



Immigration Relief for Domestic Violence Survivors

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Dynamics of Domestic Violence Experienced By Battered Immigrants



Systemic Barriers

- Fear of Deportation
- Language Barriers
- Fear of Losing Custody/access to children
 - Fear of Abandoning Home
- Economic Survival
- Misinformation about the U.S. Legal System
- Fear of Being Ostracized by Cultural Community



Fear of Deportation: Primary Barrier

- Unaddressed blocks all access to
 - Victim services
 - Shelter
 - Health Care
 - Police
 - Justice system
- Role of lack of information about US legal and social services system
- Affects both documented and undocumented immigrant victims



Implications of Returning Home

- Lack of Safety Measures in Home Country to protect victims for batterers or batterer's family
 - Lack of economic opportunity
 - Cultural stigma
 - Personal ties in the U.S.



Domestic Violence Prevalence Rates and Severity

- U.S. in general – 22.1% (NIJ)
- Immigrant women – 30-50%
- Research has found that immigrant victims
 - Stay longer
 - Have fewer resources
 - Sustain more severe physical and emotional consequences of abuse



Abuse Rates Rise When U.S. Born Citizen Marries Immigrant Woman

- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average



The Power of Control Over Immigration Status

- Of those married to a citizen or lawful resident spouse who could have filed legal immigration papers for them, 72.3% never file immigration papers.
- The 27.7% who did file has a mean delay of 3.97 years.



Immigration Law Options for Abused Immigrants



How does one become a U.S. Citizen?

- Do parents have to be U.S. Citizens?
- Do other qualifying relatives have to be U.S. Citizens?
- What if a person is born to undocumented parents on U.S. soil?



lawful permanent residency v. U.S citizenship?

- Right to live and work legally in the U.S. and to travel permanently?
- Lasts throughout life, unless become *deportable* for crime or other reason
- LPRs are the only people eligible to apply for citizenship



Undocumented people

- How does one become undocumented?
- What are the ramifications?



How does one become an LPR?

- Family Members
- Employers
- Special Situations



Inadmissibility Grounds

- Communicable diseases
- Criminal convictions including prostitution, crimes of moral turpitude
- Terrorist activities
- Nazi persecutions or genocide
- Public charge
- Misrepresentation/fraud for immigration benefit
- False claim to US citizenship for any benefit
- Alien smuggling
- Unlawful presence



Deportability Grounds (slightly different than inadmissibility grounds)

- Unlawful presence
- Alien smuggling
- Marriage Fraud
- Misrepresentation/fraud for immigration benefit
- Crimes of Moral Turpitude
- Aggravated Felonies
- Other criminal convictions related to controlled substances, firearms, domestic violence
- False claim to US citizenship for any benefit
- Terrorist activities
- Public charge



“Aggravated felonies”

- “Crime of violence” with a one-year sentence imposed (incl. suspended sentence)
 - Includes battery, assault, spousal abuse
 - Probably does not include criminal negligence (failure to act crimes)
 - Can be avoided with <365 day sentence



“Aggravated felonies”

- Rape
 - Regardless of sentence
- Sexual abuse of a minor
 - Regardless of sentence
 - Misdemeanor statutory rape (but issue is pending at 9th Circuit)
 - PC § 288(a), lewd act with a child under 14
 - Alternative pleas: battery, sexual battery, false imprisonment, nonviolent attempt to dissuade filing of police report under PC § 136.1(b), in some cases annoy/molest under PC § 647.6(a)



DV Deportation Grounds

- Specially defined “domestic violence” offense
- Stalking conviction
- Child abuse conviction
- Child neglect conviction
- Child abandonment conviction
- Civil or criminal court finding of violation of protective order



Potential Immigration Legal Remedies

- Applications filed DHS
 - VAWA self petition
 - Battered spouse waivers
 - U visa
 - T visa
 - Asylum and withholding of removal
- Forms of relief from removal- granted by Immigration Judge
 - VAWA cancellation of removal
 - VAWA suspension of deportation



VAWA Protection Also For

- Spouses of many work visa holders
 - Special VAWA work authorization
 - H (Work Visas), Diplomats (A), International Organizations (G), Australian Investors E(iii)
- Battered Immigrants – Particular Country Programs
 - NACARA (Nicaragua, El Salvador, Cuba)
 - Cuban Adjustment
 - HRIFA (Haiti)
- Adopted Children
 - No 2 year residency with abusive parent



VAWA Self-Petitioning Requirements



General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse,
 - parent,
 - adult son/daughter (over 21)
- With Whom self-petitioner resided
 - No time period required
- Good Moral Character
- Good Faith Marriage



Self-petitioning continued

- Child self-petitioners
 - Must prove relationship to abusive citizen or lawful permanent resident parent
 - TPR not end ability to self-petition
 - Have up to age 25 to file
- Self-petition must be filed within 2 years of divorce



Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sex Abuse
- Coercion
- Threats of deportation
- Physical abuse
- Intimidation
- Social Isolation
- Humiliation, insults
- Possessiveness, stalking
- Harm to pets
- Minimizing, Denying & Blaming



VAWA issues

- Children (parents of child self petitioner) attain same benefits as VAWA self-petitioner
- Abused children can self-petition until 25th birthday
- Self-petitioner and abuser can remain together
- Bigamy/innocent spouse
- Police report, protection order, medical records NOT required



VAWA self-petitioning available

Even if:

- Marriage is legally terminated
- Abuser dies
- Abuser is deported or denaturalized

*** so long as no more than 2 years has passed



Self-petitioning procedure

- The Form I-360 and supporting exhibits are filed by mail with Vermont Service Center where a special unit evaluates all applications
- The standard of proof is *any credible evidence*. The lower burden on proof facilitates the process for domestic violence survivors who may not have access to all the evidence necessary to support her claims.



Approved VAWA petitions

- Successful VAWAs give an applicant deferred action status. This is an interim status for people typically expected to be eligible for a more permanent status in the near future.
- Immediate relatives of U.S. citizens are immediately eligible to apply for adjustment of status (green card) and immediate relatives of LPRs must wait several years before becoming eligible



Children as self-petitioners

- child does not have to prove good faith marriage
- children under age 14 are presumed to have good moral character



Children as Derivatives

- VAWA self-petitioners can include their child as a derivative, if the child is under age twenty-one.
- The child need not meet the self-petition elements
- If approved, the child would then receive all the same benefits of a VAWA self-petitioner.
- If a child turns twenty-one before the adjustment of status is granted, then they receive a priority date as if they were a self-petitioner



Adjustment of Status

- This is the process by which immigrants obtain lawful permanent resident status.
- It does not apply just to VAWA self-petitioners
- Applicants applying for adjustment of status must be all admissibility criteria. There are several inadmissibility bars that are excepted for VAWA self-petitioners.



Adjustment exceptions for VAWA

- Working without authorization
- Entry without inspection- If a self-petitioner entered on or before April 1, 1997, then *entry without inspection* is permitted. If a self-petitioner entered after April 1, 1997 then the self-petitioner must be able to connect the unlawful entry the abuse.
- Unlawful Presence



Adjustment exceptions for VAWA

- Criminal Conviction- if connect criminal convictions with a pattern of abuse, then a self-petitioner is eligible for a waiver of admissibility and deportability
- Public Charge
- Health-related waiver
- Misrepresentation



VAWA Cancellation

- Cancellation is only available to people in *removal proceedings*
- One can be placed in removal for the purpose of cancellation if there are no alternatives
- Denial results in them being ordered removed from the United States.



VAWA Cancellation Elements

- Relationship to abusive party (broader than self-petitions)
- Battered or Subject to Extreme Mental Cruelty
- Good moral character
- Extreme Hardship to return to the home country
- Three years physical presence in the U.S.
- Not inadmissible




Relationship to abusive party

- Son and daughter (over age twenty-one)
- Intended spouse- believed to be married to the abusive party but were not due to the bigamy of the abusive party
- Parent of a child of abusive party
- spouse or child of LPR or USC



VAWA confidentiality

- DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
- DHS cannot disclose VAWA information to anyone (except in limited circumstances)



***Immigrant Crime Victim Visas (“U”) –
Provide Additional Options for
Immigrant Women Faced With
Challenges to Custody***



Crime Victim (“U”) Visa Requirements

- Substantial physical or emotional abuse from criminal activity
- Possesses information about criminal activity
- Criminal activity must have occurred in U.S. or otherwise violate U.S. law
- Certification from government official that victim has been, is likely to be or is being helpful to an
 - Investigation or prosecution of criminal activity



Who can certify?

- Police officer
- Prosecutor
- Judge
- Immigration Officer
- State or Federal Agency Employee
 - Child Protection Services Worker
 - EEOC



Protection For Children of U Visa Victims

- Children of U visa and T visa victims can file for U visas along with their mother
- No need to show extreme hardship
- No need for separate certification from prosecutor



“U” visa crimes covered

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- FGM
- Being held hostage
- Peonage
- Involuntary servitude
- Slave trade
- Kidnapping
- Abduction
- False Imprisonment



Crimes Covered -- Continued

- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Obstruction of justice
- Perjury or
- Attempt, conspiracy or solicitation to commit any of these crimes



Persons who will be helped

- Victims of rape and sexual assault
- ~~Abused immigrants who are not covered by~~ VAWA – i.e. spouses of non-citizens, dating violence victims, lesbian/gay victims.
- Nanny held hostage by employers
- Trafficking and forced prostitution victims
- Victims of FGM committed in the U.S.
- Abused wives/children of Diplomats/students/workers
- Non-citizens subject to slave labor
- Victims of many violent crimes



VAWA 2005 and Legal Services Access for Battered Immigrants

- All legal services programs can use any source of funding
 - Legal Services Corporation
 - VAWA (e.g. LAV, STOP)
 - Foundation funding
 - Private funding
- To represent any victim of domestic violence, sexual assault, trafficking or other U visa listed crime
- Without asking questions about the victim's immigration status