

VAWA and U-Visas

Questions and Answers*

Can I call the police if I am being sexually or physically abused and do not know my immigration status?

You can call 911 in case of emergency. Domestic and sexual violence are crimes regardless of your legal status. You have the legal right to keep your immigration status private. You do not have to tell the police or a shelter what your immigration status is.

Will immigration authorities be called if I call the police?

The police are not supposed to turn you over to Citizenship Immigration Services if you are calling to report domestic violence. However, you may want to contact a domestic violence organization in your area first.

Will my husband/partner be deported if I call the police?

If your partner is convicted of crime, s/he may be deported, depending on the immigration status and the seriousness of the crime.

If I am in danger, should I leave my home?

The safety of you and your children should be your top priority. If you are in danger, you may want to go to a friend's house or to a shelter. Shelters are usually free and will have information about other service organizations. Keep your location secret if you are staying in a shelter or with a friend or family member.

Can I get an Order of Protection/Restraining Order even though I am not a U.S. citizen or legal resident?

Yes. You do not need to be a U.S citizen or legal resident to get an order of protection/restraining order. The procedure to obtain an order of protection/restraining order is different in each state. You may want to ask your attorney, shelter worker, and/or domestic violence or rape crisis center about the specific policies of the courts in your area.

Will my husband/partner be deported if I contact a shelter, lawyer, rape crisis program or domestic violence agency?

It is *extremely* unlikely that your husband/spouse will be deported if you seek assistance from a lawyer, shelter, rape crisis program or domestic violence organization.

How can I speak to an immigration attorney if I cannot afford one?

If you cannot afford to pay for an attorney, you may qualify for free or low-cost legal aid. See the link at the end of this for a list of legal service providers in NYC. Contact your nearest legal services office or immigration organization for more assistance.

How can I get lawful permanent residency without my spouse's help?

You may be able to apply for legal permanent residency depending on your individual case scenario through:

- VAWA – The Violence Against Women Act is a federal law that allows you to ask for lawful permanent residency without the help of your spouse; and,
- U-Visa – Is a visa category that may provide another way to get lawful permanent residency. (See section below for more information.)

What is VAWA?

Self-petitioning through VAWA. You can "self-petition" for lawful permanent residency for yourself and your children if you are married to a U.S. citizen or to a lawful permanent resident. "Self-petition" means you can ask for it by yourself, without your spouse's help, but you do need a lawyer to help you.

Cancellation of removal through VAWA. If you are married to a U.S. citizen or to a lawful permanent resident and have been in the U.S. for at least three years, you can ask for your deportation to be suspended and for lawful permanent residency without the help of your spouse. If you are at risk of being deported, please talk to an immigration expert about this option.

What is a U-visa?

Under a U-visa, you can obtain a temporary visa if you have suffered physical or mental injury from a crime, and you have been, are, or will be helpful in the investigation or prosecution of that crime. To qualify for this visa, you must participate in a criminal investigation or prosecution. Officially, "U non-immigrant, humanitarian, material witness visas" include a provision so that you can get lawful permanent residency after 3 years. This is available even if you have never been married to your abuser or if your abuser is not a U.S. citizen or lawful permanent resident.

Am I eligible to apply for a U-Visa?

Maybe, victims of a broad range of criminal activity listed in the legislation may qualify for U visas. Many of these victims will be women and children and include victims of domestic violence, nannies subjected to abuse from their employers, trafficking victims, and victims of rape in the workplace.

If you are already participating in removal (deportation) proceedings, you can still apply for a U-visa.

To qualify for a U-visa, you must show:

- that you have suffered "substantial physical or mental abuse" as the result of one of the following forms of criminal activity (or "similar" activity) conducted in the U.S.:
 - rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes.
- that you possess information concerning the criminal activity;
- that you can provide a certification that states that you are being, have been, or are likely to be helpful to the investigation or prosecution of the criminal activity. (This certification must come from a federal, state, or local law enforcement official, prosecutor, judge, or authority that is investigating the criminal activity.); and
- that you are otherwise admissible to the U.S. (that you are not barred from the U.S. for any reason).

Judges are well-qualified to provide the certification that you will need to obtain this protection. Certifications also may provide information on the mental or physical abuse you have suffered. They may also state that you possess information concerning the criminal activity.

*Information adapted from the Sakhi for South Asian Women website (<http://www.sakhi.org/gethelp/immigration.php>) and WomensLaw.org (<http://www.womenslaw.org/immigrantsUvisa.htm>) which is updated regularly.