

Promoting Safety Through Successful Family Court Outcomes When Family and Immigration Laws Intersect

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Opportunities to enhance just outcomes for immigrant victims and children

- In a range of cases
 - Protection orders
 - Custody and modification
 - Abuse, neglect, abandonment
 - Child support
 - Divorce



Legal Immigration Status Options for Non-citizen Crime Victims and Children

- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- Asylum
 - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
 - Domestic violence as gender based asylum
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers
- DHS Prosecutorial Discretion
 - “low priority” for removal immigrants -- survivors, witnesses, parents, children, elderly, disabled
 - Humanitarian detention release

Materials overview of remedies - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits>

Under immigration law victims of “battering *or* extreme cruelty” have access to immigration relief

- Any state crime committed against a family member sufficient for issuance of a protection order including sexual abuse, stalking, threats, attempts *AND/OR*
 - Emotional abuse, economic abuse,
 - Using children,
 - deportation threats and immigration related abuse,
 - intimidation, social isolation,
 - degradation, possessiveness,
 - harming pets,
 - coercive control

Immigration Relief Brings Victims:

- Protection from deportation
- Legal work authorization
 - Approval or wait list approval
- Drivers' Licenses
- Access to some federal or state public benefits
 - Varies by state and by immigration case type
- VAWA confidentiality protection upon filing VAWA, T or U visa case
- Improves outcomes removes impediments in the family law case

State by State Immigrant Demographics and Benefits Options

- To see who is a member of your community and the options you have to best help them visit www.niwap.org/benefitsmap
- To locate programs in your community with expertise serving immigrant victims and children visit <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

IMMIGRANT VICTIMS IN FAMILY COURTS

Protecting Immigrant Mothers, Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Materials Immigrant Victims and Custody Bench Card -<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law>

Improved Outcomes for Immigrant Victims in Family Court

- Identify potentially eligible immigrants
 - DHS brochures
- Advocate for language access
- Provide court accurate information about current immigration laws/policies/practices
- Federal immigration law role
 - U visa certification
 - Special Immigrant Juvenile Status findings

Impact of State Court Orders on the Immigration Case

- Specific written orders are helpful to immigration adjudicators and immigrant parties
- Court orders contain evidence of
 - Abuse, abandonment, neglect
 - Family relationships including marriage
- Divorce can result in an immigrant family member being denied immigration relief
 - Tactic used by perpetrators of spouse, child, elder abuse
- Annulment instead of divorce can set up a spouse for a federal marriage fraud prosecution

CUSTODY

Is Immigration Status Relevant to Custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- Not relevant to:
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent



Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a Constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

Myth vs. Fact:

Parents Without Legal Immigration Status

Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

Fact

1. DHS policies prevent detention/removal of immigrant parents who are:
 - Parents of U.S. citizen/Lawful permanent resident children
 - Primary caretaker parents of minor children without regard to the child's immigration status
2. Legal immigrants/naturalized citizens are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.

How Immigrant Parents End Up In Department of Homeland Security Custody

- Abusers/crime perpetrators/employers report them
 - VAWA self-petitions 38.3%; U visas 26.7%
- Traffic stops
 - VAWA self-petitions 28.6%; U visas 30.1%
- Immigration enforcement at the worksite
- CPS, welfare workers, health care providers, others
- Victims call the police for help and police
 - Make a dual arrest;
 - Fail to obtain qualified interpreter and arrest the victim
 - Under Secure Communities program all arrested persons reported to DHS

Parental Interest Directive Aug 2013

- If parents are detained:
 - Placement near children and family court
 - Bring parents to family court to participate in cases involving children
 - Facilitate visitation
 - Help children travel with deported parent – obtain passports for children
 - Bring deported parents back to the US for custody and parental rights cases

PROTECTION ORDERS



Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Beneficial Findings to Include When Issuing Protection Orders

- In contested cases
 - Physical, sexual and emotional abuse of immigrant, their child or step-child
- In all cases showing an:
 - Existence of parent/child or spousal relationship by checking this box on standard court orders
- Include creative remedies

Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Economic relief
 - Child/Spousal support
 - Affidavit of support
- Health insurance

Child Support

Immigrant Victims' Economic Challenges

- Many forms of visas do not allow spouses and children of visa holders to work in the United States
 - Employment visas (H)
 - Student visas (F)
 - Diplomatic visas (A)
 - International organizations (G)
 - Investor visas (E)
- Immigrant crime victims have limited access to public benefits

Work Authorization for Spouses of Immigrant Visa Holders (3/8/16)

- **A-1, A-2, and A-3**: Foreign government *diplomats* and *officials* + immediate family members, attendants, servants, personal employees;
- **E-3**: *Australian specialty occupation* workers;
- **G-1, G-2, G-3, G-4, G-5**: *Employees of foreign governments and international organizations* officials + immediate family members, attendants, servants, personal employees
- **H-1B, H-1B1, H-2A, H-2B, H-3, H-4**: *Specialty occupation workers*, Free Trade Agreement professionals from Chile and Singapore, temporary agricultural and non-agricultural workers, trainees and special education exchange visitors, and immediate family members of specialty occupation workers

To File

- Applicant is on an A, E, G or H visas
- One of the following required
 - Marriage to spouse with A, E, G, H visa OR
 - Death of visa holder w/in 2 years
 - Dissolution of marriage or abusive spouse lose of status w/in 2 years +
 - Connection to the abuse
- Battering or extreme cruelty by A, E, G, or H visa holder of the immigrant spouse or the immigrant spouse's child/step-child
 - Abuse only proven on initial application

Affidavit of Support

- Citizen & Lawful permanent resident spouses submit an Affidavit of Support to the Department of Homeland Security in family based immigration cases
- The Affidavit of Support
 - Promise to support the family member for up to 10 years or until they become a US citizen
- Includes:
 - 3 years of tax information,
 - evidence of current employment including self-employment, and
 - proof of income over 125% of poverty

Affidavit of Support

- Courts have relied on the Affidavit of Support as
 - Evidence of income,
 - ability to pay &
 - obligation to support spouse/child
 - Walsh v. Walsh, 764 N.E.2d 1103 (Ohio Ct. App. 2001)

Immigration Issues Arising in Child Support Cases

- Payment of child support through the court provides a non-citizen parent with a history of child support payments that will be helpful evidence of good moral character for immigration cases
 - Cancellation of removal
 - Naturalization
 - Relief in immigration court can be used to show hardship to family members

Immigration Issues Arising in Child Support Cases

- Court ordered child support provides a custodial immigrant parent with evidence of child support that can be used as income in lawful permanent residency cases (avoiding public charge)

Immigration Issues Arising in Child Support Cases

- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related offenses as crimes of moral turpitude
- Lack of legal work authorization is non a valid defense to non-payment of child support
 - *Asal v. Asal*, 960 P.2d 849, 850 – 851 (Okla. 1998)
- Courts have found employers who willfully violate wage withholding orders liable to the custodial parent for the amount of child support ordered withheld.

Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on Child Support Guidelines and
 - Actual earnings
 - Employer's statements
 - Evidence of earning capacity
 - Attributed income (e.g. minimum wage)
- Undocumented workers can pay state and federal taxes on income earned using an IRS issued Tax ID number

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/IVAT2016 and
 - The NCJFCJ conference app
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

Questions

