

**County of San Diego, Health and Human Services Agency (HHS)**  
**CalWORKs Program Guide**

**Battered Noncitizens**

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**42-400.E**

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**Revision Date:**

March 1, 2021

**Background:**

Battered noncitizens may be considered “qualified” noncitizens for the purpose of CalWORKs eligibility, before they obtain lawful permanent resident (LPR) status under the Violence Against Women Act (VAWA). The purpose of the VAWA is to allow noncitizens that are in abusive situations, in which their immigration status may be used as a method of control, to petition without the assistance of their abuser.

**Purpose:**

The purpose of this revision is to complete a sunset review and to reformat this section to current standards. Additionally, clarification has been added to explain the difference between a battered noncitizen and a victim of domestic violence for the purpose of determining eligibility to the CalWORKs program. The contact information for checking on pending petitions has also been updated.

**Policy:**

**VAWA**

The VAWA allows the noncitizen to apply directly (self-petition) to USCIS on their own (without the knowledge of the abuser) for lawful immigration status. A petition (I-360) must be filed with USCIS, under the VAWA, showing they have apparent eligibility to become an LPR. Prior to VAWA, only a United States (U.S.) citizen or LPR could petition to USCIS for their noncitizen spouses or children to become LPRs. These noncitizens typically have not received their LPR status and have been issued a prima facie document from USCIS. Verification of the petition being filed must be provided prior to approving CalWORKs.

**Battered Noncitizen Categories**

Eligible battered noncitizens may submit a petition under four different categories: self-petitioners, self-petitions by widow(er), family-based petitions, and cancellation of removal/suspension of deportation.

**Note:** Battered noncitizens for purposes of this section is different from victims of domestic abuse as described in CalWORKs Program Guide (CPG) 42-400.F Sponsored Noncitizens, and U-Visa applicants as described in CPG 70-100.A. Only the United States Citizenship and Immigration Services (USCIS) can make a determination of a battered noncitizen. Battered noncitizens designated by USCIS are exempt from sponsorship deeming rules.

**Battered Noncitizen Self-Petitions**

A self-petitioner is a noncitizen who is either:

- The spouse of a U.S. citizen or LPR who has been abused by the spouse in the U.S.
- The spouse of a U.S. citizen or LPR whose child has been abused by the spouse in the U.S.
- The child of a U.S. citizen or LPR parent, who has been abused by that parent in the U.S., and resided with the spouse or parent in the U.S.

To qualify for benefits under VAWA, the battered noncitizen needs to establish that they have an approved petition or a pending prima facie determination. The USCIS documents must show approval

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or prima facie determination on an I-360 based on the status as a spouse or child of an abusive U.S. citizen or LPR. The I-797 or I-797C Notice of Action from USCIS must show:

- I-360, Establishment of Prima Facie Case
- I-360, Approval Self-Petitioning Spouse
- Notice of Deferred Action

A pending petition (prima facie) means USCIS has made an interim decision pending an approval or denial of the petition. USCIS will issue a prima facie notice, which is valid for up to 150 days after issuance. In order for the noncitizen to remain eligible after the expiration of a prima facie notice, the noncitizen must have either a renewal of the prima facie notice or an approved petition.

Self-Petitioned Noncitizens with Deferred Action Decisions

A battered noncitizen may also be granted deferred action in addition to receiving an approved self-petition. Battered noncitizens that present a document indicating they have deferred action are eligible for CalWORKs. Deferred action means that USCIS has chosen not to initiate deportation proceedings against the battered noncitizen for the period specified on the USCIS document. Once the time period has expired, the noncitizen must provide acceptable USCIS documentation in order to continue to be eligible.

USCIS documents that indicate an approved petition or prima facie determination will reference principal beneficiaries only and not derivative beneficiaries. Derivative beneficiaries include unmarried children under the age of 21. Derivative beneficiaries who are referenced on the petition request but are not indicated on the USCIS approval document or the prima facie notice are eligible for the same benefits as the principal beneficiary.

Widowed Self-Petitions

A widowed self-petitioner is a noncitizen who is the widow of a U.S. citizen who was married for at least two years at the time of the spouse's death.

To qualify, the noncitizen needs to establish that they have an **approved** petition, the widow(er)s will not have a prima facie determination. The approval document (I-797 or I-797C) must indicate approval of an I-360 based on the status as a widow(er).

Family-Based Petitions

To qualify through a family-based petition, the noncitizens need to establish that they have an approved family-based petition that shows they have met the relationship condition requirements. The approval document (I-797) must indicate approval of an I-360 based on the any of the following relationship condition requirements:

- Spouses of U.S. citizens or LPRs
- Unmarried children (under 21 years old) of U.S. citizens or LPRs
- Unmarried children (age 21 or older) of LPRs

Cancellation of Removal or Suspension of Deportation

Noncitizens in deportation proceedings can petition the Executive Office for Immigration Review (EOIR) immigration courts for a Cancellation of Removal or Suspension of Deportation if either:

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- The noncitizen has been abused by a U.S. citizen or LPR spouse in the U.S.
- The U.S. citizen or LPR parent has abused the noncitizen’s child in the U.S.

An approved petition can be a final court order or a notice (EOIR-40 or EOIR-42) from an Immigration Judge, Board of Immigration Appeals, or a Federal court granting a Cancellation of Removal or Suspension of Deportation

State Eligibility

Battered noncitizens whose petition or prima facie determination are in pending status are considered State eligible, as long as all other eligibility criteria are met under CPG 42-400.C as Permanently Residing Under Color of Law (PRUCOL).

USCIS Petition Inquiries:

- **Approved Petitions**  
Obtain verification by using the electronic Systematic Alien Verification for Entitlements (e-SAVE) system as noted under the Eligibility Operations Processing Guide (EOPG) SAVE Secondary Verification.
- **Pending Petitions**  
Prima Facie determinations cannot be verified through SAVE. Therefore, the Human Services Specialist will be required to submit an inquiry to the Vermont USCIS Service Center on the status or to obtain verification of approval on the petition, as follows:
  - Fax inquiries to the Vermont USCIS Service Center at (802) 527-3159 or
  - Inquiries on Cancellation of Removal or Suspension of Deportation petitions, staff may contact the EOIR - Immigration Courts of California located at the following locations:

San Diego	Otay Mesa Border Station
401 West A Street, Suite 800 San Diego, Ca 92101 Phone: (619) 510-4500	7488 Calzada de la Fuente San Diego, CA 92154 Phone: (619) 661-5600 Fax: (619) 269-0852

**Procedure:**

Eligibility Operations Processing Guide (EOPG): SAVE Secondary Verification

**Program Impacts:**

None

**References:**

EAS 40-105.14, 40-128, 42-431, 42-433, 42-715, 43-119

ACL No. 00-07, 17-73

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**Sunset Date:**

This policy will be reviewed for continuance by February 29, 2024.

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Approval for Release:

*Rick Wanne, 3-9-21*

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