and in consideration of its specific enforcement needs. **Factors that may be considered include, but are not limited to**:
• DOL's need for witnesses to participate in its investigation and/or possible enforcement; • Whether DHS's use of immigration-related prosecutorial discretion would support DOL's interest in holding labor law violators accountable for such violations; • Whether workers are experiencing

retaliation, threats of retaliation, or fear retaliation and/or may be “chilled” from reporting violations of the law or participating in DOL enforcement; • Whether immigration enforcement concerning workers who may be witnesses to or victims of a violation of laws within DOL’s jurisdiction could impede DOL’s ability to enforce the labor laws or provide all available remedies within its jurisdiction; • Likelihood that immigration enforcement could be an instrument used to undermine DOL’s enforcement of laws in the geographic area or industry and/or give rise to further immigration-based retaliation.

The Department will weigh factors listed above based on the specific circumstances of the labor dispute. DOL may contact the requester with questions or for additional information necessary to evaluate the request