

# HUMANITARIAN IMMIGRATION OPTIONS

A Guide for DACA Recipients

**THIS DOCUMENT ADDRESSES THE BASIC REQUIREMENTS FOR HUMANITARIAN FORMS OF RELIEF, DACA RECIPIENTS SHOULD SPEAK TO A QUALIFIED IMMIGRATION ATTORNEY ABOUT THEIR PARTICULAR CASE.**

As we anticipate a SCOTUS Decision regarding Deferred Action for Childhood Arrivals (“DACA”), ILC is disseminating information about other immigration options that provide a path to permanent status.

These options include immigration benefits that may be available to certain immigrant victims and their family members.

Relief under:

- Violence Against Women Act (VAWA)
- U-Visa
- T-Visa,
- Asylum protection

**THIS DOCUMENT IS ONLY FOR GENERAL INFORMATIONAL PURPOSES AND DOES NOT CONSTITUTE LEGAL ADVICE. PLEASE CONSULT WITH AN IMMIGRATION ATTORNEY REGARDING YOUR CASE.**



For up-to-date information on DACA and screening for referral eligibility for an immigration legal consultation, please contact the Nebraska Immigration Legal Assistance Hotline (“NILAH”) at (855) 307-6730.



## VAWA RELIEF

Relief under VAWA is accessible regardless of gender! A VAWA Self-Petition allows an individual who was or is being abused by his or her U.S. citizen or lawful permanent resident (LPR) spouse (or parent or adult child) to file a family-based petition for him- or herself without the abuser's knowledge or consent. VAWA provides access to a work permit and protection from deportation, as well as a path to LPR status if the individual is otherwise eligible. An individual placed in removal proceedings may be able to seek a related form of relief called "VAWA Cancellation of Removal."

An applicant for a spousal VAWA Self-Petition must show:

- Married to a U.S. citizen or LPR spouse, or marriage ended within the past 2 years
- Suffered "battery or extreme cruelty" by abusive spouse (including physical, verbal, emotional, sexual, and/or economic abuse)
- Entered into the marriage in good faith, not solely for an immigration benefit
- Has resided with abusive spouse at some point in time
- Is a person of good moral character (absence of crimes, fraud, negative factors)

## U NONIMMIGRANT VISA

The U-Visa is a temporary form of status available to a victims of certain qualifying crimes and their immediate family members (spouse, minor children, parents, and siblings). It is necessary that the crime was reported to authorities, and a law enforcement agency or court must certify that the victim cooperated in the crime's investigation or prosecution. (However, the perpetrator need not have been charged with a crime or even arrested.) A U-Visa provides access to a work permit, protection from deportation, and a path to LPR status if the individual is otherwise eligible.

An applicant for a U-Visa must establish:

- S/he was the victim of qualifying criminal activity (most common are domestic violence, stalking, sexual assault, felonious assault, and sex or labor trafficking)
- The crime occurred in the United States
- The crime caused her/him "substantial physical or mental abuse" or harm
- S/he possessed information about the crime, and was or is likely to be helpful to law enforcement in the crime's investigation or prosecution
- S/he is admissible under U.S. immigration law or qualifies for a waiver



## T NONIMMIGRANT VISA

The T-Visa is a temporary form of status available to victims of human trafficking, including sex and/or labor trafficking, and their immediate family members (spouse, minor children, parents, and siblings). A T-Visa provides access to a work permit, protection from deportation, and a path to LPR status if the individual is otherwise eligible.

An applicant for a T-Visa must establish:

- S/he was the victim of a “severe form of trafficking in persons,” (meaning sex or labor trafficking)
- S/he is physically present in the U.S. today due to having been trafficked
- S/he reported the trafficking to law enforcement and cooperated with any requests for assistance (unless under 18 or unable to cooperate due to trauma)
- S/he would suffer extreme hardship if removed from the U.S.
- He is admissible under U.S. immigration law or qualifies for a waiver.

## ASYLUM PROTECTION

Asylum is a form of status available to individuals who have a “well-founded fear” of persecution in their country of origin. “Persecution” means severe harm or threats to one’s safety, inflicted because of a special trait the applicant possesses, and perpetrated by the government or private actors the government is unable or unwilling to control.

An individual must generally apply for asylum within 1 year of his or her last arrival in the U.S. unless the filing delay is excused. If an undocumented person applies for asylum affirmatively—before U.S. Citizenship and Immigration Services—more than 1 year after entering the U.S., the individual will be placed in removal proceedings where an immigration judge will adjudicate the application, and there exists a significant risk the applicant will be ordered deported.

However, if already in removal proceedings, asylum—or related forms of relief called “Withholding of Removal” and “protection under the Convention Against Torture”—may be appropriate defenses to deportation.

An asylum applicant must demonstrate:

- She applied for asylum within one year of her arrival in the U.S. or qualifies for an exception (i.e., new circumstances recently arose that cause her to fear return)
- She suffered or will suffer harm in her home country that is sufficiently severe to constitute “persecution”
- The harm was or would be inflicted because of her race, religion, nationality, political opinion, or membership in a particular social group
- The harm was or would be inflicted by home country government actors or by private actors the government is unable or unwilling to control
- She deserves asylum protection as a matter of discretion, weighing all positive and negative factors

