



Fact Sheet

Oct. 27, 2010

Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa

Purpose

Immigrants are particularly vulnerable to domestic violence because they may not speak English, are often separated from family and friends, and may not understand the laws of the United States. For these reasons, immigrants are often afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

This fact sheet will explain domestic violence and inform you of your legal rights in the United States. The International Marriage Broker Regulation Act (IMBRA) requires that the U.S. Government provide foreign fiancé(e)s and spouses immigrating to the United States with information about their legal rights as well as about the criminal or domestic violence histories of their U.S. citizen fiancé(e)s and spouses. One of IMBRA's goals is to provide accurate information to immigrating fiancé(e)s and spouses about the immigration process and how to access help if their relationship becomes abusive.

Questions & Answers

PART I:

Legal Rights and Resources Available to Immigrant Victims of Domestic Violence and Other Crimes in the United States

1. What is domestic violence?

Domestic violence is a pattern of behavior when one intimate partner or spouse threatens or abuses the other partner. Domestic violence may include physical harm, forced sexual relations, psychological and emotional abuse, tactics of isolation (such as controlling who you talk to or where you go) or intimidation, economic abuse (such as withholding support) and/or immigration related abuse or threats (such as refusing to file applications to give you legal immigration status, or threatening to call immigration authorities to get you removed from the United States if you report abuse). Domestic violence often increases victims' dependence on abusers, making it difficult for victims to leave. While most recorded incidents of domestic violence involve men abusing women or children, men can also be victims of domestic violence.

Domestic violence may include sexual assault, child abuse, and other violent crimes. Sexual assault is any type of sexual activity that you do not agree to, even with your spouse, and can be committed by anyone. It includes unwanted touching of your intimate parts as well as rape or attempted rape. Child abuse includes: physical abuse (any injury that does not happen by accident, including excessive punishment), physical neglect (failure to provide food, shelter, medical care or supervision), sexual abuse, and emotional abuse (threats, withholding love, support or guidance).

Under all circumstances, domestic violence, sexual assault, and child abuse are illegal in the United States. All people in the United States (regardless of race, color, religion, sex, age, ethnicity, national origin, or immigration status) are guaranteed protection from abuse under the law. Any victim of

domestic violence – regardless of immigration or citizenship status – can seek help. An immigrant victim of domestic violence may also be eligible for immigration related protections.

If you are experiencing domestic violence in your home, you are not alone. This pamphlet is intended to help you understand U.S. laws and know how to get help if you need it.

2. What are the legal rights for victims of domestic violence in the United States?

All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. U.S. laws that apply to families give you:

- The right to obtain a protection order for you and your child(ren).
- The right to legal separation or divorce without the consent of your spouse.
- The right to share certain marital property. In cases of divorce, the court will divide any property or financial assets you and your spouse have together.
- The right to ask for custody of your child(ren) and financial support. Parents of children under the age of 21 often are required to pay child support for any child not living with them.

Consult a family lawyer and an immigration lawyer who works with immigrant victims of domestic violence to understand how any of these family law options may affect or assist you.

Under U.S. law any crime victim, regardless of immigration or citizenship status, can call the police for help or to obtain a protection order.

Call the police (dial “911”) if you or your child(ren) are in danger. The police officers may arrest your fiancé(e), spouse, partner, or another person if they believe that person has committed a crime. You should tell the police officers about any abuse that has happened, even in the past, and show any injuries. If the police officers do not speak your language, find a safe person to interpret for you, or to help you ask the police officers to get an interpreter. Anyone, regardless of immigration or citizenship status, may report a crime.

Likewise, if you are a victim of domestic violence you can apply to a court for a protection order. Through a protection order (also called a “restraining order”), the court can order your abuser not to call, contact, or hurt you, your child(ren), or other family members. If your abuser violates the protection order, you can call the police. Applications for protection orders are available at most courthouses, women’s shelters, and legal service offices, as well as at some police stations.

If your abuser accuses you of a crime, you have basic rights, regardless of your immigration or citizenship status, including: the right to talk to a lawyer (the government will appoint one for you if you cannot afford one); the right to not answer questions without a lawyer present; and the right to speak in your defense. It is very important to consult with both an immigration lawyer and a criminal lawyer to understand how a criminal plea or conviction could affect your immigration status.

Remember: a protection order does not guarantee your safety. In fact, taking action to end an abusive relationship can often lead to greater danger because it angers the abuser to lose control over the victim. To help improve your safety, you should work with a domestic violence specialist to prepare a “safety plan” that considers all possible escape routes from your home, identifies places you can go for help, and sets aside critical items you need to take with you (such as money, emergency contact information, and important documents, including immigration related documents).

3. What services are available to victims of domestic violence and sexual assault in the United States?

In the United States, victims of crime, regardless of immigration or citizenship status, can access help provided by government or non-governmental agencies, which may include counseling, interpreters, safety planning, emergency housing, and even monetary assistance.

The “hotlines” listed below have operators trained to help victims 24 hours a day, 7 days a week. “Helplines” that operate during normal business hours can also assist victims. All use “toll-free” numbers (free of charge). Interpreters are available and these numbers can connect you with other free services for victims in your local area, including emergency housing, medical care, counseling, and legal assistance. If you cannot afford to pay a lawyer you may qualify for free or low-cost legal assistance for immigrant victims of domestic violence or other crimes.

Hotlines (available 24 hours a day, 7 days a week):

National Domestic Violence Hotline

1-800-799-SAFE (1-800-799-7233)

1-800-787-3224 (TTY)

www.ndvh.org

National Sexual Assault Hotline of the Rape, Abuse and Incest National Network (RAINN)

1-800-656-HOPE (1-800-656-4673)

www.rainn.org

National Center for Missing and Exploited Children

1-800-THE-LOST (1-800-843-5678)

www.missingkids.com

Helpline (available 8:30 am to 8:30 pm (Eastern Standard Time)):

The National Center for Victims of Crime

1-800-FYI-CALL (1-800-394-2255)

1-800-211-7996 (TTY)

www.ncvc.org

If you are in danger, do not call a hotline or helpline – dial “911” to reach your local police immediately.

4. What is human trafficking? What services are available to victims of human trafficking in the United States?

Human trafficking is also known as “modern-day slavery,” and is illegal in the United States. Human trafficking and other forms of exploitation can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts. Victims can access many of the same free services described above. For help regarding human trafficking, contact the following toll-free hotline and complaint line (interpreters are available):

National Human Trafficking Resource Center

1-888-373-7888

(Available 24 hours a day, 7 days a week)

Trafficking in Persons and Worker Exploitation Task Force Complaint Line, U.S. Department of Justice

1-888-428-7581

(Available Monday through Friday, 9 am to 5 pm (Eastern Standard Time))

PART II:
**Facts about Immigrating on a Marriage-Based Visa and
Immigration-Related Options for Immigrant Victims of Domestic Violence and Other Crimes**

5. How does the marriage-based immigration process work?

The marriage-based immigration process involves several steps to obtain legal immigration status in the United States, and over time, to be eligible for citizenship. These steps depend on the type of marriage-based visa you travel on to the United States, as well as other factors. The following information is an overview of some of these types of visas, as well as information on your legal rights.

K-1 nonimmigrant status (as the fiancé(e) of a United States citizen): you are required to either marry the United States citizen who sponsored your visa within 90 days of entry or to depart the United States. Following your marriage to the U.S. citizen-sponsor, you must file an Application to Register Permanent Residence or Adjust Status (Form I-485). If your Form I-485 is approved, your status will be adjusted from a K nonimmigrant to that of a conditional permanent resident (a conditional “green card” holder). You will have that conditional status for two years.

If you remain in the U.S. without marrying the U.S. citizen who sponsored your K-1 visa, or marry someone else, you will violate the terms of your visa, have no legal status, and may be subject to removal proceedings or other penalties.

K-3 nonimmigrant status (as the spouse of a United States citizen): you are allowed to enter the United States temporarily while waiting for approval of a family-based visa petition (Form I-130). Once the Form I-130 is approved, you are entitled to lawful permanent residence (a “green card”) and will need to file an Application to Register Permanent Residence or Adjust Status (Form I-485).

All other marriage-based immigration status holders should refer to the information given to them from the U.S. consulate. Additional information may be found online at www.uscis.gov.

6. If I am married to a U.S. citizen who filed immigration papers on my behalf, what is my immigration status?

If you have been married less than 2 years when your Form I-485 is approved, you will receive a conditional permanent residence status or “green card” from USCIS. Ninety (90) days before the second anniversary of your conditional permanent residence, you and your spouse must apply together (Form I-751) to remove the conditions on your lawful permanent residence. To do so, you must prove the marriage is in “good faith” and valid. Once the conditions are removed, you have lawful permanent residency that is not dependent on your U.S. spouse.

If you have been married more than 2 years when your Form I-485 is approved, you will receive lawful permanent residence status from USCIS. On that date you will no longer be dependent on your U.S. citizen spouse for immigration status.

There are three situations when the law allows conditional permanent residents to request a waiver of the requirement that you and your spouse file jointly to request removal of the conditions:

- 1) Your spouse died or the marriage was terminated due to divorce or annulment; OR
- 2) The termination of your status and your removal from the U.S. would result in extreme hardship; OR
- 3) During the marriage you were battered or subjected to extreme cruelty by your U.S. citizen or lawful permanent resident spouse.

All three waivers are also filed on Form I-751 and require you to prove your marriage was in “good faith” and not fraudulent.

7. If I am a victim of domestic violence, sexual assault, or other crimes, what immigration options are available to me?

Depending on the circumstances, there are several ways that immigrants who become victims of domestic violence, sexual assault, and some other specific crimes may apply for legal immigration status for themselves and their child(ren). A victim’s application is confidential and no one, including an abuser, crime perpetrator, or family member, will be told that you applied.

- **Self-Petitions under the Violence Against Women Act (VAWA)** (Form I-360):
 - For spouses and children of abusive U.S. citizen or lawful permanent residents who have subjected them to battery or extreme cruelty.
 - Also available to parents of abusive U.S. citizen children (if children are over 21).
 - Allows the victim to apply for legal permanent residency without the help or knowledge of the abuser.
- **Battered Spouse Waivers under VAWA** (Form I-751):
 - For a conditional permanent resident who has been subjected to battery or extreme cruelty by a U.S. citizen or lawful permanent resident spouse.
 - Allows the victim to remove the conditions on permanent residence without the help or knowledge of the abusive U.S. citizen or lawful permanent resident spouse.
- **Cancellation of Removal under VAWA** (requested in immigration court):
 - For spouses and children of abusive U.S. citizens who have subjected them to battery or extreme cruelty and who are in removal proceedings before an immigration judge.
 - Also available to the parent of a child or step-child who is abused by a U.S. citizen.
 - Among other requirements, victim must have been in the United States for longer than 3 years, and show that removal will cause the victim extreme hardship.
 - Allows the victim to request that the immigration judge cancel the removal proceedings and grant the victim lawful permanent residency.
- **U-nonimmigrant status (crime victims)** (Form I-918)
 - For victims of certain serious crimes, including domestic violence, who have suffered substantial mental or physical abuse as a result of criminal activity in the United States.
 - Requires victims to cooperate in the criminal investigation or prosecution.
 - Allows victims to receive a “U visa,” and, after 3 years, if they can prove humanitarian need, public interest, or family unity reasons, to apply for lawful permanent residency.
- **T-nonimmigrant status (victims of human trafficking)** (Form I-914)
 - For victims who have been subjected to severe forms of sex or labor trafficking.
 - Requires victims to cooperate in the criminal investigation or prosecution.
 - Allows victims to receive a “T visa,” and, after 3 years, to apply for lawful permanent residency.

These immigration options each have further specific requirements that must be established. For more information and a flyer specifically on “Immigration Options for Victims of Crimes,” please visit the “Humanitarian” section of the USCIS website (www.uscis.gov).

Consult an immigration lawyer who works with victims of domestic violence to discuss how any of these immigration options may affect or assist you.

8. In what other ways does the U.S. government try to inform foreign fiancé(e)s and spouses about their rights and protect them and their children from abuse?

As mentioned above, the International Marriage Broker Regulation Act of 2005 (IMBRA) is a law in the United States that changed the marriage-based immigration process to help foreign fiancé(e)s and spouses. IMBRA responded to concerns that some U.S. citizen-sponsors of foreign fiancé(e) and spouse visas have a history of domestic violence, sexual assault, child abuse, or other crimes of which their foreign fiancé(e) or spouse is unaware. IMBRA mandates that the U.S. Government give immigrating foreign fiancé(e)s and spouses information and self-help tools to help protect them against violence from the partners who sponsor their visas. Immigrating fiancé(e)s and spouses are often unfamiliar with the U.S. laws and unsupported by family or friends who could help them escape violence at home.

IMBRA required this pamphlet be written and distributed to tell you about laws and services that can help you in the United States if you are abused. IMBRA prevents U.S. citizens from simultaneously sponsoring visas for multiple foreign fiancé(e)s, and places overall limits on how many times (twice) and how often (2 years apart) U.S. citizens may sponsor such visas. A U.S. citizen may seek a waiver of these limits. However, a waiver will ordinarily not be granted if the U.S. citizen has a history of violent crimes. IMBRA requires the U.S. government to give foreign fiancé(e)s and spouses of U.S. citizens a copy of the criminal background check that USCIS does on U.S. citizen-sponsors, as well as a copy of the visa sponsorship application.

9. How does the U.S. government regulate “International Marriage Brokers”?

If an agency offering dating or matchmaking services qualifies as an “international marriage broker,” it is prohibited from doing business with you if you are under 18 years of age. The international marriage broker is required to give you certain marital and criminal background information on the U.S. client who wants to contact you, including information contained in federal and state sex offender public registries, and get your written permission before giving the U.S. client your contact information. The international marriage broker is also required to give you a copy of this pamphlet.

10. Can I rely on the criminal background information on my U.S. citizen fiancé(e) or spouse?

The criminal background information compiled by the international marriage broker is self-disclosed by the U.S. client, or comes from various public sources. The criminal background information compiled by USCIS is also self-disclosed by the U.S. citizen-sponsor on immigration applications, or comes from a limited set of government databases. USCIS does not have access to all criminal history databases in the United States. The U.S. client or citizen-sponsor may not tell the truth to the international marriage broker or on the sponsorship application. It is also possible the U.S. client or citizen-sponsor has a history of abusive behavior but was never arrested or convicted.

Therefore, the criminal background information you receive, either from the international marriage broker or from USCIS, may not be complete. The intent of IMBRA is to provide available information and resources to foreign nationals using international marriage brokers and to immigrating fiancé(s) and spouses. Ultimately, you are responsible for deciding whether you feel safe in the relationship.

11. What are the penalties for marriage fraud?

Immigrants cannot receive immigration benefits (such as legal status) if they knowingly enter into a marriage for the purpose of evading immigration law or solely for an immigration benefit. Conviction for marriage fraud can involve imprisonment for up to five (5) years and fines up to \$250,000 (U.S. currency). Immigrants who commit marriage fraud may be removed from the United States and may be permanently barred from the United States.

More information can be found at our website at www.uscis.gov or by calling the toll-free number 1-800-870-3676.