

9 FAM 41.85

VICTIMS OF CRIMINAL ACTIVITY

(CT:VISA-970; 06-12-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 41.85 RELATED STATUTORY PROVISIONS

(CT:VISA-970; 06-12-2008)

See INA 101(a)(15)(U) (8 U.S.C. 1101(a)(15)(U)), INA 101(a)(50) (8 U.S.C. 1101(a)(50)), INA 204(a)(1)(A)(iii), (iv), (v) (8 U.S.C. 1184(a)(1)(A)(iii), (iv), (v)), INA 204(a)(1)(B)(ii), (iii), (iv) (8 U.S.C. 1184(a)(1)(B)(ii), (iii), (iv)), and INA 204(a)(1)(C) & (D) (8 U.S.C. 1184(a)(1)(C) & (D)).

INA 101(a)(15)(U)

- (U) (i) subject to section 214(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—
 - (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
 - (II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);
 - (III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
 - (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and

- military installations) or the territories and possessions of the United States;
- (ii) if accompanying, or following to join, the alien described in clause (i)—
 - (I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or
 - (II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and
 - (iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: 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; or

INA 101(a)(50)

(50) The term “intended spouse” means any alien who meets the criteria set forth in section 214(a)(1)(A)(iii)(II)(aa)(BB), 214(a)(1)(B)(ii)(II)(aa)(BB), or 240a(b)(2)(A)(i)(III) of this title.

INA 204(a)(1)(A)(iii), (iv), (v)

- (iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that--
 - (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
 - (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has

been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

- (II) For purposes of subclause (I), an alien described in this subclause is an alien--
 - (aa) (AA) who is the spouse of a citizen of the United States;
 - (BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or
 - (CC) who was a bona fide spouse of a United States citizen within the past 2 years and--
 - (aaa) whose spouse died within the past 2 years;
 - (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or
 - (ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;
 - (bb) who is a person of good moral character;
 - (cc) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and
 - (dd) who has resided with the alien's spouse or intended spouse.
- (iv) An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who

within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

- (v) An alien who--
 - (I) is the spouse, intended spouse, or child living abroad of a citizen who--
 - (aa) is an employee of the United States Government;
 - (bb) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or
 - (cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and
 - (II) is eligible to file a petition under clause (iii) or (iv), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii) or (iv), as applicable.

INA 204(a)(1)(B)(ii), (iii), (iv)

- (ii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if such a child has not been classified under clause (iii) of section 203(a)(2)(A) and if the alien demonstrates to the Attorney General that--
 - (aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and
 - (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has

been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

- (II) For purposes of subclause (I), an alien described in this paragraph is an alien--
 - (aa) (AA) who is the spouse of a lawful permanent resident of the United States; or
 - (BB) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States; or
 - (CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and--
 - (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or
 - (bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;
 - (bb) who is a person of good moral character;
 - (cc) who is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) or who would have been so classified but for the bigamy of the lawful permanent resident of the United States that the alien intended to marry; and
 - (dd) who has resided with the alien's spouse or intended spouse.

- (iii) An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.
- (iv) An alien who--
 - (I) is the spouse, intended spouse, or child living abroad of a lawful permanent resident who--
 - (aa) is an employee of the United States Government;
 - (bb) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or
 - (cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and
 - (II) is eligible to file a petition under clause (ii) or (iii), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (ii) or (iii), as applicable.

INA 204(a)(1)(C) and (D)

- (C) Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii),(A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

- (D) (i) (I) Any child who attains 21 years of age who has filed a petition under clause (iv) of section 204(a)(1)(A) or section 204(a)(1)(B)(iii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under clause (iv) of section 204(a)(1)(A) . No new petition shall be required to be filed.
- (II) Any individual described in subclause (I) is eligible for deferred action and work authorization.
- (III) Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.
- (IV) Any individual described in subclause (III) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization.
- (ii) The petition referred to in clause (i)(III) is a petition filed by an alien under subparagraph (A)(iii), (A)(iv), (B)(ii) or (B)(iii) in which the child is included as a derivative beneficiary.
- (iii) Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this subparagraph.
- (iv) Any alien who benefits from this subparagraph may adjust status in accordance with subsections (a) and (c) of section 245 as an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii).
- (v) For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition

under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. Clauses (i) through (iv) of this subparagraph shall apply to an individual described in this clause in the same manner as an individual filing a petition under subparagraph (A)(iv) or (B)(iii)