



ASIAN TASK FORCE
Against Domestic Violence

Immigration

Frequently Asked Questions

Legal Advocacy Program

24-hour multilingual helpline

(617) 338-2355

www.atask.org



Legal Advocacy Program

Our Legal Advocacy Program strives to fill a critical gap in free legal services to victims of domestic violence and sexual assault of Asian or Asian-American heritage.

Started in 2009, we have been providing holistic multi-lingual and multi-cultural legal advocacy, representation, and counseling to ATASK clients to help secure their legal rights to become safe and independent individuals, freeing them from patterns of power and control used by abusers.

Our history of collaboration with community-based organizations, law schools, legal services and pro bono attorneys mean that we work diligently to ensure that no survivor is turned away without legal representation, strategic assistance, guidance, or a successful referral.

Disclaimer: The content of this page is for limited informational purposes only and is not legal advice. Before you decide on any course of action, ATASK strongly encourages you to seek the advice of a Massachusetts lawyer to help you analyze your unique and specific situation to find a solution best tailored to your needs.

If I leave my abuser, won't I lose my immigration status and be deported?

No, this is not necessarily true. There are independent options for immigrant and non-immigrant victims of abuse.

1) I-751 Waiver/removal of conditions

If you have a 2-year “green card”, you may be able to apply for a permanent (10) year card without the help of or knowledge by your abusive spouse. You must prove good-faith marriage to your spouse, and either abuse by your spouse or final divorce from your spouse.

“I have a 2 year conditional green card, and I am the victim of spousal abuse by a United States citizen or legal permanent resident.”

Physical or sexual abuse, emotional abuse and mental cruelty are valid grounds for applying for this waiver, but the abuse must be supported by credible evidence (for example: affidavits, medical records, restraining orders, police reports etc.).

“I am married to a US citizen or legal permanent resident, but I do not have a 2 year green card.”

2) Battered Spouse Self-Petition/VAWA

If you are undocumented or do not yet have a “green card,” you may be for filing a battered spouse self-petition if you are married to a USC citizen or Lawful Permanent Resident abusive spouse. You do not need your abuser’s help to do this but you must prove that your marriage was bona fide and genuine.

Physical abuse, emotional abuse and mental cruelty are valid types of abuse, but the abuse must be demonstrated by substantive documentary evidence. You must also prove that you did not marry your spouse for the sole purpose of getting a green card.

If this is approved, you may then be eligible to apply for permanent residence without your spouse/former spouse’s involvement or knowledge.

What about my Children ?

You can include your child (ren) on your I-751 waiver and your VAWA I-360 petition.

In order to be included on the petition, your child must meet the following eligibility requirements:

- Child of a U.S. citizen or permanent resident abuser;
- Child was abused by the U.S. citizen or permanent resident parent in the United States or abroad when the parent was employed by the United States government;
- Child resided with the parent;
- Child can demonstrate relationship to the abusive parent; and
- Child demonstrates good moral character if the child is over 14

3) U-visa for Victims of Certain Crimes

If you were a victim of a crime such as assault and battery, sexual assault, rape or other violent crime, you may qualify for a U Visa. This visa does not require that your abusive spouse have immigration status nor does it even require that you be married to your abuser or perpetrator.

“I am not married to my abuser and/or my abuser is not a US citizen/green card holder?”

The U-Visa is generally available for crime victims who

- (1) have suffered substantial physical or mental abuse from criminal activity;
- (2) have information regarding the criminal activity;
- (3) assist government officials in the investigation or prosecution of such criminal activity.

You can be undocumented and not married to your abuser to apply for a U-Visa. You can also apply for this visa if you are married to your abuser, but he is not a U.S. citizen or permanent resident (for example, if he is on an H-1 visa or F-1 student visa).

If you receive a U-Visa, you will be permitted to live and work in the U.S. for four years, at which point you then have permission to apply for a green card independently.

Children of U-Visa

Derivative spouses and/or children of the U visa petitioner can obtain a U derivative visa through the primary U visa applicant if you can prove that you or they would suffer extreme hardship if they were not permitted to stay with or join you in the U.S.

Once you apply for a green card, you may also apply for a green card for your derivative spouse or children.

4) T-visa/trafficking visa

If you were lured in to coming to the U.S., or a U.S. territory, with promises of a good job or life, but then forced into slave-like conditions instead, you may be a victim of human trafficking. If so, you may be eligible for a T visa to stay in the U.S.

“I was promised a good job / life in the U.S., but I was imprisoned and enslaved and my freedom taken away.”

To get this kind of visa, you must show that you would suffer extreme hardship if you leave the United States. You also must cooperate with law enforcement to help them prosecute your traffickers, unless you receive a waiver of this requirement.

If you receive this visa, you will be permitted to work in the U.S. for three years, after which you will have permission to apply for a green card.

What about my spouse or child?

You may include your children and immediate family members as your derivatives of your T-visa status if you can show they will suffer extreme hardship if they are not included.

If you are under 21 years of age, you may apply for T-visas for your children, spouse, parents, and unmarried siblings under 18 years of age. If you are over 21 years of age, you may apply for T-visas for your children and your spouse. Furthermore, regardless of age, you may apply for T-visas for any immediate family members if they will likely face retaliation as a result of your escape from trafficking.

As a victim of abuse in my home country, do I qualify for refugee status or asylum?

Under current US government policy, domestic violence that occurred in your home country may be a possible basis for seeking political asylum in the U.S.

Generally, any applicant for asylum or refugee status in the United States must demonstrate a “well-founded fear of persecution” based on his/her race, religion, nationality, political opinion or “membership in a particular social group.” In most cases, you must apply for asylum within one year of entry to the U.S.

To qualify based on abuse, you must thoroughly prove all of the following through an extensive current and relevant documentary and in some cases, testimonial, evidence:

- you are a member of a particular social group of women who are being abused regularly or systematically
- domestic violence in your country is pervasive and socially acceptable
- that you could not find protection from the government, at home or by moving to another place within your own country.

The eligibility requirements, deadlines and application process are strict, complex and require a thorough analysis by a competent attorney.

My abuser is not a US Citizen. If I report him/her to the police, will s/he be deported?

If you seek assistance from a shelter or lawyer, this alone will not result in the deportation of your partner.

If you contact the police and your partner is convicted of a crime, he may be deported, depending on his immigration status and his criminal history record.

It is important to remember that you have a right to keep yourself and your children safe. It is your abuser that has put himself at risk by his violent or dangerous actions against you and/or your children.

I am a man who is abused. Can I also qualify for immigration protection?

Yes, the relief available through a VAWA battered spouse self petition, an I-751 Waiver, U-Visa, T-visa and general asylum relief are equally available to men and women.

I am in a same-sex partner abusive relationship. Do I qualify for the same immigration relief and benefits as someone in a heterosexual relationship?

U.S. federal law is required to recognize all legal marriages between couples regardless of sexual orientation. Whether in a same-sex or opposite-sex marriage, abused spouses have equal access to the same immigration benefits and relief, including VAWA self-petitions and I-751 waivers. Victims of violent crimes or human trafficking may be eligible for U and T visas regardless of sexual orientation. All persons are eligible for asylum relief regardless of sexual orientation, and gay individuals persecuted in their home country for their sexual orientation may also claim relief for this specific category of persecution.

Sources for Further Reading

- INA §216(c)(4)(C)
- http://www.womenslaw.org/laws_state_type.php?id=10270&state_code=US&open_id=14649
- <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b85c3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=b85c3e4d77d73210VgnVCM100000082ca60aRCRD>
- http://www.womenslaw.org/laws_state_type.php?id=13636&state_code=US&open_id=13641
- http://travel.state.gov/visa/temp/types/types_5186.html#overview
- http://www.empirejustice.org/issue-areas/domestic-violence/battered-immigrants/articles/domestic-violence-and.html#.T_dA747_mrQ
- http://www.futureswithoutviolence.org/section/our_work/women_and_girls/_key_resources_immigrant_women1/_questions_immigrant_refugee#deportation
- <http://www.citymasala.com/Feb2011/Immigration.pdf>

Need more help?

In an emergency please call 911

Safelink	1-877-785-2020
.....	1-877-521-2601
Political Asylum Immigrant Refugee Project.....	617-742-9296
Greater Boston Legal Services	617-371-1234
.....	800-323-3205
Legal Advocacy and Resource Center, Inc.....	617-603-1700
.....	800-345-5297
American Immigration Lawyers Association	202-507-7600
AILA New England Chapter.....	
MetroWest Legal Services.....	800-696-1501
National Lawyers Guild	617-227-7008
Boston Bar Association Lawyer Referral Service....	617-742-0625
.....	800-552-7046
Massachusetts Bar Association	617-654-0400
.....	866-627-7577

ATASK is a domestic violence (DV) agency for pan-Asian victims and survivors in New England, serving clients in 14 Asian languages. Our mission is to prevent domestic violence in Asian families and communities and to provide hope to survivors.

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24-hour multilingual
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Bangla
Vietnamese
Cantonese; Mandarin
Taiwanese
Indonesian
Hindi
Nepali
Urdu

Thai
Tagalog (Filipino)
Mien
Khmer (Cambodian)
Japanese
Korean
Manipuri

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