

**Moving Battered Spouse Waiver Adjudications to the VAWA Unit:
A Call for Consistency and Safety National Survey Findings Highlights**

By: Kavell Joseph, Amanda Davis and Leslye E. Orloff

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I. Introduction

The National Immigrant Women's Advocacy Project conducted a national survey and produced this analysis to highlight the current concerns that persist with Battered Spouse Waiver (BSW) cases that are processed by the United States Citizenship and Immigration Services (USCIS).

NIWAP provides national technical assistance to advocates, attorneys, police, prosecutors, judges and other professionals to whom immigrant survivors turn for help. These professionals serve immigrant victims of the following crimes, their children, and non-abusive family members. Our work focuses on providing technical assistance, training, legal research, strategy consultations, and public policy advocacy assistance for immigrant women and children living in poverty and for immigrant victims of domestic violence, sexual assault, human trafficking, stalking, dating violence, elder abuse, child abuse and other criminal activities described in the U visa. Immigration and Nationality Act Section 101(a)(15)(U).

BSW helps battered immigrant spouses who received conditional residency

The BSW application was established in 1990 to allow battered immigrant spouses who received conditional residency based on an application filed by their abusive U.S. citizen or lawful permanent resident spouses to file for and attain lawful permanent residence without their abusive spouse's agreement to sign a joint petition. In creating the BSW, Congress sought to free thousands of immigrant women from the nightmare of

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

4300 Nebraska Avenue NW C100 · Washington, D.C. 20016

(o) 202.274.4457 · niwap@wcl.american.edu · wcl.american.edu/niwap

brutal physical abuse and mental cruelty.¹ BSWs were the first form of immigration relief offered to battered immigrant spouses of citizens (USC) and lawful permanent residents (LPR). BSWs were only available to battered immigrants whose spouses had filed I-130 visa applications on the victim's behalf. Victims received conditional residency only after the citizen or lawful permanent resident spouse and the immigrant spouse appeared at an interview with USCIS. Immigrant spouses were then required to remain in the marriage to the USC or LPR spouse for two years and jointly file with USCIS a request to remove the conditions and grant the victims full lawful permanent residency. The BSW remedied the problem of the joint filing requirement, which locked battered immigrant spouses into abusive marriages.

VAWA Self-Petitioning: Helps Immigrant Spouses Whose Abusive Citizens and Lawful Permanent Resident Spouses Never Filed Family Based Visa Petitions

VAWA self-petitions offer a path to lawful permanent residency for abused spouses of citizens and lawful permanent residents who had never filed an I-130 visa application for their abused immigrant spouse. All of the application requirements for the BSW are identical to many of the elements of proof adjudicated in the VAWA self-petition. VAWA self-petitions have additional evidentiary requirements that are not included in BSW cases. The primary difference between the BSWs and VAWA self-petitions is that in BSW cases, the abusive citizen or lawful permanent resident spouse who filed, provided evidence of a good faith marriage and usually appeared at an interview in the underlying I-130 action. The VAWA self-petition is filed and adjudicated without the perpetrator USC or LPR spouse's involvement. These two forms of immigration relief both help the same group of victims, *battered immigrant spouses of US citizens and lawful permanent residents*.

Dramatically Different Adjudication Processes for an Identical Group of Victims

The VAWA Self-Petition and BSW were both designed to offer a path to lawful permanent residency for spouses of U.S. citizens and lawful permanent residents who have been subjected to battering or extreme cruelty. The filing and case adjudication process for these two case types is dramatically different. Since 1997, the specially trained VAWA Unit adjudicates VAWA self-petitions. The VAWA Unit has been solely responsible for adjudicating all VAWA confidentially protected cases. However, the VAWA unit does not adjudicate BSW cases. In VAWA 2005 Congress made it clear that it expected that the VAWA unit adjudicate all VAWA confidentiality protected cases where the cases include self-petitions, U visa, T visa, BSW and related domestic violence, human trafficking and crime victims.²

BSW cases, however, continue to be adjudicated at regional services centers by staff that is not part of the specially trained VAWA Unit. As a result BSW cases take longer, battered immigrant spouses commonly receive requests for further evidence, and are subjected to unnecessary in-person interviews at district offices by adjudicators and interviewers who:

- Are not complying with VAWA's any credible evidence rules;

¹ Congressional Record for the 101st Congress House of Representatives UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990 (House of Representatives - October 02, 1990)(Representative Louise Slaughter page H8642)

² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP'T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 116. "In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created "to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants.", to "[engender] uniformity in the adjudication of all applications of this type" and to "[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies." See 62 Fed. Reg. 16607- 16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002). Consistent with these procedures, the Committee recommends that the same specially trained unit that adjudicates VAWA self petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§§ 202 or 203), and VAWA HRIFA petitions, 214(c)(15)(work authorization under section 933 of this Act), battered spouse waiver adjudications under 216(c)(4)(C) and (D), applications for parole of VAWA petitioners and their children, and applications for children of victims who have received VAWA cancellation."

- Do not understand the dynamics of domestic violence;
- Re-traumatize victims during interviews; and
- In the worst cases, violate VAWA Confidentiality protections usually by relying on perpetrator provided information.

The research results from the survey show the negative effects of the approach of having untrained personnel adjudicate BSW applications.

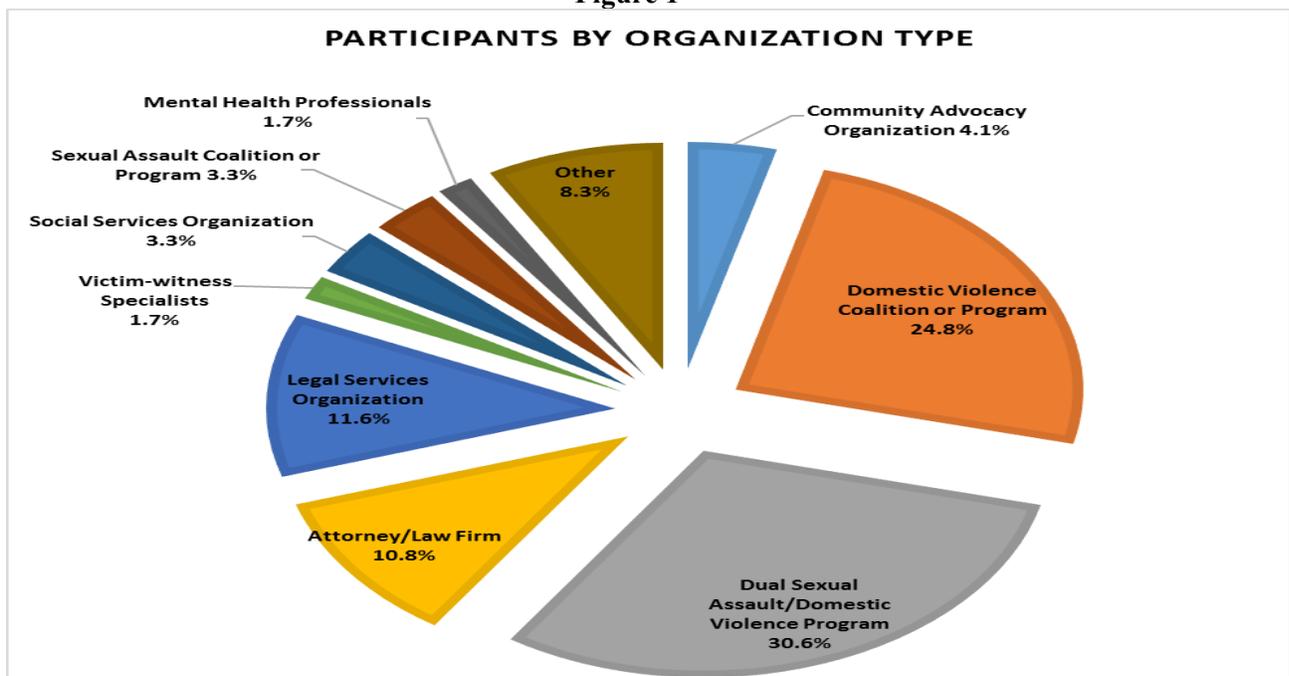
II. Research Results

a. NIWAP Survey Findings Regarding Problems with BSW Applications

NIWAP conducted a national survey in April of 2016 that collected information from the field on 391 BSW cases. These cases were filed by 24 agencies for immigrant victims residing in 49 states and U.S. jurisdictions. The survey sought to learn how BSW adjudications differed from VAWA self-petition adjudications, and the extent to which there was consistency or predictability in these cases including the extent to which interviews were being required. Our findings can be summarized as follows:

Participants of Survey

Figure 1



Over half (58.7%, n=71) of the respondents were service providers in domestic violence and/or sexual assault programs, and 22.4% (n=25) were attorneys and legal service organizations serving immigrant victims of sexual assault, domestic violence and human trafficking. Victim services, social services, and health agencies comprised of 6.7% (n=8), and community advocacy made up 4.1% (n=5) of survey participants.

Profile of BSW Petitioners

The majority of BSW clients who seek relief suffer from multiple forms of abuse. It is useful to compare the abuse suffered by the BSW petitioners in this survey with the abuse NIWAP found in prior research suffered by VAWA self-petitioners. In the fall of 2013, NIWAP conducted a survey on access to work authorization for VAWA self-petitioners and U Visa applicants. In that survey, participants reported on various aspects of adjudication including the basis for VAWA self-petitions. Most individuals responding to the BSW survey reported that their clients' BSW petitions were based on a combination of different kinds of abuse. The proportion of BSW applicants who suffered from battering, sexual assault and extreme cruelty was 55.8% (n=192). This figure is much higher than the basis for VAWA self-petitions based on the same combination of abuse which is 27.2%. However, the percentage of petitions based on battering and extreme cruelty was higher for VAWA clients (37.5%) than for BSW clients (27.1%). Battering, sexual assault and extreme cruelty basis combined with battering and extreme cruelty basis for BSW petitions makes up the bulk of abuse (82.9%) faced by victims. Whereas these two combinations for VAWA self-petitions, only make up 64.7% of abuse faced by victims.

Figure 2

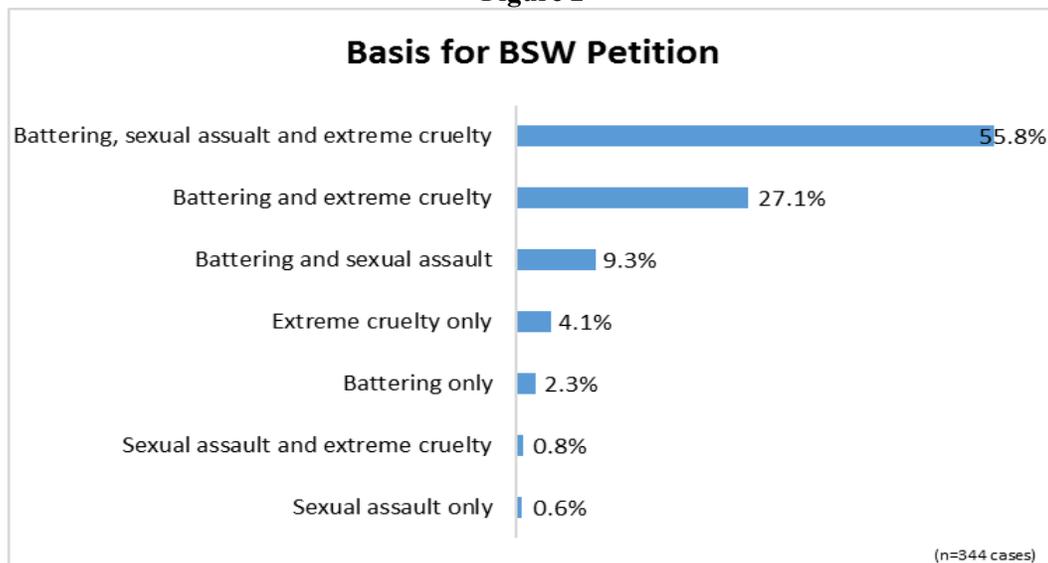
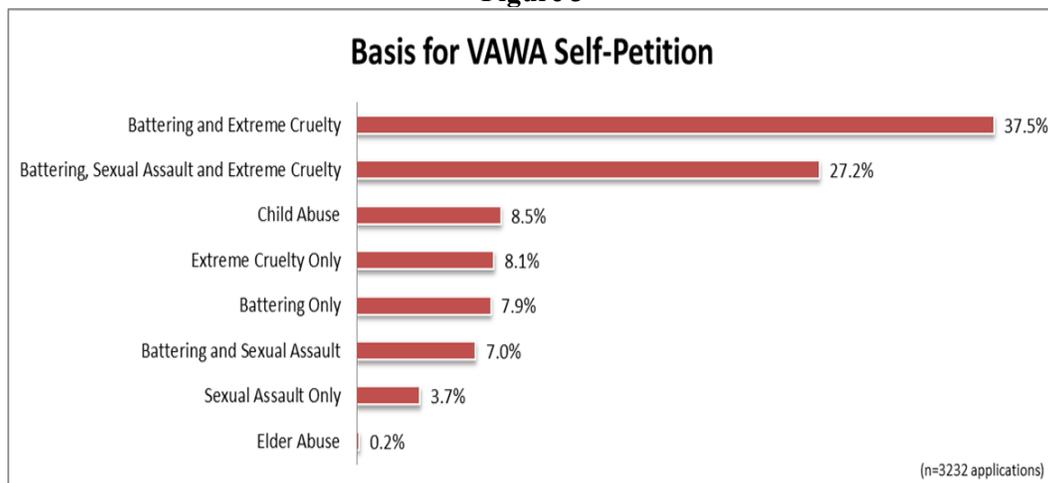


Figure 3



BSW Petitioner's Children and Family

The 391 women that were represented by the survey participants are mothers to 706 children. Only 12% (n=42) of applicants do not have children compared to the 88% (n=306) that have children. In regards to the amount of children, 11.9% (n=41) had one child, 32.8% (n=114) had two children, and 43.3% (n=151) had three or more children.

Figure 4

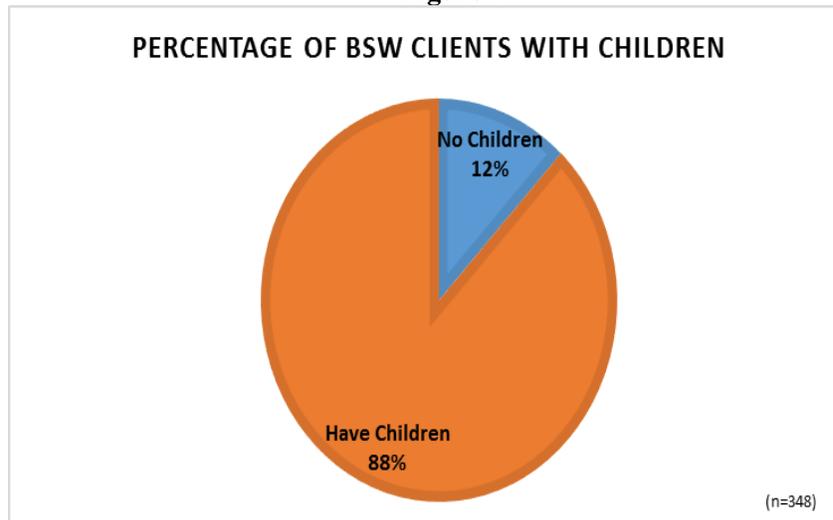
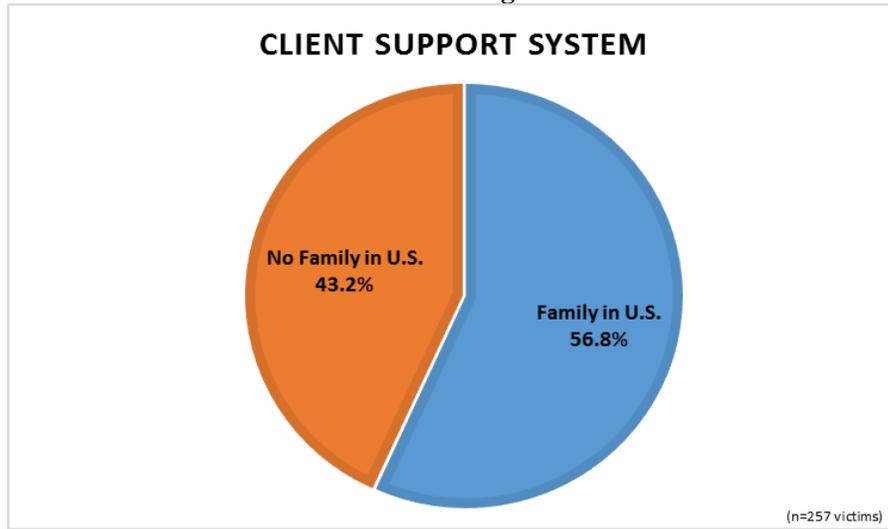


Figure 5

| # of children that BSW clients had: | |
|--|-------|
| No children: | 12.0% |
| One child: | 11.9% |
| Two children: | 32.8% |
| Three children: | 37.9% |
| Four children: | 3.7% |
| Five or more children: | 1.7% |
| n=348 | |

The survey sought to determine how many children were being affected by the abuse occurring in the households of BSW applicant victims, and to understand the extent that without the BSW both the mother and child's immigration status were in jeopardy. Survey respondents reported that 49.1% (n=83) of BSW applicants' children were U.S. citizens, and another 7.1% (n=12) were lawful permanent residents. Less than half (43.8%, n=74) of petitioner's children obtained legal immigration status with their mothers and were beneficiaries of their mother's BSW application.

**BSW Support
Figure 6**

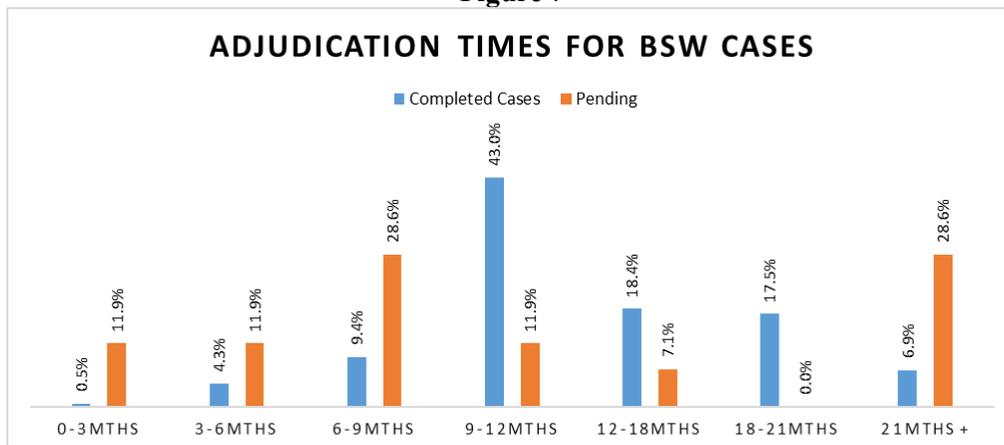


We also wanted to understand what types of support systems BSW clients had in the U.S. who could assist them over the course of time while they awaited their BSW adjudication. This included supporting the victim’s ability to separate from the abuser despite the pending unresolved application. The majority of clients (56.8%, n=146) have family members other than their abusers in the U.S. However, a significant minority of clients (43.2%, n=111) did not have their own family members in the United States augmenting their worry about the safety of their children and themselves without having a family support system to turn to.

Adjudication Times of BSW Cases

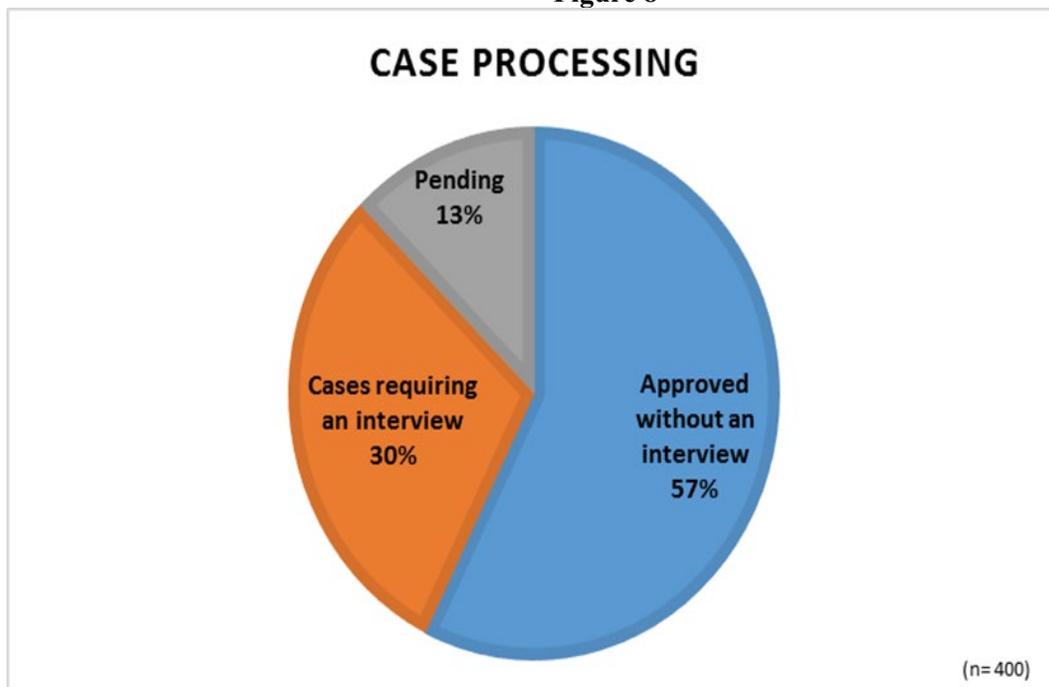
According to NIWAP’s survey on adjudication times from January 2010 to March 2016, while most (57.2%) of BSW petitioners received decisions on their cases within one year (4.8% 0-6 months and another 51.4% 6-12 months), many victims (42.8%) experience extremely long wait times of what can be well over a year. As can be seen in Figure 7, adjudication times are scattered among all time frames and lack consistency.

Figure 7



Among all the BSW petitions filed, 57.3% (n=229) were approved and adjudicated without an interview. Out of the remaining cases that were adjudicated with an interview (30.2%, n=121), 96.7% (n=117) were approved after the interview process compared to the 3.3% (n=4) that were denied. However, 12.5% (n=50) of cases reported by respondents were still pending. Of the cases that were still pending, less than a quarter (23.8%, n=10) have been waiting 0-6 months and 40.5% (n=17) have been waiting 6-12 months. The remaining pending cases (35.7%, n=15) are cases of clients who have been awaiting adjudications for more than a year with a majority of those clients waiting 21 months to 2 years. Adjudication time is crucial as many women are stuck in abusive relationships while waiting for their cases to be processed and cannot move forward in life.

Case Processing Period
Figure 8



Regional Service Centers

BSW cases are sent to one of two Regional Service Centers. These service centers are located in Vermont and California. Figure 9 shows that most (47.7%, n=199) BSW cases are taking at least a year to adjudicate. California boasts a faster adjudication time with the majority (68.2%, n=15) of cases being completed within 6-9 months. However, California had a case that took 5 or more years to adjudicate while Vermont did not.

There were a small number of responding agencies with cases filed in both service centers (n=22). The data from those respondents has been excluded from our analysis of adjudications conducted by each service center.

Figure 9

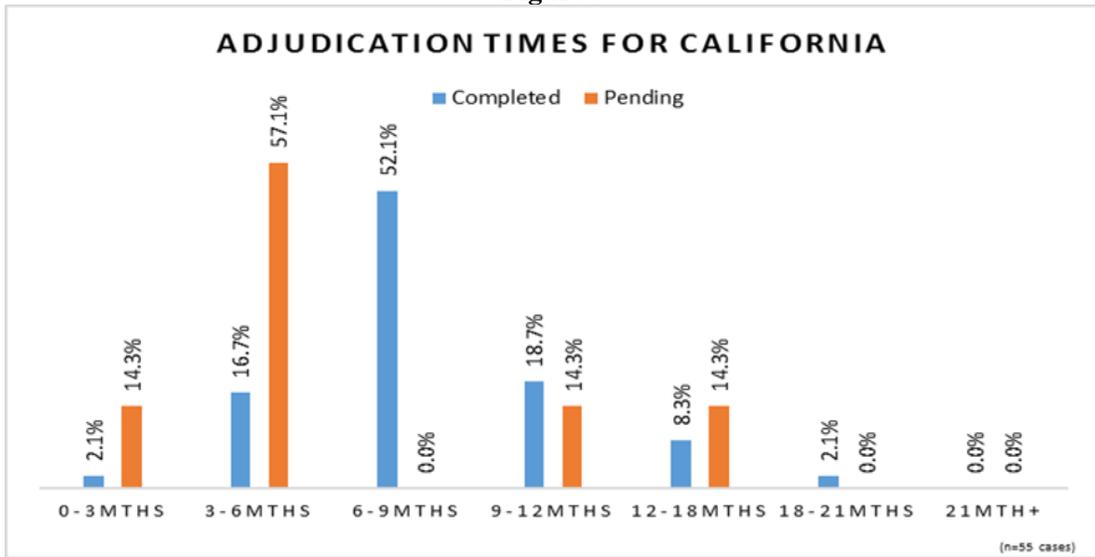
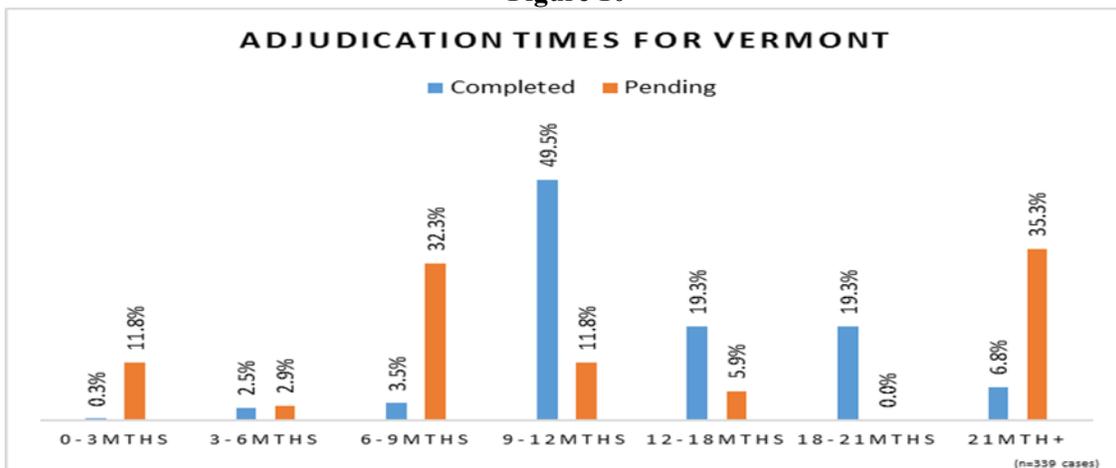


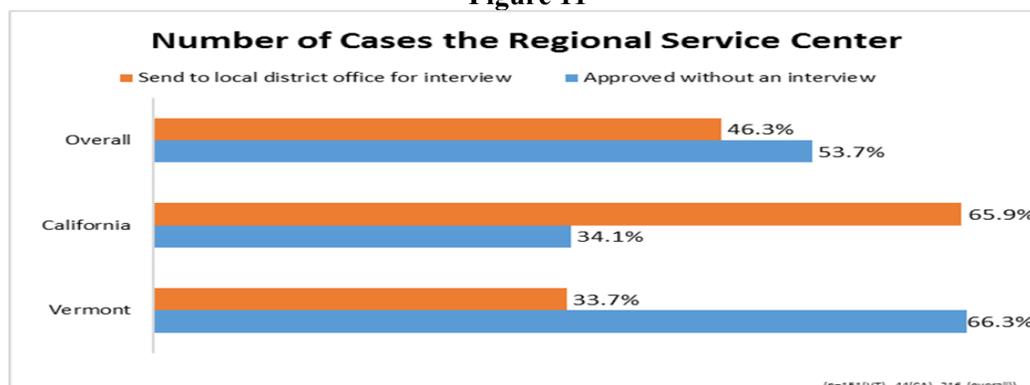
Figure 10



The California Service Center completed a substantial proportion of cases (89.6%, n=43) in a year or less. The majority of BSW cases (52.1%, n=25) completed at this center were done so within 6-9 months. When it comes to pending cases, 57.1% (n=4) of clients have been waiting 3-6 months, and only 14.3% (n=1) have been waiting a year or longer. The Vermont Service Center has much longer processing times for its battered spouse cases as the majority of completed cases (49.5%, n=151) are adjudicated between 9 months and a year. For cases that have been sent to Vermont and are still pending most clients (35.3%, n=12) have been waiting 21 months or longer. When looking at Figures 9 and 10 it is clear that California has most cases situated on the left and Vermont has most cases situated on the right. Such a stark difference in adjudication times means that these two Regional Service Centers are not treating cases in the same manner or with the same sense of urgency.

Adjudication times are dependent on whether or not cases need an interview. Upon receiving BSW cases, Regional Service Centers review the petition and decide whether to approve the case without an interview or send it to the local district office for an interview.

Location of Regional Service Center
Figure 11

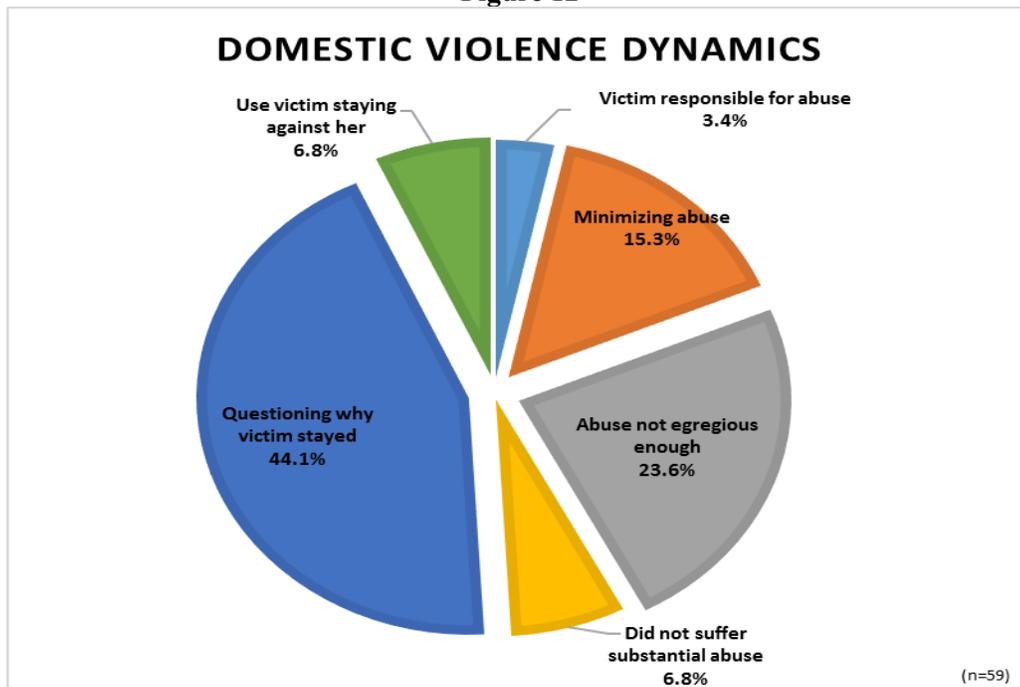


Overall there is nearly an even split between cases that were approved without an interview versus cases sent to local district offices for interviews. The percentages for the cases reviewed by California and Vermont Service Centers are opposite and highlights the lack of consistency in the adjudication process. This is even more alarming when recalling that 82.9% of BSW petitions were based upon either a combination of battering *and* extreme cruelty, or a combination of battering, sexual assault *and* extreme cruelty. California sends 65.9% (n=29) cases to local offices whereas Vermont sends about a third (33.7%, n=51) of its cases. When it comes to approving cases without an interview, California only approves 34.1% (n=15) and Vermont approves nearly two-thirds (66.3%, n=100) of its cases. The automatic approval rates for each service center are dramatically different and show that California and Vermont do not handle cases in the same manner.

BSW Petitioners’ Interview Experiences at Local District Offices

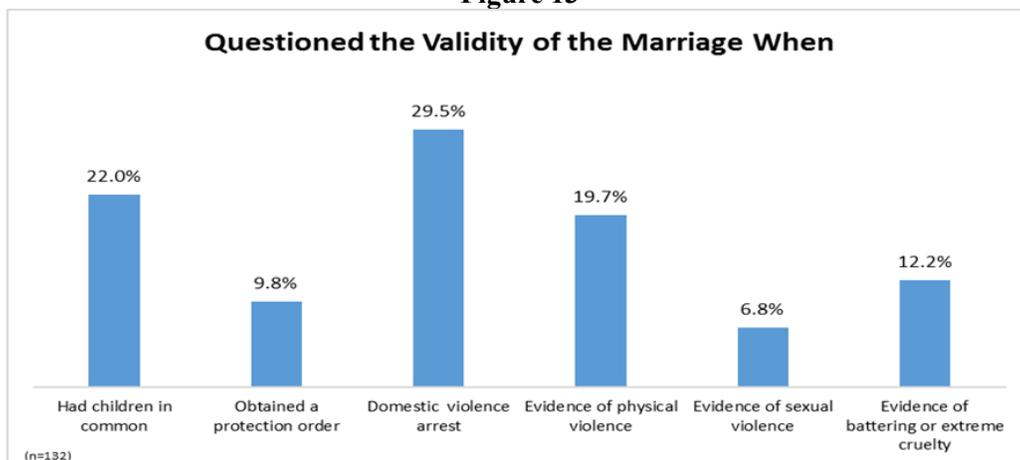
The current processing approach to adjudicating BSW cases is resulting in significant numbers of BSW cases being sent for interviews at the local district offices. The fact that interviews are being required at such a high rate for battered immigrant spouses who have already participated in an interview with their husbands that led to the approval of the victim’s conditional residency status, makes the high rate of interview particularly alarming. The survey asked questions regarding the interviews conducted to gain a greater understanding of the problems and issues that arose related to the required interviews. Of the 252 cases in which participating survey organizations reported that their clients experienced problems during the interviews the following charts summarize the problems most commonly encountered.

Figure 12



Many victims face interviews that question their claim and minimize their traumatic experiences. Of all reported issues that involved domestic violence dynamics, 45.7% were faced with statements and questions that minimized the abuse and/or indicated that substantial enough abuse was not suffered. Victims are less likely to talk about their abuse if they feel that they are not believed which could result in a denial of their BSW case. It must be noted that 50.9% of problems involved questions about the victim’s decision to stay with the abuser and/or used that fact as evidence that no abuse at all occurred. Some also experienced statements that indicated that the victim was responsible for the abuse.

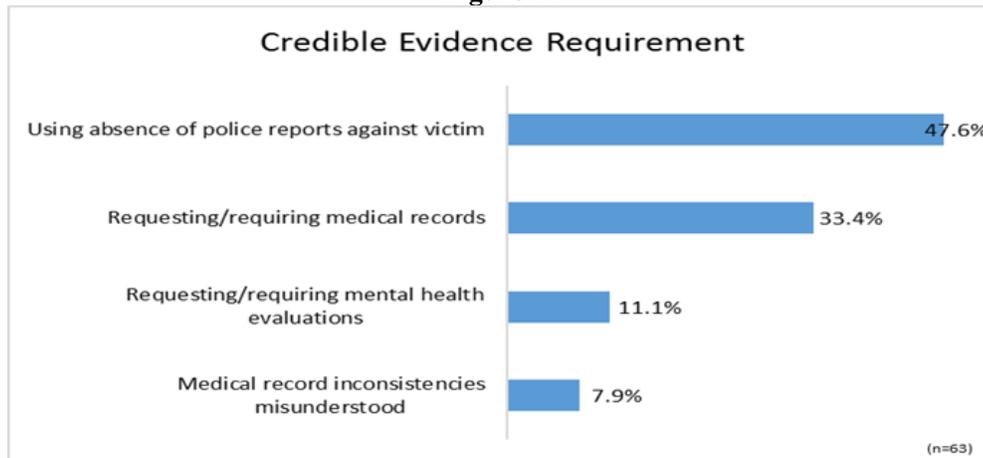
Figure 13



BSW petitioners are “conditional residents” through their marriage to a US citizen or legal permanent resident and therefore they must be able to prove the existence of a good faith marriage. The inability to provide substantial evidence of marriage will result in the denial of the petition. During interviews, the validity of marriage was questioned under various circumstances. The majority of interviewers questioned marriage when

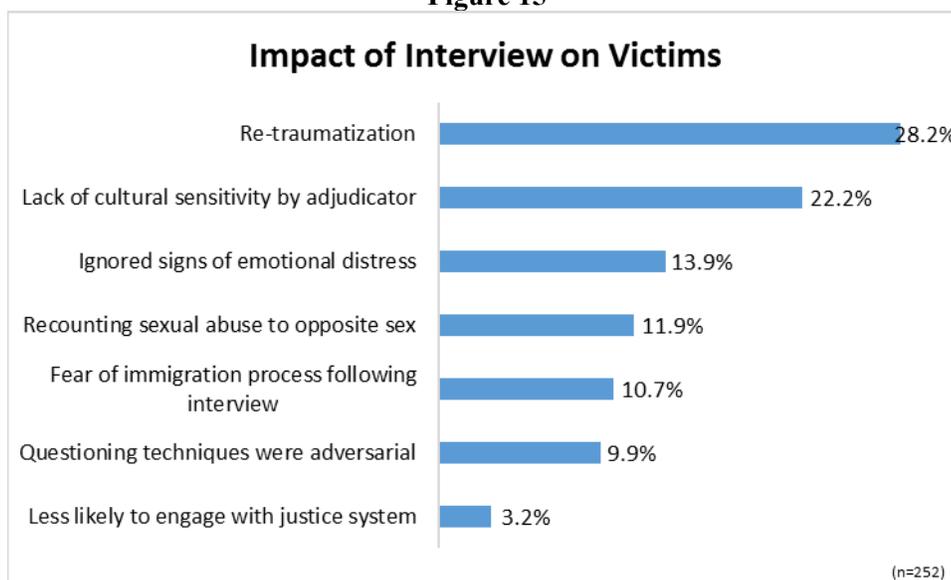
they did not recognize that evidence of abuse provides evidence of the validity of marriage. Our surveys discovered 39.3% of such instances occurred when the perpetrator was arrested for domestic violence or the victim filed for a protection order. 38.7% were questioned about the validity of marriage when the record contained evidence of physical violence, sexual violence, battering or extreme cruelty. Surprisingly, 22% of reports on questioning validity of marriage occurred when the victim and perpetrator had children in common.

Figure 14



The lack of understanding on the definition of any credible evidence led district office interviewers to ask for unnecessary and often unattainable legal documents and medical records. Of all survey participants that provided information on credible evidence issues nearly half (47.6%) reported that using the absence of police reports against victims occurred. A third (33.4%) reported that interviewers requested and/or required medical records. The remaining problems reported were requests/requirements of mental health evaluations and misunderstanding medical record inconsistencies. In addition to credible evidence issues, there were 12 cases in which there were indicia that district office officials had been in contact with the perpetrator. This is a strict violation of confidentiality and punishable by law.

Figure 15



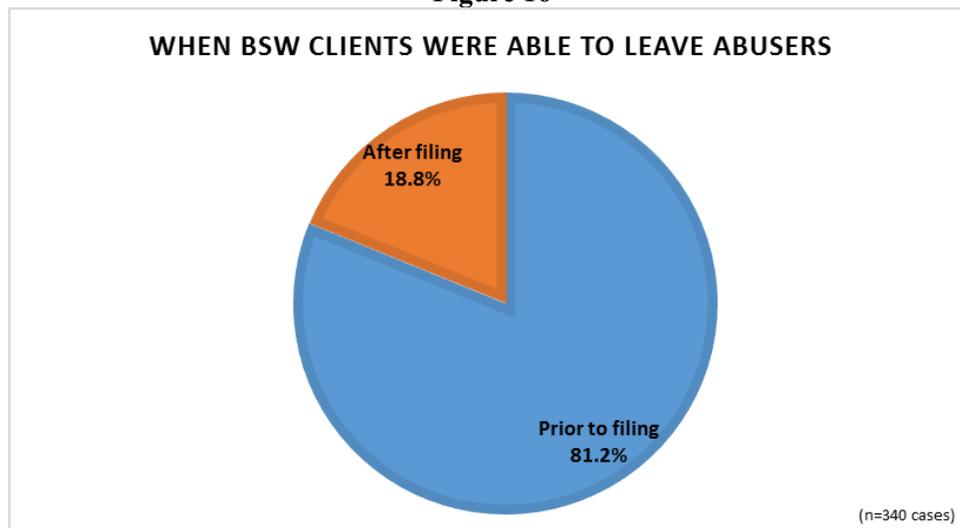
While many women are trying to escape traumatic and painful relationships, these victims are subjected to interviews conducted by individuals who are neither well trained nor sensitive to domestic violence cases. In fact, adversarial questioning techniques and lack of cultural sensitivity counted as 32.1% of answers given by survey participants on the impact of the interview. This causes victims to become re-traumatized as they are forced to answer questions as the interviewer ignores signs of emotional distress. Another common issue is where the victim has to recount traumatic experiences to an individual of the opposite sex. There were 8 cases (3.2%) in which the interview experience made victims less likely to engage with the justice system or police to report future violence.

A Majority of BSW Petitioners Are Able to Leave Abusive Environments

Many BSW cases take at least a year to adjudicate, which places victims' lives in limbo. However, the majority of victims (81.2%, n=276) are able to leave their abusers prior to filing their petition. The remaining 18.8% (n=64) are able to leave their abuser after filing, with 12% doing so while their case is still pending, and 6.8% leaving after approval. These percentages are starkly different than those for VAWA and U Visa petitioners. Only 26.6% of VAWA self-petitioners and 16% of U visa applicants are able to leave their abuser within the first 6 months. Because BSW petitioners have conditional residency status they are able to gain work authorization. Possessing work authorization allows battered spouse victims greater freedom and the ability to leave their abusers. Many BSW clients also have family in the U.S., which also increases the ability to leave their abusers. This is shown in the high percentage of women that leave their abusers prior to filing their BSW petition.

Decision Time Frame to Leave Abusive Spouse

Figure 16



The majority (56.4%, n=31) of victims who continued to stay with their abuser from the date of filing BSW petitions to the date it was completed only stayed for three months or less. The remaining victims stayed with their abuser from a range of three to eighteen months. With a more efficient and faster adjudicating process victims and their children could leave their abusers sooner. This is especially important for victims that lack a support system in the U.S. It is clear that these victims want to leave as Figure 16 shows that 75% of those continuing to live with their abuser attempt to leave multiple times.

Figure 17

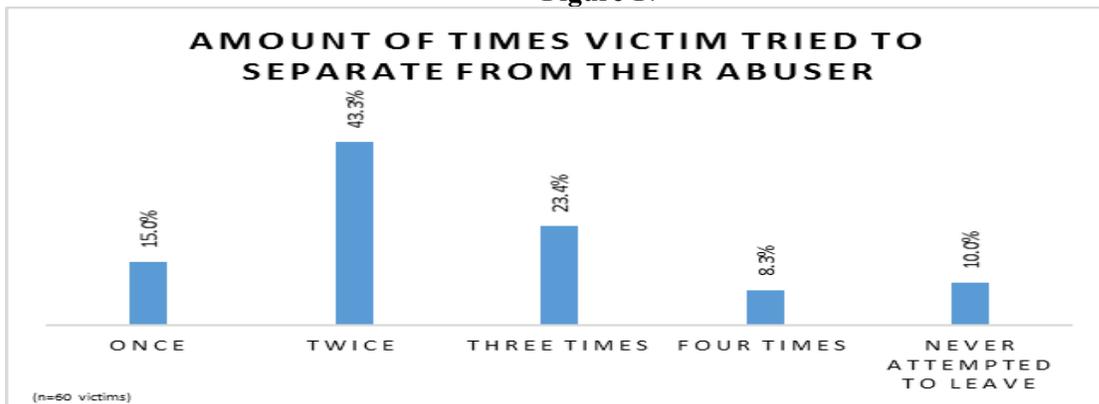
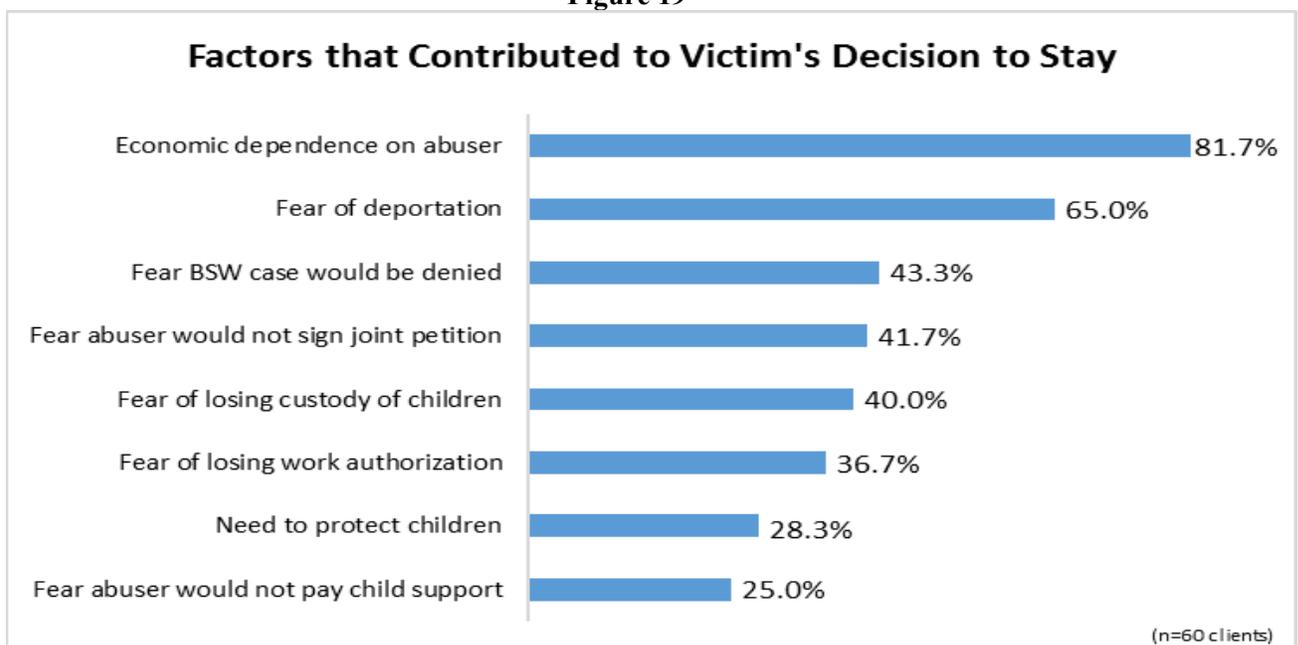


Figure 18



Figure 19



The decision to stay with an abuser is often not a matter of choice. Of the reported factors that contributed to victims staying, 81.7% said that economic dependence on the abuser was the reason. Access to money and hiding assets is a common strategy that abusers use to keep control over their spouse. Victims have no choice but to stay or face destitution. Fear of deportation made up 65% of victims' decision to stay. Case related worries such as fear of case denial (43.3%) and fear of abuser not signing joint petition (43.3%) were reported. Some also experienced child-related factors such as need to protect children (28.3%), fear abuser would not pay child support (25%), and fear of losing custody of children (40%).

Ongoing Abuse by Perpetrator While BSW Applicants Are Awaiting Adjudication

Battered spouses who filed BSW petitions and lived with their abuser after filing experienced high levels of ongoing abuse perpetrated by their spouse between the times that they filed their petition and the time their case was adjudicated. Almost all applicants (95%, n=57) reported economic abuse. Over three-quarters (78.3%, n=47) faced threats, attempts, or incidents of physical battering and 65% (n=39) experienced stalking by their spouse. Victim's children were also at risk as 18.3% (n=11) reported that the abuser threatened, attempted or perpetrated abuse against their children and 21.7% (n=16) reported threats, attempts, or incidents of child kidnapping. Slow adjudication times exacerbate victims' abuse and place their children at greater risk.

Figure 20

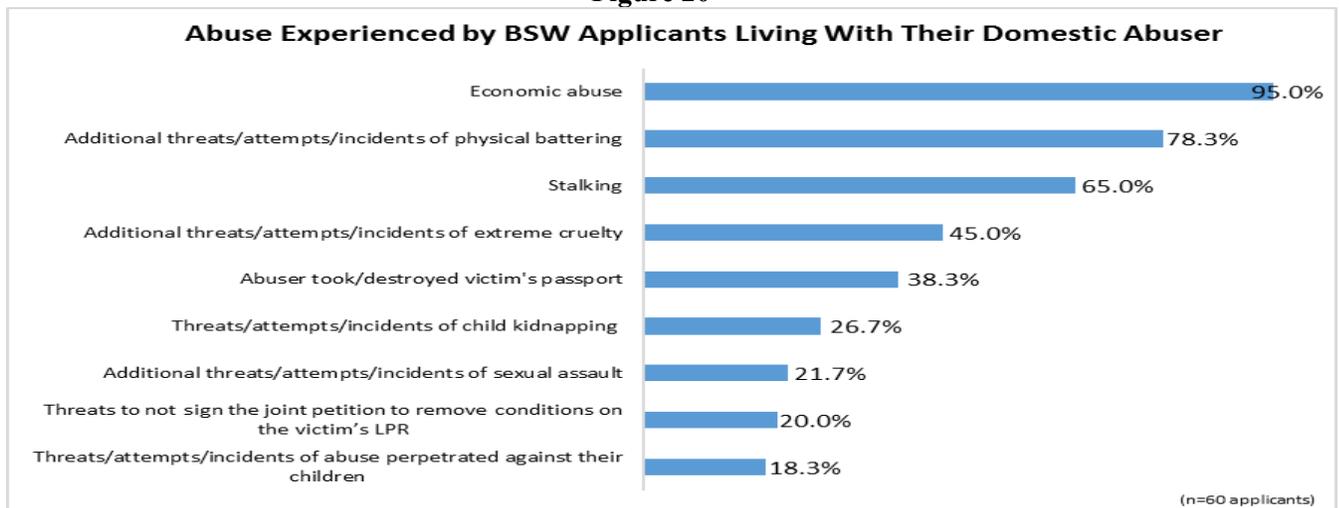
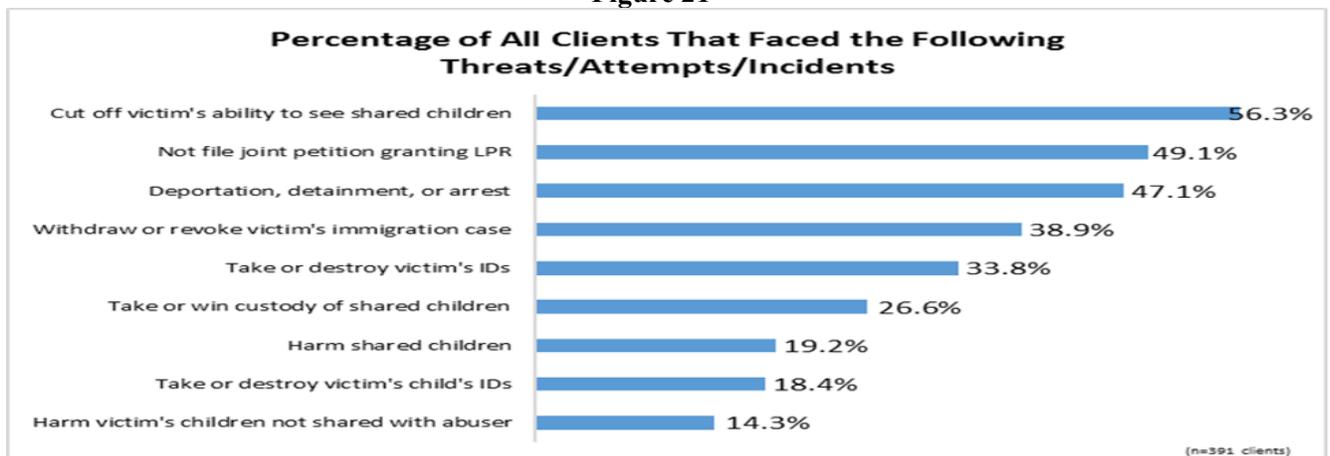


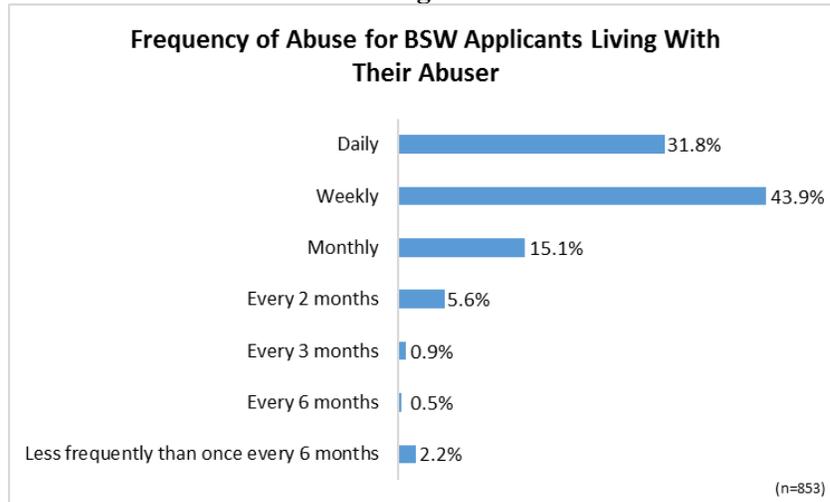
Figure 21



Frequency of Ongoing Abuse by Perpetrator While Awaiting Adjudication

An overwhelming majority (90.8%) of BSW applicants who live with their domestic abuser experienced monthly abuse. The highest frequency of abuse occurred on a weekly basis as 43.9% of survey participants reported.

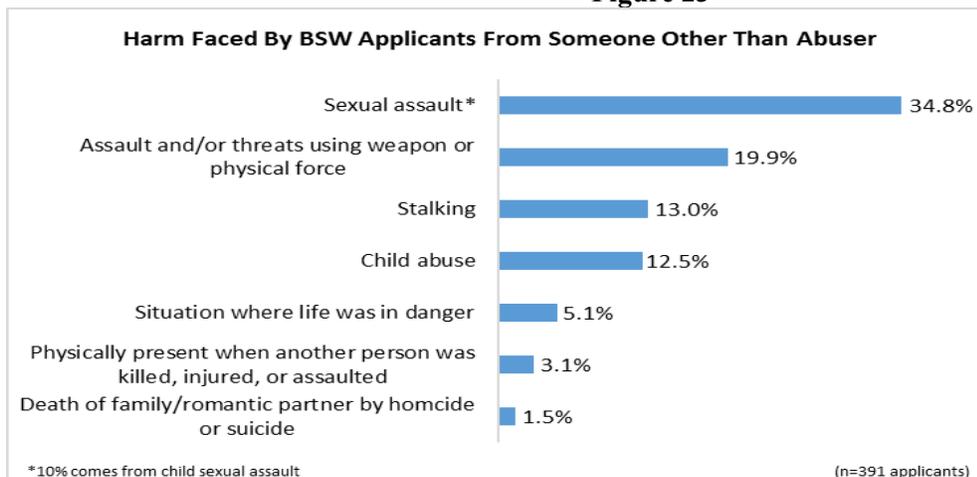
Figure 22



Harm to BSW Applicants from Sources Other than Their Domestic Abuser

Prior research shows that many immigrant spouses and children suffer multiple traumas in their lifetimes. Therefore, many victims are subject to abuse from more than one perpetrator. Sexual assault is the most prevalent form of harm (34.8%, n=136) that victims experience, and a quarter of the 136 reports of sexual assault are cases of child sexual assault. In addition to child sexual assault, 12.5% (n=49) reported cases of child abuse. Nearly a fifth of victims (19.9%) experienced assaults and/or threats using a weapon or physical force. Others (4.6%, n=32) witness death or were physically present when another person was seriously injured or assaulted.

Figure 23



Interaction with the Justice System

The majority of BSW applicant interaction with the justice system happens prior to filing a petition. Overall most interactions (59.3%, n=232) come from filing a police report. Over a third (37.8%, n=148) seek protection orders and nearly two-thirds (64.2%, n=251) seek some form of child-related justice. It is important to note that 43.9% (n=172) do not interact with the justice system at all. This could stem from lack of faith in the justice system or the fear of deportation.

Figure 24

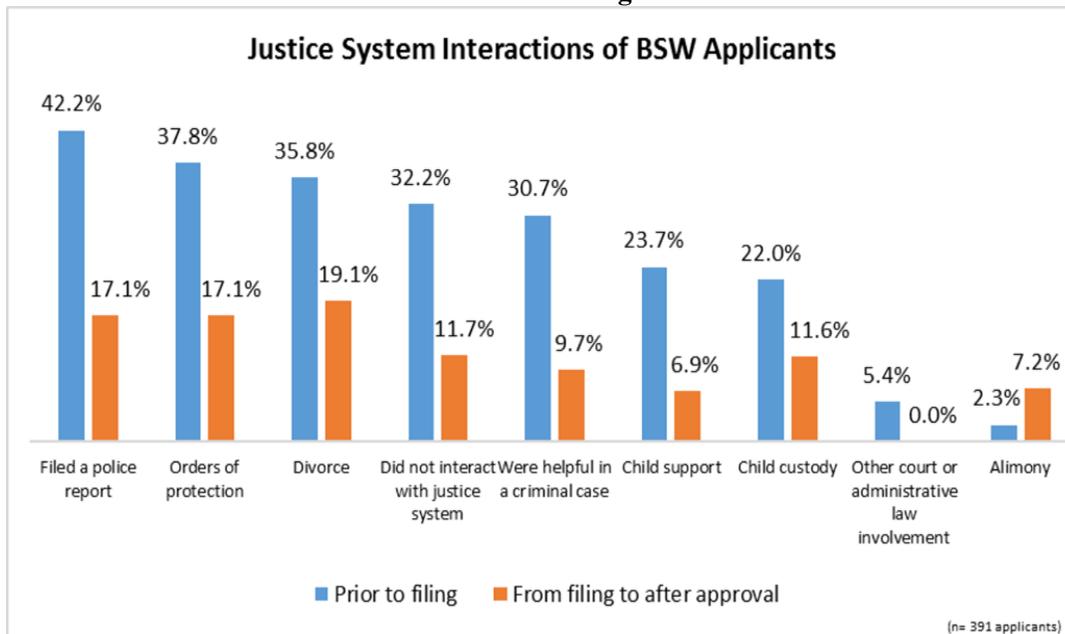
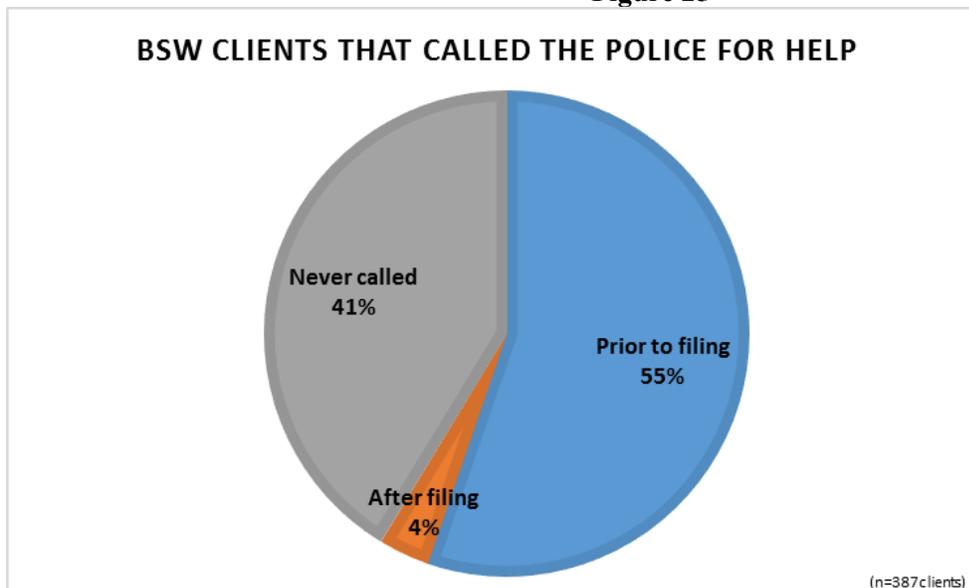


Figure 25



Similar to the percentage of victims that did not interact with the justice system, 41% of BSW applicants never called the police for help. Law enforcement is often an immigrant's first experience with the justice system when it comes to domestic violence. Interaction with the police should increase a victim's ability to receive help and stop domestic violence, and victims should feel comfortable in reaching out to law enforcement for help. Those that call the police for help are more likely to acquire police reports, which helps their BSW case.

b. Recommendations to Improve BSW Adjudication Process

Under the current USCIS system, BSW applicants who are called for an interview can only receive removal of their conditional status if the local district office to which their application is sent grants approval. Therefore, due to the concerns raised above as to the effects of this lengthy process, there needs to be a revision of the current approach. NIWAP advocates that all BSW applications be adjudicated at the Vermont Service Center. The main reason is because the staff members at the Vermont Service Center are trained to deal with battered spouse victims. This training is essential as they are more qualified to assess the urgency of the case. In California local district office, attorneys have noted that during BSW interviews, the interviewer did not seem trained to handle domestic violence cases that are sensitive. The reason for this conclusion was due to experiences of victim blaming and re-traumatization during the interview process.

Additionally, there has been the experience at the local district center staff considering letters from the batterer (other than as proof of abuse) in adjudicating BSW cases. This violates VAWA confidentiality provisions. In a Tennessee local district office, another attorney noted that the request for further evidence required evidence of common financial assets. This disregarded the abuse dynamic of the petitioner who excluded his spouse from their finances. The victim had no access, and he even hid assets. This is something regular I-751 adjudicators are not trained to deal with. Additionally, attorneys have reported breaches in the confidentiality rule that applies to BSW. These experiences therefore, highlight the need for the BSW applications to be heard at the Vermont Service Center, where staff is able to analyze these facts more thoroughly and accurately to adjudicate the matters in a timely manner.

Under the current system, problems have arisen at the local district center due to the backlogs that exist. There is no consistency in the BSW applications for battered women. Currently, there is confusion in the field regarding the length of time the process takes. Time is of the essence for battered spouse victims. Time is also a crucial factor for immigrant attorneys and organizations due to the fact that many immigrant women who are victims of domestic violence are financially dependent on their abuser. Therefore, in order for organizations to give proper safety planning to their abused clients, they need to know a specific timeline as to how long their BSW adjudication would take. Currently, the timeline is based on the workload at the local district office. This is because the local district center deals with thousands of different non-asylum related applications, which has resulted in the delays of BSW applications.

NIWAP notes that based on VAWA 2005, it was advocated by Congress that battered women be dealt with at the Vermont Service Center. Additionally, women who are BSW applicants receive the conditional residence status on the basis that they have a good marriage that is not considered fraudulent by the state. Therefore, there is a waste of resources by the Department of Homeland Security when there is a request to do a second interview to adjudicate the matter to remove the conditional status.

The similarities of the BSW applications and VAWA Self-Petitioning applications are noted in the Comparison Chart, which provides further evidence that these applications should all be adjudicated at the Vermont Service Center.

c. Comparison between BSW and VAWA Self Petitioning Cases Based on for Abused Immigrant Spouses

| Comparison Chart: Battered Spouse Waiver and VAWA Self-Petition Immigration Relief for Abused Spouses of Citizens and Lawful Permanent Residents | | |
|---|---|---|
| Comparison | Battered Spouse Waiver | VAWA Self-Petition |
| 1. What is the purpose of the legislation | It was passed to specifically address the dangers experienced by experienced by immigrant women, eliminating the “conditional residence” requirement and prevents the victim from being locked for two years in an abusive marriage | It was passed to deter and punish violent crimes against women. It protect victims of abuse who are not US citizens to file a petition without having to rely on their abuser |
| 2. Who is eligible | Spouses, former spouses, and bigamy victims spouse of citizens and lawful permanent residents who have been subject to battering or extreme cruelty. | Spouses, former spouses, and bigamy victims spouse of citizens and lawful permanent residents who have been subject to battering or extreme cruelty. |
| 3. Children Included? | Can include immigrant spouses’ children in the application if they were included in the underlying petition or their case was filed within 90 days of the abused spouse’s application. If the petition was filed at a different point in time the child can file a separate application to remove conditions. | Can included the abused immigrant spouse’s children in the application. |
| 4. Who files underlying petition | Citizen/Lawful Permanent Resident Spouse | The victim files self-petition |
| 5. Who files for the waiver | The victim files the battered spouse waiver | N/A |
| 6. Proof Required | Battered or extreme cruelty of immigrant spouse or the immigrant spouse’s child | Battered or extreme cruelty of immigrant spouse or the immigrant spouse’s child |
| | Good faith marriage | Good faith marriage |
| | Abuser’s U.S citizenship or permanent resident status proven by abuser in underlying case before the conditional residency was issued | <i>Prove abuser’s U.S citizenship or immigration status</i> |
| | Must have resided together for some period of time | Must have resided together for some period of time |
| | | Good moral character |
| 7. VAWA Confidentiality Protected Case | Yes | Yes |
| 8. Interview Required | Can be waived | No |
| 9. Current Adjudication Time | 85.8% take 9-21+ months | 6-8 months |
| 10. Where is the matter adjudicated | Filed a the California or Vermont regional service center and 43.3% require interviews at the USCIS local District Office. | Specially trained VAWA Unit |

d. History of the Battered Spouse Waiver

| Evolution of the Battered Spouse Waiver Protection Interlineated Statutes | | |
|--|---|---|
| Name of Legislation | Public Law Number | Legislative Change |
| 1. Amendments to the Immigration Act of 1990 | Pub. L. No. 101-649, 104 Stat. 4978 | Established the Battered Spouse Waiver Application |
| 2. Violent Crime Control and Law Enforcement Act of 1994 | Pub. L. No. 103-322, 108 Stat. 1796 | Established the use of Credible Evidence in Spousal Waiver Applications |
| 3. Omnibus Consolidated Appropriations Act of 1996 | Pub. L. No. 104-208, 110 Stat. 3009 | Added battered spouse waiver cases to the list of cases statutorily protected by VAWA confidentiality |
| 4. Violence Against Women and Department of Justice Reauthorization Act of 2005 | Pub. L. No. 109-162, 119 Stat. 2960 | Strengthened VAWA confidentiality's non-disclosure and non-reliance on perpetrator provided information protections to bring battered spouse waivers and all other forms of VAWA self-petitions under VAWA non-disclosure protections. Created VAWA Confidentiality protected locations protections |
| 5. Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments | <u>Pub. L. No. 109-271</u> , 119 Stat. 3060 | Conforming amendments on VAWA confidentiality non-disclosure protections to include U visas and forms of self-petitions not previously included |
| 6. Violence Against Women Reauthorization Act of 2013 | Pub. L. No. 113-4, 127 Stat. 54 | Added exception to VAWA confidentiality allowing sharing of information for national security purposes provided that the information is shared within government in a manner that continues to protect the confidentiality of the information. Added that information shared with law enforcement under the law enforcement exception must also be handled in a manner that continues to protect the confidentiality of the information |

§ 216(c)(4). Conditional Permanent Resident Status For Certain Alien Spouses And Sons And Daughters (Current as of February 5, 2017)

The following amendments were made to *Section 216(c)(4) (8 U.S.C. 1186a(c)(4) in the following legislative acts:*

- Immigration Marriage Fraud Amendments of 1986 legislation³
- Immigration Act of 1990⁴
- **Violent Crime Control and Law Enforcement Act of 1994**⁵
- Omnibus Consolidated Appropriations Act of 1997⁶
- Victims of Trafficking and Violence Protection Act of 2000⁷
- Violence Against Women Reauthorization Act of 2013⁸

(c)(4) HARDSHIP WAIVER-

The Secretary of Homeland Security, in the Secretary's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that-

- "(A) extreme hardship would result if such alien is removed;
- "(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1); or
- "(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1); or
- "(D) the alien meets the requirements under section 204 (a)(1)(A)(iii)(II)(aa)(BB) and following the marriage ceremony was battered by or subject to extreme cruelty perpetrated by the alien's intended spouse and was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Secretary shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. The Secretary of Homeland Security shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child. **In acting on applications under this paragraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary of Homeland Security.**

Violence against Women Act (VAWA) Confidentiality Interlineated Statute

HIRAIRA § 384

8 USC §1367 Penalties for Disclosure of Information (Current as of February 5, 2017)

³ Pub. L. 99-639, 100 Stat. 3537, "Immigration Marriage Fraud Amendments of 1986"

⁴ Pub. L. 101-649, 104 Stat. 4978, "Immigration Act of 1990"

⁵ Pub. L. 103-322, 108 Stat. 1796, "Violence Against Women Act (VAWA) of 1994"

⁶ Pub. L. 104-208, 110 Stat. 3009, "Omnibus Consolidated Appropriations Act of 1997"

⁷ Pub. L. 106-386, 114 Stat. 1464, "Victims of Trafficking and Violence Protection Act of 2000." (VAWA 2000)

⁸ Pub. L. 113-4, 127 Stat. 54, "Violence Against Women Reauthorization Act of 2013," (VAWA 2013)

Key Code for Statutes:

IRAIRA 1996⁹ Original Statute

VAWA 2000¹⁰ Changes are in ***Bold Italics***

VAWA 2005¹¹ Changes are in **SMALL CAPS**

VAWA 2013¹² Changes are in **Bold**

(a) IN GENERAL.—Except as provided in subsection (b), in no case may the Attorney General, or any other official or employee of the Department of Justice THE SECRETARY OF HOMELAND SECURITY, THE SECRETARY OF STATE, OR ANY OTHER OFFICIAL OR EMPLOYEE OF THE DEPARTMENT OF HOMELAND SECURITY OF DEPARTMENT OF STATE (INCLUDING ANY BUREAU OR AGENCY OF EITHER SUCH DEPARTMENTS) —

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by—

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,

(B) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,

(C) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (with- out the active participation of the alien in the battery or extreme cruelty),

(D) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, unless the alien has been convicted of a crime or crimes listed in section 241(a)(2) of the Immigration and Nationality Act; or (D) a member of the

spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty,

(E) in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act [8 U.S.C.A. § 1101(a)(15)(U)], the perpetrator of the substantial physical or mental abuse and the criminal activity,

(F) IN THE CASE OF AN ALIEN APPLYING FOR STATUS UNDER SECTION 101(A)(15) (T) OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1101(A)(15)(T)), UNDER SECTION 7105(B)(1)(E)(I)(II)(BB) OF TITLE 22, UNDER SECTION 244(A)(3) OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1254A(A)(3)), AS IN EFFECT PRIOR TO MARCH 31, 1999, OR AS A VAWA SELF-PETITIONER (AS DEFINED IN SECTION 101(A)(51) OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1101(A)(51)), [FN2] THE TRAFFICKER OR PERPETRATOR,

(2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), section 216(c)(4)(C), or section 244(a)(3) of such Act as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty.

⁹ Pub. L. 104-208, 110 Stat. 3009, "Penalties for disclosure of information" (originally enacted as Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IRAIRA))

¹⁰ Pub. L. 106-386, 114 Stat. 1464, "Victims of Trafficking and Violence Protection Act of 2000. (VAWA 2000)

¹¹ Pub. L. 109-162, 119 Stat. 2960, "Violence Against Women and Department of Justice Reauthorization Act of 2005," Section 817, "VAWA Confidentiality Nondisclosure." (VAWA 2005)

¹² Pub. L. 113-4, 127 Stat. 54, "Violence Against Women Reauthorization Act of 2013," Section 810, "Disclosure of Information for National Security Purposes." (VAWA 2013)

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

(b) EXCEPTIONS.—

(1) The **Secretary of Homeland Security or the Attorney General** may provide, in the **Secretary's or the Attorney General's** discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(2) The **Secretary of Homeland Security or the Attorney General** may provide in the discretion of the **Secretary or the Attorney General** for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose **in a manner that protects the confidentiality of such information.**

(3) Subsection (a) shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.

(4) Subsection (a)(2) shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

(5) **The Secretary of Homeland Security and the Attorney General** are authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 1641(c) of this title.

(6) SUBSECTION (A) OF THIS SECTION MAY NOT BE CONSTRUED TO PREVENT THE ATTORNEY GENERAL AND THE SECRETARY OF HOMELAND SECURITY FROM DISCLOSING TO THE CHAIRMEN AND RANKING MEMBERS OF THE COMMITTEE ON THE JUDICIARY OF THE SENATE OR THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES, FOR THE EXERCISE OF CONGRESSIONAL OVERSIGHT AUTHORITY, INFORMATION ON CLOSED CASES UNDER THIS SECTION IN A MANNER THAT PROTECTS THE CONFIDENTIALITY OF SUCH INFORMATION AND THAT OMITTS PERSONALLY IDENTIFYING INFORMATION (INCLUDING LOCATIONAL INFORMATION ABOUT INDIVIDUALS).

(7) GOVERNMENT ENTITIES ADJUDICATING APPLICATIONS FOR RELIEF UNDER SUBSECTION (A)(2) OF THIS SECTION, AND GOVERNMENT PERSONNEL CARRYING OUT MANDATED DUTIES UNDER SECTION 101(i)(1) OF THE IMMIGRATION AND NATIONALITY ACT [8 U.S.C.A. § 1101(i)(1)], MAY, WITH THE PRIOR WRITTEN CONSENT OF THE ALIEN INVOLVED, COMMUNICATE WITH NONPROFIT, NONGOVERNMENTAL VICTIMS' SERVICE PROVIDERS FOR THE SOLE PURPOSE OF ASSISTING VICTIMS IN OBTAINING VICTIM SERVICES FROM PROGRAMS WITH EXPERTISE WORKING WITH IMMIGRANT VICTIMS. AGENCIES RECEIVING REFERRALS ARE BOUND BY THE PROVISIONS OF THIS SECTION. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED AS AFFECTING THE ABILITY OF AN APPLICANT TO DESIGNATE A SAFE ORGANIZATION THROUGH WHOM GOVERNMENTAL AGENCIES MAY COMMUNICATE WITH THE APPLICANT.

(8) Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the discretion of either such Secretary or the Attorney General for the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

(c) PENALTIES FOR VIOLATIONS.—Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section OR WHO KNOWINGLY MAKES A FALSE CERTIFICATION UNDER SECTION 239(E) OF THE IMMIGRATION AND NATIONALITY ACT shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation.

(d) GUIDANCE THE ATTORNEY GENERAL, **Secretary of State**, AND THE SECRETARY OF HOMELAND SECURITY SHALL PROVIDE GUIDANCE TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE, **Department of State**, OR THE DEPARTMENT OF HOMELAND SECURITY WHO HAVE ACCESS TO INFORMATION COVERED BY THIS SECTION REGARDING THE PROVISIONS OF THIS SECTION, INCLUDING THE PROVISIONS TO PROTECT VICTIMS OF DOMESTIC VIOLENCE AND SEVERE FORMS OF TRAFFICKING IN PERSONS OR CRIMINAL ACTIVITY LISTED IN SECTION 1101(A)(15)(U) **of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U))** FROM HARM THAT COULD RESULT FROM THE INAPPROPRIATE DISCLOSURE OF COVERED INFORMATION.

a. Historical Background which led to the Battered Spouse Waiver

Congress established the **Immigration Marriage Fraud Amendments of 1986 (IMFA)**.¹³ The intended purpose of the IMFA was to deter immigrants from entering into fraudulent marriages to obtain lawful permanent resident status. In order to achieve this intention, the IMFA created a “two-year conditional residence period” status for immigrant women who were either married to a U.S citizen or a legal permanent resident for less than two years at the time of the permanent residence interview with USCIS. The IMFA required that in order to have the conditional residence be changed to lawful permanent residence status, within ninety days before the end of the conditional residence, both husband and wife had to file a joint petition to have the condition removed and both may be required to appear before an USCIS official for a personal interview.¹⁴ The couple had to show that their marriage was not a sham and was not legally terminated.

This waiting period and joint petition requirement created great hardship for immigrant women who entered into marriages “in good faith”, but became victims of violence within the marriage. It allowed the abusers to have control over the status of the immigrant woman in the relationship. The control over the immigrant woman stemmed from the fact that the abusers could refuse to jointly file the petition or cooperate in the mandated USCIS interview. Therefore, the victim was forced to remain in the abusive relationship, because failure to do such meant they could jeopardize their immigration status.

Congress realizing the problems that arose from the IMFA began to draft legislation to protect vulnerable women in these circumstances of abusive relationships. This led to the development of the **Battered Spouse Waiver through the Amendments to the Immigration Act of 1990 (Immigration Act of 1990)**.¹⁵

b. Legislative History of Battered Spouse Waiver

Since the establishment of the **BSW through the Immigration Act of 1990**, section 216(c)(4) which is the hardship waiver, has undergone several changes in its wording.¹⁶ This was due to the passing of the following legislations:

- 1) **The Violent Crime Control and Law Enforcement Act of 1994,**
- 2) **The Omnibus Consolidated Appropriations Act of 1997,**
- 3) **The Victims of Trafficking and Violence Protection Act of 2000, and**
- 4) **The Violence Against Women Reauthorization Act of 2013.**

In order to fully comprehend the intended effects of the BSW, INS must look at the intention of Congress created by the **Immigration Act of 1990**. The BSW amendment allowed the victim to petition to have the conditional residence removed thereby removing the opportunity to be trapped in an abusive marriage.

A major supporter of the legislation in Congress was **Representative Louise Slaughter**. She explained that congressional intent regarding the creation of the BSW legislation was as follows:

The lack of clarity in the law, however, resulted in several significant difficulties and, in many cases,

¹³ Pub. L. No. 99-639, 100 Stat. 3537.

¹⁴ INA § 216(c)(1), 8 U.S.C. 1186a(c)(1); INA § 216(d)(2), 8 U.S.C. 1186a(d)(2); INA § 216(d)(3), 8 U.S.C. 1186a(d)(3).

¹⁵ Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C.).

¹⁶ Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C.).

served as a deterrent to battered immigrant spouses seeking to leave their marriage."¹⁷

"What should not go unsaid or unnoticed, however, is that the bill we have before us contains a small but significant provision, which will literally free thousands of immigrant women from a nightmare of brutal physical abuse and mental cruelty. Immigrant women are some of the most vulnerable to domestic violence, yet their plight is not well enough known to effect real change. Not long ago, I heard the heart-wrenching story of an immigrant woman living in Rochester with her abusive American spouse. She was regularly beaten by her husband and subjected to unspeakable cruelties. She lived with two paralyzing fears—that of her husband's rage and that of being forced back to her native Haiti. The 1986 Marriage Fraud Act leaves this woman trapped in the abusive relationship for at least 2 years or face deportation to a country, which is no longer her home.

Responding to this woman's circumstances and those of thousands of alien spouses nationwide, I introduced legislation to amend the Marriage Fraud Act and provide immigrant spouses in a bona fide marriage, an escape from the beatings, the insults and the fear... The Immigration Marriage Fraud Amendments Act of 1986 [IMFA] mandates a 2-year period of conditional permanent residency for foreigners who marry American citizens or permanent residents. At the end of this 2-year period, the American spouse with the foreign spouse must file a joint petition to gain full permanent residency for the foreign spouse. Due to a lack of clarity in the IMFA, a battered foreign spouse may be forced to choose between remaining in an abusive relationship or facing possible deportation to a country that is no longer his or her home... Under the IMFA, if the resident spouse refuses to sign the joint petition, deportation proceedings can be initiated by the Immigration and Naturalization Service....

Where a foreign spouse could demonstrate that he or she entered into a marriage with a resident spouse in good faith and could establish through credible evidence that he or she was battered by the American spouse, the foreign spouse would be allowed to waive the joint petition requirement and file independently to have the conditionality of his or her permanent residence removed. This waiver would not force the foreign spouse to seek a divorce and would thus avoid the question of good cause which must be considered in the good cause/good faith waiver and it would make it clear to abused spouses that there was an escape from their situations.... [T]his additional waiver would not alter the spirit of the IMFA and the conditional permanent residence system established in 1986, it would be beneficial to a large number of persons trapped in abusive relationships...

Those in this situation are often advised to remain with the abuser until the 2 years of conditional permanent residence have ended because of the lack of clarity in the law. Abused spouses should be sent a clearer signal that there is an escape from their dilemma and that the abusing spouse does not have complete control over their lives... the House intends that when the citizen or resident spouse engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status. It is the Committee's intent that the Attorney General will grant the waiver when battering of or cruelty to spouse or child is demonstrated. The House intends that the discretion given to the Attorney General to decide to deny waiver requests under this provision be limited to rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.... I am also concerned with the situation in which the citizen or resident spouse abuses a child or alien child. It is the intent of the legislation, then, that the conditional resident spouse be able to protect the child without fearing that the citizen or resident spouse will refuse to cooperate in the joint petition, joint interview requirements for the alien spouse. In such a situation, the good faith or extreme hardship waiver will be granted to the alien spouse. The existence of a child of the marriage is evidence that the marriage was entered into in good faith. Both a child and the child's alien parent would suffer extreme hardship if the child were denied the protection and support of the alien spouse when the citizen or resident spouse abuses the child.... The group that

¹⁷ Testimony from Re. Louise Slaughter H. Rec. 102-2 Oct. 2, 1990 (27085).

would be targeted by the clarifications I have proposed is one of the most vulnerable in American society today. The vast majority of abused foreign spouses are women. Most are new to American society and many do not speak English as a first language. This group is in particular need of statutory language that clearly protects them from abusive spouses taking advantage of the necessity of filing a joint petition at the end of the 2-year period.¹⁸

The **House Judiciary Committee report in 1990** was explicit about congressional intent in allowing victims of “battery” or “extreme cruelty” who provided proof of a good faith marriage to a U.S. citizen or lawful permanent resident spouse to be granted the battered spouse or child waiver. They noted that:

*The purpose of this provision is to ensure that when the U.S. citizen or permanent resident spouse or parent engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status.*¹⁹

Again, in 1990, the House was explicit in its intent to allow victims of “battery” or “extreme cruelty” to be granted the battered spouse or child waiver when **Representative Benjamin Gilman (R-NY)** supported the creation of this waiver. He noted:

In particular, the marriage fraud provisions required our review and modification. The battered spouse or child waiver of the conditional residence requirement portion would allow the Attorney General to bestow permanent resident status if an alien can demonstrate that, while the marriage was entered into in good faith, evidence has shown that the spouse was battered by, or was the subject of extreme mental cruelty perpetrated by, his or her spouse or parent.

*This provision would, in effect, create an avenue of relief for a spouse or child caught in a detrimental relationship. Under current law a damaging situation must be endured in order to maintain legal status in the United States. It would seem unconscionable that any human being should be required by our laws to remain in a situation in which they are abused in order to remain in legal status.*²⁰

The House Judiciary Committee adopted Representative Slaughter’s view, further clarifying its intent by stating that legitimate requests for battered spouse waivers should be denied only in “rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.”²¹ It is important that in adjudicating such waiver applications USCIS officers are aware of and act in accord with the views of Congress in passing this legislation. Other issues to bear in mind when adjudicating a battering or extreme cruelty waiver include:

*“Persons who have been subjected to such treatment may have difficulty in discussing their experiences. While it is almost always necessary to discuss the abusive events with the applicant, such discussions should be carried on in a professional manner which does not further abuse the applicant by forcing him or her to unnecessarily re-live abusive episodes....Police reports and hospital records can be key documents in establishing that battering or extreme cruelty existed.”*²²

¹⁸ Congressional Record for the 101st Congress House of Representatives UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990 (House of Representatives - October 02, 1990) page H8642

¹⁹ House Report 101-723(I), p. 78.

²⁰ Family Unity and Employment Opportunity Immigration Act of 1990, October 2, 1990, 136 Cong. Rec. H. 8629 (Vol. 136, No. 126, Pg. H8629).

²¹ Ibid, p. 79

²² Leslye E. Orloff & Brittnay Roberts, *Good Faith Marriage in VAWA Self-Petitioning Cases*, National Immigrant Advocacy Project (Feb. 17, 2013), <https://niwaplibrary.wcl.american.edu/pubs/good-faith-marriage-vaawa>

President Bush noted in the Signing of the **Immigration Act of 1990**:

*“It is the most comprehensive reform of our immigration laws in 66 years. It also credits the special role of immigrants to America, and it will promote a more competitive economy, respect for the family unit, and swift punishment for drugs and crime. This bill is good for families, good for business, good for crime fighting, and good for America. We welcome both it and the generations of future Americans who it will bring in to strengthen our great country. And now I am honored and pleased to sign into law the Immigration Act of 1990.”*²³

Therefore, the BSW legislation created a completely new type of waiver that specifically addressed the experiences of battered immigrants.²⁴

c. Requirements of BSW

The BSW amendment allowed the victim to petition to have the conditional residence removed. There are nonetheless certain requirements that must be fulfilled:

1. Evidence of a Good faith marriage;

This meant that the victim has to show that at the time of marriage the victim and the abuser intended to establish a life together.²⁵ Due to the heightened number of factors a battered immigrant self-petitioner must prove to have the BSW approved, there have been relatively low levels of marriage fraud in the context of BSW applications. Domestic violence, battering or extreme cruelty, power, and coercive control provide strong evidence that the marriage is a good faith marriage.²⁶ The Immigration and Nationality Act does not define a “good-faith” marriage or provide guidelines for evaluating the bona fides of a marriage. However, a significant body of case law has developed concerning the interpretation of this requirement.²⁷ Other examples to show the intention of a good faith marriage includes:²⁸

- Birth certificate of children born to the marriage;
- Evidence of a lease or mortgage contract, affidavits of landlord and neighbors, showing joint occupancy and/or ownership of the couple’s communal residence;
- Financial records showing joint ownership of assets and joint responsibility for liabilities, such as joint savings and checking accounts, joint federal and state tax returns, insurance policies that show the other spouse as the beneficiary, joint utility bills, joint installment or other loans;
- Affidavits by people who have known both spouses since the conditional residence was granted, attesting to their personal knowledge of the marital relationship, in addition to the personal knowledge of their courtship or dating;
- Photographs from the wedding, family vacations, special events, holiday celebrations.

²³ George Bush: *Statement on Signing Immigration Act of 1990* (Nov. 29, 1990)

²⁴ Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C).

²⁵ See *Bark v. INS*, 511 F.2d 1200 (1975).

²⁶ See generally, Nawal Ammar, Helene Berman, Jacquelyn Campbell, Anindita Dasgupta, Mary Ann Dutton, Giselle Hass, Stephanie J. Nawyn, Leslye E. Orloff, Anita Raj, Rachael Rodriguez, Evan Stark, Jay G. Silverman, Cris M. Sullivan, David B. Thronson, Veronica Tobar Thronson, Hannah Brenner, J. Ruben Parra-Cardona, and Julia L. Perilla; *Social Science Research Documents the Need for VAWA Self-Petitions and U-Visas*, 10-11 (December 6, 2012). Available at <https://niwaplibrary.wcl.american.edu/pubs/traum-man-socialscienceresearchneedvawauvisa-12-06-12>

²⁷ 61 FR 13061, *Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children*. Available at <https://niwaplibrary.wcl.american.edu/pubs/vawa-rule>

²⁸ See General Filing Instructions to INS Form I-751.

2. Evidence of Battery or Extreme Cruelty by the abuser

This means that during the marriage the victim must provide documents that show that she has been subjected to battering or extreme cruelty. The victim must show as many of the following documents:²⁹

- Copy of reports or official records documenting the abuse or the effects of the abuse on the battered immigrant or her child issued by school officials and representatives of social service agencies;
- Medical records documenting the frequency and extent of any injuries;
- Police records of calls or complaints (e.g. police reports and 911 call tapes);
- Court records documenting arrests, convictions, or the issuance of protection orders;
- Affidavits from police, judges, medical personnel, school officials, battered women's advocates or shelter workers, mental health professionals treating the victim or her children, social services agency personnel, and witnesses to the domestic violence incidents documenting the emotional abuse or injuries that resulted from the abuse;
- An original evaluation by a professional such as a licensed social worker, psychologist, or psychiatrist to show extreme mental cruelty could be helpful but is not required;
- Copy of divorce decree if marriage was terminated by divorce on grounds of physical abuse or mental cruelty;
- Copy of the custody order if the decision to grant custody was based on a finding of domestic violence.

3. An affidavit with all the details of the relationship and in-depth details of the abuse

This should discuss her intention of marrying in good faith, giving details of how the relationship developed, when they got married, when the abuse started and details of the abuse etc. It should also cover specific hardships that have been experienced as a result of the abuse.

The BSW also included a confidentiality provision.³⁰ This was created to ensure the safety of battered immigrants by guaranteeing that a court order or the applicant's permission must first be obtained before any information from the application is released to someone besides the applicant, the applicant's representative, a Department of Justice official, or any state or federal law enforcement agency.³¹

However, the law did not provide a remedy for women whose spouses refused to file for conditional residency in the first place. This problem was however remedied by the Violence Against Women Act (VAWA 1994) when this legislation decided to include battered victims into the definition of eligible applicants.³² This allowed for battered spouse victims to file an application under VAWA petitions.

d. Creation and Benefits of the Vermont Service Center

In the justice system police officers, prosecutors, state criminal and family courts, and federal agencies play a crucial role when dealing with matters of domestic violence, and child and elder abuse victims. In between 1994 to 1997 the VAWA self-petitioning cases were adjudicated at the local district offices in the field. In 1996, in recognition of the need for specially trained adjudicators the Department of Justice noted that while the burden

²⁹ See General Filing Instructions for INS Form I-751.

³⁰ INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4).

³¹ 8 C.F.R. § 216.5(e)(3)(viii).

³² Pub. L. 103-322, 108 Stat. 1796 "Violence Against Women Act (VAWA) of 1994"

of proof to establish eligibility of self-petition lies with the applicant, adjudicators should give due consideration to the difficulties some self-petitioners may experience in acquiring documentation, particularly documentation that cannot be obtained without the abuser's knowledge or consent.³³

In early 1997 the Immigration and Naturalization Service (INS) recognised the need for specialised case processing of VAWA self-petitions. This was due to the fact that as the justice system personnel continued to gain expertise in efforts to protect victims and prosecute perpetrators, the view and beliefs previously held were neither accurate nor fully informed. Additionally, there were numerous complaints about INS District Offices mishandling, refusing to decide, losing and/or incorrectly denying VAWA self-petitioning cases.³⁴ Adjudicators needed to be trained to be aware that victims are not likely to have access to the range of documents available to the ordinary visa petitioner.³⁵

On April 7, 1997, INS published a notice in the Federal Register at 16607-08 establishing the Vermont Service Center (VSC) as the direct mail filing location for all Forms I-360 filed by self-petitioning battered spouses and children.³⁶ This approach taken was based on the best practices for domestic violence and sexual assault adjudications throughout the justice system. Additionally, the VSC was chosen because it had a good track record for handling VAWA self-petitions and it was extremely responsive to requests by victim advocates and attorneys to improve the processing and adjudication of VAWA cases. It had been long established that having a specialised unit composed of personnel with specialized training on domestic violence, sexual assault, stalking and human trafficking accomplishes three very important goals:³⁷

1. Improves and facilitates access to justice and protection for crime victims in a manner that protects their safety and is mindful of the urgency of their need for protection;
2. Strengthens the ability of police, sheriffs and prosecutors to detect, investigate and prosecute perpetrators and hold them accountable for their crimes, enhancing victim, community and officer safety; and
3. Ensures the expertise needed to detect patterns that enable adjudicators to ferret out and deny fraudulent cases while, at the same time, having the training that promotes recognition of patterns of coercive control and abusive behavior that simultaneously allows officers to identify and offer swift protections to victims filing valid cases under VAWA's immigration protections.

The unit was created “to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . .” to “[engender] uniformity in the adjudication of all applications of this type” and to “[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and

³³ See DOJ Memorandum on the Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents (April 16, 1996), available at <https://niwaplibrary.wcl.american.edu/pubs/doj-memo-imp-crime-bill-self-petition>

³⁴ See Letter from Leslye Orloff, Director of Program Development, Ayuda to T. Alexander Aleinikoff, Executive Associate Commissioner for Programs, Immigration and Naturalization Service (June 13, 1996) (regarding INS documenting field office adjudication problems in VAWA Self-Petitioning cases), available at: <https://niwaplibrary.wcl.american.edu/pubs/letter-to-alexander-aleinikoff>; see also Letter from T. Alexander Aleinikoff, Executive Associate Commissioner, Immigration and Naturalization Service, to Leslye Orloff, Director of Program Development, Ayuda, (Aug. 22, 1996) (regarding June 13, 1996 letter from Ayuda about VAWA Self-Petitioning cases), available at: <https://niwaplibrary.wcl.american.edu/pubs/letter-to-leslye-orloff-ayuda>

³⁵ Virtue, Office of General Counsel, "Extreme Hardship" and Documentary Requirements Involving Battered Spouses and Children, Memorandum to Terrence O'Reilly, Director, Administrative Appeals Office (Oct. 16, 1990), reprinted in 76(4) Interpreter Releases 162 (Jan. 25, 1999); see also VAWA Unit Letter to Michael Aytes from the National Network to End Violence Against Immigrant Women (February 18, 2009), available at: <https://niwaplibrary.wcl.american.edu/pubs/letter-to-michael-aytes>

³⁶ See the DOJ Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues (May 6, 1997), available at: <https://niwaplibrary.wcl.american.edu/pubs/doj-memo-supplemental-guidance-on-sp-process>

³⁷ For a discussion of the social science research explaining the why specially trained professionals are required to fairly adjudicate domestic violence and sexual assault cases based on an understanding of the dynamics of abuse and coercive control see generally NAWAL AMMAR, HELENE BERMAN, JACQUELYN CAMPBELL, ANINDITA DASGUPTA, MARY ANN DUTTON, GISELLE HASS, STEPHANIE J. NAWYN, LESLYE E. ORLOFF, ANITA RAJ, RACHAEL RODRIGUEZ, EVAN STARK, JAY G. SILVERMAN, CRIS M. SULLIVAN, DAVID B. THRONSON, VERONICA TOBAR THRONSON, HANNAH BRENNER, J. RUBEN PARRA-CARDONA, JULIA L. PERILLA, VAWA IV LEGISLATIVE HISTORY HOUSE MARK-UP RESEARCHER'S PERSPECTIVE ON IMMIGRATION PROTECTIONS FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT (2012), available at: <https://niwaplibrary.wcl.american.edu/pubs/traum-man-vawaivresearcherperspectiveondvandsa-05-15-12>

benefit granting agencies.”³⁸

a. Congressional Support for the VAWA Unit

During the Congressional Record in 2000, **Senator Orrin Hatch, Utah** noted:

*“We would expect that INS will take advantage of the expertise the Vermont Service Center has developing in deciding self-petitions and assign it responsibility for adjudicating these petitions even though they may be filed at U.S. embassies abroad.”*³⁹

In 2003 **Senator Patrick Leahy** noted that unlike T visas, which were decided at the VAWA VSC unit, the adjudication of U visas was adjudicated at the local service centers, which created inconsistent results.⁴⁰ He noted: *I am very proud of the work the VAWA unit has done with gender-related immigration petitions*

In relation to the amendment to VAWA 2005, the legislative history for the protection for immigrant victims is reported in two separate places. The House Judiciary Committee Report that accompanied the passage of VAWA 2005 in the house contains a detailed description of the history and purpose of the immigration protections contained in VAWA 2005. Some of the provisions included in the House bill, however, were not included in the final bill and the bill that emerged from conference and was signed into law contained some provisions that were not included in the House bill.

Thus, the legislative history of VAWA 2005’s immigration protections are made of two separate reports that are both included here.⁴¹ The first section below contains the text of the House Judiciary Committee Report. This is followed by John Conyer’s Extension of Remarks that were reported in the Congressional Record accompanying the conference report and passage of VAWA 2005. The Conyers Extension of Remarks includes much of the original language from the House Judiciary Report amended to reflect the section numbers and modification that were part of the final bill. At the end of the Conyer’s Extension or Remarks, Mr. Conyers included a chart that tracks, which section numbers in the final bill incorporated which section numbers of the House passed, bill.

i. *VAWA 2005 Legislative History House Judiciary Committee Report*⁴²

Section 911. Definition of VAWA Petitioner

- “This section defines a ‘VAWA petitioner’ as an alien who has applied for classification or relief under a number of provisions of the INA, including those who have filed self-petitions for permanent residence as the battered spouses and children of U.S. citizens and permanent residents and, pursuant to this bill, as the battered parents of U.S. citizens. Also included in this definition are applicants for certain benefits under

³⁸ H.R. REP. NO. 109-233, *supra* n. 50, at 116.; See 62 Fed. Reg. 16607– 16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002).

³⁹ 146 Cong. Rec. S10192 (2000)

⁴⁰ See the Statement of Senator Patrick Leahy: Announcement of DHS Transfer of all U Visa Adjudications to VAWA Unit of the Vermont Service Center (July 25, 2003), available at: <https://niwaplibrary.wcl.american.edu/pubs/senator-patrick-leahy-statement>

⁴¹ The following sections are numbered in the 900’s because they are taken from a Report from the House, and the House version of VAWA 2005 put its immigration related provisions in Title IX. The Senate version’s immigration related provisions were in Title VIII, and the Senate version of the bill became the final law. Thus, while many of the provisions discussed in the House Report still exist in the final version of VAWA 2005, the provisions in the final version will be numbered in the 800’s. To determine whether or not a particular section from the House Report is in the final version of VAWA 2005, and to determine the number of that provision in the final bill, please see the cross-referenced list provided in the Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005), available at: <https://niwaplibrary.wcl.american.edu/pubs/congressional-record-extension-remarks>

⁴² H.R. REP. NO. 109-233, *supra* n. 50, at 114-126

the Cuban Adjustment Act, the Haitian Refugee Immigrant Fairness Act ('HRIFA'), and the Nicaraguan Adjustment and Central American Relief Act ('NACARA')."⁴³

- In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created "to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . ." to "[engender] uniformity in the adjudication of all applications of this type" and to "[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies."⁴⁴
- "Consistent with these procedures, the Committee recommends that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§§202 or 203), and VAWA HRIFA petitions, 214(c)(15)(work authorization under section 933 of this Act), battered spouse waiver adjudications under 216(c)(4)(C) and (D), applications for parole of VAWA petitioners and their children, and applications for children of victims who have received VAWA cancellation."⁴⁵

ii. VAWA 2005 Final Bill-Legislative History Immigration Protections: Conyer's Extension of Remarks⁴⁶

*I want to emphasize the importance of the fact that the law assures that adjudication of all forms of immigration relief related to domestic violence, sexual assault, trafficking or victims of violent crime continue to be adjudicated by the specially trained VAWA unit.*⁴⁷

*In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created "to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . .", to "[engender] uniformity in the adjudication of all applications of this type" and to "[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies." See 62 Fed. Reg. 16607-16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. (See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002)). This specially trained VAWA unit assures consistency of VAWA adjudications, and can effectively identify eligible cases and deny fraudulent cases. Maintaining a specially trained unit with consistent and stable staffing and management is critically important to the effective adjudication of these applications.*⁴⁸

⁴³ H.R. REP. NO. 109-233, 146 Cong. Rec. H9046 (2000) 116.

⁴⁴ *Id.*; See 62 Fed. Reg. 16607- 16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A.

⁴⁵ H.R. REP. NO. 109-233, 146 Cong. Rec. H9046 (2000) 116.

⁴⁶ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605-E2609 (2005); John Conyer's also published an article on the history and purpose of VAWA 2005's immigration protections. See, John Conyers Jr. United States House of Representatives, *The 2005 Reauthorization of the Violence Against Women Act: Why Congress Acted to Expand Protections for Immigrant Victims*, Violence Against Women, Volume 13, Number 5, May 2007, pp. 457-468 available at <https://niwaplibrary.wcl.american.edu/pubs/vawa2005reauthorization> .

⁴⁷ H.R. REP. NO. 109-233, at E2606.

⁴⁸ H.R. REP. NO. 109-233, at E2606.

Consistent with these procedures, I recommend that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§202 or 203), and VAWA HRIFA petitions, 106 work authorization under section 814(c) of this Act), battered spouse waiver adjudications under 216(c)(4)(C), applications for parole of VAWA petitioners and their children and applications for children of victims who have received VAWA cancellation. I also encourage DHS to promote consistency in VAWA adjudications by defining references to “domestic violence” in the INA as “battery or extreme cruelty,” the domestic abuse definition codified in the Violence Against Women Act of 1994 (“VAWA 1994”), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) and regulations implementing the battered spouse waiver.⁴⁹

b. Efficacy of the Specialized VAWA Unit in Processing Battered Immigrants’ Applications for Immigration Relief

The primary goal in creation of the VAWA Unit was to establish a centralized system that uniformly handled VAWA cases in an efficient manner and with the utmost care. Creation of the VAWA Unit at the VSC also provided a centralized “clearinghouse⁵⁰ with the capacity to implement 1996 welfare provisions which make certain battered aliens -- including self-petitioners and others -- eligible for public benefits,”⁵¹ and to implement VAWA confidentiality protections that became law as part of 1996 immigration reform legislation.⁵² The creation of the specialized unit enhanced the safety and security of victims by ensuring that a properly trained expert who understood the serious nature of domestic violence and the impact on its victims would adjudicate their VAWA cases. The Unit was also trained on “how batterers use their authority over victims’ immigration status to control victims and prevent them from seeking assistance from the criminal justice system.”⁵³ With the specialized personnel, the VAWA unit has been able to timely complete VAWA petitions, adjudicate prima facie determinations, and adjudicate requests for employment authorization.⁵⁴

USCIS in their own **2010 report** on the Vermont Service Center acknowledged the competency of the VAWA Unit. They noted the following:

“By creating a specialized VAWA Unit composed of non-rotating staff, it operates in a similar

⁴⁹ H.R. REP. NO. 109-233, at E2606.

⁵⁰ Memorandum from Paul Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, to Regional Directors, District Directors, Officers-in-Charge, & Service Center Directors, Immigration and Naturalization Service, Supplemental Guidance on Battered Alien Self-petitioning Process and Related Issues 2 (May 6, 1997), available at: <https://niwaplibrary.wcl.american.edu/pubs/doj-memo-supplemental-guidance-on-sp-process>

⁵¹ Memorandum from Paul Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, to Regional Directors, District Directors, Officers-in-Charge, & Service Center Directors, Immigration and Naturalization Service, Supplemental Guidance on Battered Alien Self-petitioning Process and Related Issues 2 (May 6, 1997), available at: <https://niwaplibrary.wcl.american.edu/pubs/doj-memo-supplemental-guidance-on-sp-process>

⁵² *Id.* at 4; See also Memorandum from Paul Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, to All INS Employees, Immigration and Naturalization Service, Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384 (May 5, 1997), available at: <https://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-insconfvawamemo-05-05-1997>

⁵³ Battered Immigrant Women Protection Act of 1999: Hearing on H.R. 2083 Before the Subcomm. On Immigration and Claims of the H. Comm. On the Judiciary, 106th Cong. (2000) (statement of Barbara Strack, Acting Executive Associate Commissioner for Policy and Planning, Immigration and Naturalization Service), available at: <http://judiciary.house.gov/legacy/stra0720.htm>.

⁵⁴ Rocio Molina, Leslye E. Orloff and Benish Anver, How Training and Expertise Improve VAWA Immigration Case Processing: The Efficacy and Legislative History of the Specialized VAWA Unit (January 6, 2015) <https://niwaplibrary.wcl.american.edu/pubs/efficacy-legislative-history-specialized-vawa-unit>; See also Memo to Grace Carswell, Vermont Service Center, From Now Legal Defense and Education Fund on the VAWA Unit (March 28, 2001), available at <https://niwaplibrary.wcl.american.edu/pubs/letter-to-grace-carswell>

manner to the domestic violence units around the country where the judges, prosecutors, and court personnel are permanent, well-trained, and well-versed staff in domestic violence law. With specialized personnel who have committed themselves to the plight of battered women, domestic violence units across the country are making great progress by efficiently moving cases through the judicial system while presenting as much specialized assistance to the victims as possible.

Maintaining a permanent VAWA Unit staff also furthers the mission and goals of USCIS to provide accuracy, consistency, uniformity, and reliability, and helps to prevent USCIS from committing accidental violations of confidentiality. Without the well-trained and specialized staff working in the VAWA Unit, it would be difficult for USCIS to process each application timely, efficiently, fairly, and with victim safety in mind. Devoting expert staff to VAWA cases also provides another means of detecting fraudulent applications. Despite a high volume of VAWA cases received, expert adjudicators who handle domestic violence cases on a daily basis are best suited to distinguish a legitimate application by a pro se applicant from a fraudulent application. The VAWA Unit staff are able to share information with one another about cases, which helps them identify patterns and dynamics among both the valid, approvable applications and the fraudulent ones. Since specialized staff share information with each other, each case is adjudicated in an appropriate, consistent, and timely manner, and the fraudulent cases are addressed quickly. Further, they can do this while preserving victim safety and without the risk of violating the special confidentiality provisions that apply to VAWA cases. In this regard, the Unit has experienced such success that USCIS has centralized the adjudication of all human trafficking-related and crime victim-related petitions at the VSC as well.⁵⁵

IV. Conclusion

There is concrete evidence that foreign-born women are at a higher risk for homicide from an intimate partner.⁵⁶ This is due to the clash of culture, language barriers and the issue of fear and deportation, in particular to women who are immigrants and undocumented. Domestic violence abuse rates rise to almost three times the national average when a foreign born woman is married to U.S. citizen man. Without any specialized training to fully understand the implication of such abuse for immigrants, inexperienced adjudicators may not recognize the more subtle signs of trauma and other patterns of abuse, including immigration related abuse,⁵⁷ threats of deportation, to turn the victim in for immigration enforcement and/or to withdraw papers the perpetrator filed for the victim constitute immigration related abuse.⁵⁸ Such abuse is ten times higher in physically and sexually abusive relationships than in emotionally abusive relationships.⁵⁹

BSW applicants, with their children, are each immigrants married to a U.S citizen or lawful permanent resident. The citizen or lawful permanent resident spouse, were they not an abuser would have continued the application on behalf of the immigrant for lawful permanent residency, based on proof of the immigrant's good faith marriage to a U.S. citizen or lawful permanent resident. Congress determined the need for a specially trained unit within DHS to curb the issues identified above, and to ensure access to relief for those who are

⁵⁵ U.S Department of Homeland Security, *Report on the Operations of the Violence Against Women Act Unit at the USCIS Vermont Service Center Report to Congress October 22, 2010*, <https://niwaplibrary.wcl.american.edu/pubs/report-vawa-uscis-vermont-service-center>

⁵⁶ Victoria Frye, Sandro Galea, Melissa Tracy, Angela Bucciarelli, Sara Putnam, and Susan Wilt, The Role of Neighborhood Environment and Risk Femicide of Intimate Partner in a Large Urban Area, *American Journal of Public Health*, August 2008, Vol. 98, No 8, pp1473-1479.

⁵⁷ Giselle Aguilar Hass, Mary Ann Dutton and Leslye E. Orloff, Lifetime Prevalence of Violence Against Latina Immigrant: Legal and Policy Implications, *Domestic Violence: Global Responses*, pp. 93-113 2000 A B Academic Publishers Printed in Great Britain available at <https://niwaplibrary.wcl.american.edu/pubs/lifetime-prevalence-dv-latinas>

⁵⁸ *Id.*

⁵⁹ Mary Ann Dutton, Leslye Orloff and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications, 2 *GEO. J. GENDER & L* 245 (2000), available at: <https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors>

eligible under VAWA.⁶⁰ The specialized nature of the VAWA Unit allows adjudicators to be more effective detecting fraud due to specialized training that equips them with the knowledge they need to easily identify patterns in fraudulent claims that come before them. With the proposed training in place, adjudicators in the VAWA Unit will acquire the knowledge necessary to properly discern credibility issues, effectively work with victims of abuse, and note that it requires them to understand the victim's fear for herself, for her children, her sense of guilt and shame, which are further complicated by ongoing threats of deportation from her abuser, which then prevents her from seeking help and cooperating with law enforcement.⁶¹

⁶⁰ Office of Policy and Planning, "Strategic Plan Toward INS 2000." U.S. Immigration and Naturalization Service, 1994, p. 116

⁶¹ Ann Shalleck, Theory and Experience in Constructing the Relationship between Lawyer and Client: Representing Women who have been abused, 64 TENN. L. REV. 1019, 1046-47 (1997).

V. APPENDIX A: Illustrative Stories from the Field

a. Effects of delays on BSW applicant's personal life

- **Idaho- Dual Sexual Assault and Domestic Program Organization**
Basically froze them out of being able to set out on their own - delays meant they couldn't necessarily work or apply for benefits.
- **Kentucky Emily Jones-Kentucky Refugee Ministries**
The uncertainty of her situation caused severe stress for client. State court did not understand client's immigration status in the divorce/custody proceedings so immigration attorney spent many hours explaining to family law attorney information about the process and the US immigration system because of course USCIS required proof of finalized divorce before granting the waiver.
- **California-Luce-Hollingsworth Organization**
Her and her child's life were in limbo because she wasn't sure if she'd be approved. Slept and ate little.

b. Stories about client's experiences in filing BSW that illustrate problems with the current process and the need to move cases to the Vermont Service Center

- **Idaho- Dual Sexual Assault and Domestic Program Organization**
Our local PDs encourage people to not start filing for divorce until AFTER they receive a BSW or U-visa otherwise the PD thinks they have to report the clients to ICE for possible deportation. This sort of belief and the following delay of divorce only help the abuser as it reinforces the abuser's own belief that they own the client.
- **California-Alyson Messenger-Jenesse Center**
During a BSW the interviewer in my client's BSW case displayed a complete lack of understanding regarding the law and the dynamics of domestic violence. She seemed focused on questioning the validity of the marriage; specifically focusing on whether the parties lived together following the marriage (there was ample evidence that they did), and did not recognize that evidence of abuse validates the marriage. It was a very disappointing and demoralizing experience for my client, and we still have not received a decision. I believe my client's case would have been handled differently were it processed at the Vermont Services Center where the reviewers are specially trained in issues related to immigrant victims of domestic violence and sexual assault.
- **California-Luce-Hollingsworth Organization**
I was hoping that the interview was just because her case got lost in the shuffle and that since her one-year extension was set to expire in March 2016, they were going to adjudicate it at the interview. My pessimistic side, however, was worried that they were taking into account her husband's letter, which ended up being the case. I also was unable to bring an Armenian translator for the interview because our service center was still closed for the holidays. The client's English was pretty good at this point however and I expected that if we had trouble, the officer would use language line. The officer questioned her English, rolled her eyes, and refused to use language line. From the start of the interview, the officer was extremely insensitive and made it clear that the purpose was to find out if the marriage was bona fide. During much of the interview, my client was crying to the point of hyperventilating. The officer also admitted multiple times to not have read the file before the interview when I tried to point to evidence in

the original petition that I brought with me. The officer kept the door open throughout the interview despite my protests, and a couple of times other officers were right outside the hallway joking around. This went on for over an hour until finally she brought up the husband's letter. I too brought a copy of the letter, brought it out, and informed the officer that we had it because her husband threw it at her after he lost the restraining order hearing. In fact, if she checked the date the letter was sent to CIS, it would probably correspond with the date of the hearing. I conveyed to her again that this was a typical pattern of abuse by the husband. The officer stated again, flippantly, that she had not read the file. Then she turned to my client and asked if she poisoned her husband. At the end of the interview, the officer stated that we would get an answer within 90 days and that there was no need to get another one-year extension. She also asked my client if she has any more character letters or pictures showing the 'happy couple'. I let her know that there were multiple letters in the original petition and we gave her all of the pictures we had and explained to her again that everything she owned except the clothes on her back were taken when he towed her car from the DV service center that she fled to. We received the approval in just less than 90 days but have yet to receive the permanent resident card - it has been three weeks since approval.

- **Virginia-Leslie Moncada-Empower House**

A client had a diplomatic visa, she collaborated with the police and detectives of domestic violence, she showed enough evidence of cruelty, sexual abuse and the abuser used drugs in the food and drink of it, he did to her videos abuse. She handed all the evidence, but the abuser fled the country and she became frustrated because he was exposed it was impossible to give more help with her immigration situation

- **Tennessee-Rose Hernandez-Saev Hernandez Immigration Practice**

The Request for Further I received appears to basically require evidence of commons financial assets. This disregards the abuse dynamic of the petitioner excluding his spouse from their finances. She had no access, and he even hid assets. This is something regular I-751 adjudicators are not trained to deal with.

- **Kentucky-Emily Jones-Kentucky Refugee Ministries**

My client had to respond to accusations that her perpetrator told the USCIS field office in her interview. It was very traumatic for her because she was terribly afraid of her husband being able to take her child and deport her and when she heard that he had talked to immigration she nearly broke down.

- **Georgia-Jennifer Hamamoto-Latin American Association**

I had one officer accuse my client of not having good faith marriage, even after we explained that due to the circumstances of leaving in a hurry after the abuse, victim left good faith marriage evidence behind.

- **Missouri- Jessica Mayo-MICA Project**

Our one completed case showed clear evidence that the adjudicating officer did not understand the dynamics of domestic violence in an extreme cruelty case

- **New York**

Local officers are not deeply trained on VAWA issues and ask inappropriate questions. They also never seem to get the file before we sit down to the interview itself. They feel rushed and our clients are stressed out.

- **Michigan**

On 4 out of the 5 cases, we've had to re-send the entire packet of proof in responding to the RFE issued by the California Service Center. It delays the case and it seems as if the adjudicator didn't even read our packet and/or deemed it insufficient. Dealing with the California Service Center on BSW cases is

difficult and often involves responding to boilerplate RFEs that disregard all evidence already submitted. It seems as though the standard of proof is much higher at the CSC for proving extreme cruelty.

- **Alaska- Heather Stenson-Alaska Immigration Justice Project**

The local office has next to no knowledge regarding DV. The CSC appears to have very little knowledge regarding DV. VSC should absolutely, absolutely be the ones to adjudicate BSPs. Because my office's past experiences with BSWs have been so poor, we regularly advise clients whose cases won't be approved on a BSW basis to file for divorce and file with a divorce waiver (this is not, of course, the case if the client wishes to remain married to the batterer or has an employment or travel-related need to file before a divorce is finalized). We still submit DV evidence in the divorce waiver, both as GFM evidence and to explain the lack of "primary" GFM evidence.