# Fraud and Abuse in the Violence Against Women Act in Immigration Related Matters

# OR

# How Aliens Seeking the American Dream Create the American Nightmare for Citizens

**Written by John N. Sampson**

In order to understand how frauds are committed in connection with the filing of self petitions by aliens who allege domestic violence against their US citizen husbands or wives, one has to understand basic immigration law and how one would normally go about obtaining an immigrant visa or permanent resident status through marriage to a US citizen.

In 1952, Congress passed major immigration legislation which became the Immigration and Nationality Act of 1952 (INA). The relevant passages of that law relate to the immigrant visa provisions that apply to foreign national or alien spouses of United States citizens.

There are three kinds of people in the United States as defined by the INA. Citizens, nationals (they have almost all of the same rights as a citizen except they can't hold public office, cannot vote in elections, and other restrictions apply. They are defined in Section 101(a)(22) of the INA as either a "citizen" or a person who though is not a citizen of the United States, owes permanent allegiance to the United States.), and aliens (all others other than Citizens or Nationals).

A person can become a citizen of the United States under four possible scenarios. Birth in the United States, Puerto Rico, the American Virgin Islands; by transmission in which a child is born in a foreign country to either one or two U.S. citizen parents and acquires citizenship at the time of their birth providing that the provisions of Section 301(g) of the INA are met; by Naturalization in which a permanent resident alien applies to become a U.S. citizen, and lastly by derivation in which a child (under the age of 18) derives their citizenship when both of their permanent resident alien parents naturalize.

Section 201(b)(2)(a)(i), of the Immigration and Nationality Act, as amended, allows for the immigration without numerical limitation (or quotas) of spouses, children, and parents of a citizen of the United States. In the case of the parent or parents of a United States citizen, the U.S. citizen child must be at least 21 years of age in order to petition for their parent(s).

That means that unlike most other means by which to immigrate to the United States, there is no annual cap or limit placed on those who immigrate to the U.S. because they are the spouse, child, or parent of a United States citizen. For example, a person who wishes to immigrate to the U.S. based upon a special work skill, must wait his or her "turn" based upon how many people have applied for the same kind of visa before them. The spouse or child of a U.S. citizen does not have to "wait in line" for the visa is immediately available without regard to the yearly numerical limitations placed on other immigrant visas.

Section 204(a) of the INA sets forth the statutory provisions by which a US citizen can petition for an alien relative that is either their spouse, child, or parent. That section of

law also provides for the ability for an alien to self petition for themselves and their children, should they allege that they are the victim of domestic violence or abuse.

The regulations that relate to these statutory provisions can be found in Title 8 Code of Federal Regulations, Section 204.2. These regulations set forth the procedures in which a US Citizen can petition for their alien spouse, children, and/or parents. In those regulations, requirements are set in which interviews must be conducted by USCIS to determine the bona fides of the marital relationship, what proof is needed to establish that the relationship is bona fide and not a sham for the purposes of obtaining an immigration benefit, namely permanent residence.

Section 204.2(c) of Title 8 Code of Federal Regulations, sets forth the procedures and requirements to file Form I-360, Self Petition under the provisions of the Violence Against Women Act (VAWA). It states:

**"(c) *Self-petition by spouse of abusive citizen or lawful permanent resident*—(1) *Eligibility*—(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:**

**(A) Is the spouse of a citizen or lawful permanent resident of the United States;**

**(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;**

**(C) Is residing in the United States;**

**(D) Has resided in the United States with the citizen or lawful permanent resident spouse;**

**(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is that parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;**

**(F) Is a person of good moral character;**

**(G) Is a person whose deportation would result in extreme hardship to himself, herself, or his or her child; and**
**(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.**
**(ii)** ***Legal status of the marriage.*** **The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the selfpetition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.**
**(iii)** ***Citizenship or immigration status of the abuser.*** **The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Changes in the abuser's citizenship or lawful permanent resident status after the approval will have no effect on the self-petition. A self-petition approved on the basis of a relationship to an abusive lawful permanent resident spouse will not be automatically upgraded to immediate relative status. The self-petitioner would not be precluded, however, from filing a new self-petition for immediate relative classification after the abuser's naturalization, provided the self-petitioner continues to meet the self-petitiong requirements.**
**(iv)** ***Eligibility for immigrant classification.*** **A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the**

**Act, and section 204(a)(2) of the Act.**
**(v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.**
**(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase ''was battered by or was the subject of extreme cruelty'' includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.**
**(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good**

**moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-bycase basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.**

**(viii)** ***Extreme hardship.*** **The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances**

**surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation would cause extreme hardship.**

**(ix)** ***Good faith marriage.*** **A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.**

**(2)** ***Evidence for a spousal self-petition—***

**(i)** ***General.*** **Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.**

**(ii)** ***Relationship.*** **A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination**

**of all prior marriages, if any, of both the self-petitioner and the abuser. If the self-petition is based on a claim that the self-petitioner's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, the self-petition should also be accompanied by the child's birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.**

**(iii)** ***Residence.*** **One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.**

**(iv)** ***Abuse.*** **Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the**

**visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of nonqualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.**

**(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the selfpetition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the selfpetition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.**

**(vi) *Extreme hardship.* Evidence of extreme hardship may include affidavits, birth certificates of children, medical reports, protection orders and other court documents, police reports, and**

**other relevant credible evidence.**
**(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.**
**(3) *Decision on and disposition of the petition*—(i) *Petition approved.* If the self-petitioning spouse will apply for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the selfpetitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center.**
**(ii) *Petition denied.* If the self-petition is denied, the self-petitioner will be notified in writing of the reasons for the denial and of the right to appeal the decision.**
**(4) *Derivative beneficiaries.* A child accompanying or following-to-join the self-petitioning spouse may be accorded the same preference and priority date as the self-petitioner without the necessity of a separate petition, if the child has not been classified as an immigrant based on his or her own self-petition. A derivative child who had been included in a parent's**

**self-petition may later file a self-petition, provided the child meets the selfpetitioning requirements. A child who has been classified as an immigrant based on a petition filed by the abuser or another relative may also be derivatively included in a parent's self-petition. The derivative child must be unmarried, less than 21 years old, and otherwise qualify as the self-petitioner's child under section 101(b)(1)(F) of the Act until he or she becomes a lawful permanent resident based on the derivative classification.**

**(5)** ***Name change.*** **If the self-petitioner's current name is different than the name shown on the documents, evidence of the name change (such as the petitioner's marriage certificate, legal document showing name change, or other similar evidence) must accompany the self-petition.**

**(6)** ***Prima facie determination.*** **(i) Upon receipt of a self-petition under paragraph (c)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a ''prima facie case'' for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104–208.**

**(ii) For purposes of paragraph (c)(6)(i) of this section, a prima facie case is established only if the petitioner submits a completed Form I–360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (c)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.**

**(iii) If the Service determines that a**

**petitioner has made a ''prima facie case,'' the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.**
**(iv) For purposes of adjudicating the petition submitted under paragraph (c)(1) of this section, a prima facie determination—**
**(A) Shall not be considered evidence in support of the petition;**
**(B) Shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and,**
**(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (c)(2) of this section"**

If you wade through 8 CFR 204.2(c), you will find that acts that would make an alien inadmissible to the US under ordinary circumstances, are waived when one files a self petition pursuant to Section 204(a)(1)(A)(iii) of the INA. Furthermore, there is no interview conducted by USCIS to determine the bona fides of the marriage. In short, by filing an I-360 self petition and alleging domestic violence, assault, rape, extreme mental cruelty or abuse, an alien can avoid the potential pitfalls of pursuing an immigrant visa by conventional means through marriage to a U.S. citizen, if the underlying marriage was entered into by the alien under false pretenses. It is a means by which an alien can avoid detection by USCIS for entering into a sham marriage in order to get a green card.

Lest anyone think that there are no consequences for entering into a sham or fraudulent marriage, all one has to do is refer to Section 275(c) of the INA as well as Sections 204(c) and 204(g) of the INA to see that there are severe penalties and consequences should it be established that an alien entered into a marriage of convenience or fraudulent marriage. The penalties are both administrative and criminal. Section 275(c) makes it a felony to enter into a fraudulent marriage in order to get an immigrant visa, punishable by up to five years in federal prison and up to a $250,000.00 fine, or both.

Section 204(c) of the Act prohibits the granting of any petition on behalf of an alien who has been found to have entered into a fraudulent marriage in order to obtain permanent residence. There are no exceptions, there are no waivers for such a finding and the consequences that attach themselves to such a finding.

Section 204(g) of the Act essentially states that if an alien is in removal or deportation proceedings and then marries a U.S. citizen, there is a rebuttable presumption that the marriage was entered into by the alien to avoid deportation and to obtain an immigration benefit, namely permanent residence. Since the presumption is rebuttable, the statutes sets forth the burden of proof an alien must meet in order to successfully rebut such a presumption.

To further complicate matters, Congress, in 1986, enacted the Immigration Marriage Fraud Amendments of 1986 which is the subject of an excellent article written by Vonnell C. Tingel of the University of Louisville. Tingel puts forth in clear and concise language the problems that the former Immigration and Naturalization Service (INS) and its successor, USCIS, faced with regards to sham marriages being entered into by aliens in order to circumvent the numerical limitations of other forms of immigrant visas and how Congress enacted legislation to "fix the problem".

The website that explains this whole phenomenon is:

www.http://discuss.ilw.com/eve/forums/a/tpc/f/902603441/m/28910060611

However, the introduction of this treatise explains the issue in absolute clarity:

"The Immigration Marriage Fraud Amendments of 1986 (the Amendments) were passed by Congress to deter immigration-related marriage fraud. *Because long waiting periods exist before entry for all other immigrant categories, the avenue of marrying an American citizen was found to be the simplest and quickest way of immigrating to this country."* [emphasis added]

Tingle further states:

"A sham or fraudulent marriage under immigration law is a marriage contracted for the sole purpose of evading the numerical restrictions that otherwise limit immigration into the United States. In Lutwak v. United States the Supreme Court stated that "Congress did not intend to provide aliens with an easy means of circumventing the quota system by fake marriages in which neither of the parties ever intended to enter into the marital relationship . . . . "

Service statistics show that between 1978 and 1984 the number of immigrants acquiring status as spouses of United States citizens increased 43 as compared to a total immigration drop of 9.6. The Service estimated that 30 of these spousal relationships were fraudulent. Furthermore, Congress was made aware of the problem by the Service's discovery of numerous marriage fraud rings around the country and national media attention.

There are generally two types of sham marriages. One is the collusive or "contract"' marriage whereby a citizen agrees to marry an alien solely to enable the alien to achieve permanent resident status. There is usually a fee involved for the citizen and an understanding that the marriage will be dissolved soon after the permanent resident status is obtained by the alien. The more blatant cases of this type of fraud have involved marriage "rings"' whereby citizen "spouses"' are supplied along with bogus documents. The second type of sham marriage is a unilateral or "one-sided"' marriage whereby the alien deludes a citizen into the marriage, and upon receipt of derivative status the alien abandons the citizen spouse."

The procedure for the processing of marriage based immigrant visas and applications for adjustment of status are outlined in the Tingel treatise:

"Under the Act the process for obtaining permanent resident status for the alien spouse begins when the citizen spouse petitions the Service for such classification after the marriage. Simultaneously with this petition, the alien spouse applies for adjustment of status to that of permanent resident, and the Service is given the discretion to grant such status.

The petition is accompanied by proof of the marriage and, if applicable, proof of dissolution of any prior marriages. Along with the petition, the Service usually conducts a separate interview with each spouse, essentially in an effort to uncover any sham marriages, and subsequent investigation if the Service determines it is needed.

The Service is aided by a statutory presumption that any marriage entered into within two years before the petition is assumed to be fraudulent. Based upon the petition and the interview, the Service officer makes an initial determination whether the facts in the petition are true and approves or disapproves permanent resident status for the alien spouse.

If the petition is approved, the alien spouse is granted the permanent resident status and obtains the coveted "green card."' In three years the alien spouse would be eligible for naturalization as a United States citizen, in contrast to a five year wait by other immigrants. If the Service officer refuses the petition on the ground that the marriage was fraudulent, the alien spouse may be subject to deportation.

However, if the marriage is a sham marriage and this fact is not discovered at the time of the initial petition and interview, there is usually no subsequent investigation of the marriage to uncover the fraud unless either one of the spouses or another party reports this fact to the Service. Since most of these

marriages are fairly recent, there is often little or no marital lifestyle to evaluate for clues as to whether the marriage is a sham or not. Furthermore, there is evidence that insufficient manpower has also hampered the Service in uncovering sham marriages at this threshold level."

What the aforementioned legislation did was to create another immigrant visa classification of Conditional Resident (or CR). What that meant was that an alien who married a U.S. citizen was admitted for a period of two years as a Conditional Resident and was required to file a joint petition with their U.S. citizen spouse, Form I-751, to remove the conditions of their residency. This required yet another interview with the former INS and the current USCIS. It gave INS and USCIS the opportunity to conduct a second interview of marriage based visa applicants to see if the marriage was valid or fraudulent. Failure to file this joint petition would result in the revocation of resident status and the initiation of deportation proceedings against the alien.

For a while, INS was able to effectively reduce the number of sham marriages because instead of having only one interview to determine if a marriage was bona fide or a sham, they now had two interviews spaced two years or more apart. This created a major problem for those aliens who merely wanted to enter into a marriage to get their "green card", for now they had to wait two years, and ostensibly remain married to their sponsoring U.S. citizen "spouse" for that period of time.

Another fact that plays a part in this whole scheme is the processing time one must endure from the time they file their paperwork with INS or USCIS and the time they have their interview. Depending on where one lives, it now may take from 12 months to 36 months before an interview is scheduled for a conventional marriage based immigrant visa or adjustment of status application. Consequently, an alien who is defrauding their U.S. citizen spouse into believing they married them for love, now has to live with that U.S. citizen for a year or more before they have their interview with USCIS. Not a pleasant prospect for a person who only wants to get a "green card" and has no feelings or attraction for their U.S. citizen "spouse".

In 1994, Congress enacted the Violence Against Women Act (VAWA), in an effort to address the serious problem of domestic violence, stalking, and other forms of domestic abuse. The provisions of VAWA found themselves contained in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996.

The provisions of Section 204(a)(1)(A)(iii)(I) of the INA codify VAWA into the INA. And what is notable are the regulations enacted to enable the statute which eliminate all the procedural safeguards that had been enacted in 1986 under the Immigration Marriage Fraud Amendments. Gone is the necessity of having an interview to determine if the underlying marriage was valid in the first place. Gone is virtually every ground of inadmissibility and/or deportability to include convictions for aggravated felonies.

In short, by alleging that they are the "victim" of domestic violence, abuse, or extreme cruelty, an alien who initially has entered into a sham marriage in which they have fraudulently induced an unsuspecting U.S. citizen into marrying them, and by filing false accusations of domestic violence, assault, sexual assault, and/or rape, can obtain their permanent residence in the United States and do so without having to submit to the procedural safeguards and vetting process that everyone else has to go through.

The VAWA provisions of the Immigration and Nationality Act, and the regulations implementing the law make it simple for someone to allege domestic violence against an unsuspecting and emotionally vulnerable U.S. citizen and obtain an immigrant visa or permanent residence to the United States without the need to go through the bothersome, lengthy, and difficult, not to mention intrusive, vetting and application process that one normally would go through in a marriage based immigration visa application. The funds the federal government gives to states and local jurisdictions to "aggressively enforce" the provisions of the VAWA have resulted in police departments, sheriffs departments, and prosecutors throughout the country arresting and prosecuting thousands of American citizens for a variety of domestic violence related crimes based upon the uncorroborated complaints of foreign national victims with little or no thought that perhaps the "victim" is in fact the true abuser and the American citizen is the true victim.

And the ever increasing numbers of domestic violence related arrests act as a self fulfilling prophecy, justifying even more arrests. The attitude is "There have been so many domestic violence related arrests that it proves there is an epidemic of domestic violence being perpetrated against women by men in the United States.

It's an open invitation to fraud and abuse that no one can resist. And the result is thousands of American citizens are being charged with a variety of crimes under the domestic violence umbrella thereby creating trauma, upheaval, in the lives of the unsuspecting American citizen's life. Their reputations are impugned if not destroyed, their property stolen from them by their alien spouse, bank accounts are emptied, and they are emotionally and financially bankrupted by a system endorsed and encouraged by their own government. And to add insult to injury, there is virtually nothing the American citizen can say or do to stop it from happening. They have no voice by which their government can hear their complaints. They have been systematically stripped of their Constitutional rights to equal protection and due process, all in the name of stamping out violence against women.

I have heard the following line time and time again coming from American citizens I have interviewed while working for Immigration and Customs Enforcement: "My own government, which is supposed to serve and protect me, has turned its back on me and has assisted a foreign national in destroying me". "Who do I turn to for help?"

Who, indeed?