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Leslye E. Orloff and Hema Sarangapani
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Governmental and Industry Roles and Responsibilities With Regard to International Marriage Brokers

Equalizing the Balance of Power Between Foreign Fiancés and Spouses

Leslye E. Orloff

Legal Momentum, Washington, DC

Hema Sarangapani

Immigration Unit of Greater Boston Legal Services, MA

The unregulated nature of the international marriage broker (IMB) industry endangers women by denying them information necessary to make informed choices with respect to their intended U.S.-based citizen spouses. This article (a) provides an overview of the contemporary IMB industry, including a discussion of reasons underlying women's choices to use IMB agencies to meet and marry U.S.-based spouses, (b) discusses how this industry's marketing of marriages potentially endangers many women recruits, and (c) offers an update and analysis of new provisions under U.S. immigration law that strengthen protections available for women who immigrate as fiancés and spouses of U.S. citizens, including those in marriages arranged by IMBs.

Keywords: *immigration; partner violence; public policy*

The international marriage broker (IMB) industry, an industry that markets available foreign brides primarily to U.S. citizens, has dramatically grown in recent years. Relying heavily on the Internet, this industry remained largely unregulated through 2005. In recent years, concern has grown over the all-too-frequent phenomenon of U.S. citizen and lawful permanent resident abusive men using the services of IMBs to meet foreign fiancés and wives, only to lock them into physically and sexually abusive relationships once they are brought to the U.S. (Scholes, 1999). Until now, foreign national women recruited by IMBs have had no formalized access to information about their legal rights in the United States or the criminal or domestic violence histories of their U.S. citizen fiancés or spouses. As a result, these women are less able to make informed choices prior to entering into their marital relationships, reinforcing the imbalance of power between the two parties and increasing women's vulnerability to abuse. Hence, as part of the reauthorization of the Violence

Against Women Act (VAWA) of 2005, Congress passed the International Marriage Broker Regulation Act (IMBRA), offering for the first time protections for international women recruited by the IMB industry. IMBRA legislation was developed to provide foreign-born women valuable information about their legal rights in the United States and about the criminal and marital histories of their U.S. citizen spouse or fiancé early in the process.

This article will provide an overview of the contemporary IMB industry, will examine the economic and personal security reasons underlying women's choices to use IMB agencies to meet and ultimately marry U.S. citizens, and will discuss how this industry's marketing of marriages heightens vulnerability to domestic violence among the women it recruits. The article will then conclude with a brief discussion of existing forms of relief for these immigrant survivors of domestic violence and will offer an update and analysis of new provisions under U.S. immigration law, including IMBRA, that will strengthen protections available for women who immigrate to the United States through marriages arranged by IMBs.

IMB Industry: Origins

The phenomenon of marriages solely arranged through written correspondence between a man and a woman overseas is not a new concept. The origins of this practice in the United States can be traced to early settlement of the country when the majority of immigrants who traveled to the western United States to mine gold and to work in the railroad industry were men. This phenomenon came to be known as the "picture bride" practice. As the western half of the United States became more populous, the need for picture brides diminished, and this practice faded.

This phenomenon resurfaced, however, in the 1970s when U.S.-based men, disgruntled with the modern women's rights movement, began to seek wives overseas in the hope that they shared more traditional values with respect to marriage and gender roles. Parting from its origins as arrangements that arose largely out of necessity in the developing western United States, the contemporary promoters of picture brides, renamed "mail-order brides," saw great profit in connecting U.S.-based men with women overseas. In fact, one of the first contemporary IMB agencies began in 1974, when an importer of Asian collectibles expanded his business to market foreign women (Chun, 1996).

Today, IMBs in the United States are for-profit agencies dedicated to connecting U.S.-based men with international women for marriage. The industry has exponentially expanded since its inception in the 1970s. One report estimates "that between 100,000 and 150,000 women from a variety of countries annually are recruited to advertise themselves as available for marriage" (Scholes, 1999). Although the current IMB structure is superficially similar to the traditional picture bride system, the increased economic and social power imbalance of the parties characteristic of the

modern industry, coupled with the at-times problematic motivation of those seeking wives overseas and the fiercely profit-driven goals of the industry, make IMBs more complex and likely to produce potentially dangerous consequences (Scholes, 1999).

Contemporary Practices of IMBs

In a typical IMB recruitment process, the bridal agencies initiate contact with potential brides by primarily utilizing Internet, newspaper, and magazine advertisements (Chun, 1996; O'Rourke, 2002). The agencies screen potential recruits, select eligible candidates for marriage, assign them identification numbers, and include their full-body photographs or headshots in print magazines, Internet catalogues, or both. Recruits are also often required to provide other personal information, including physical measurements and personal interests (Chun, 1996).

After developing a catalogue of profiles of women available for marriage, the agencies direct their efforts toward attracting potential consumers. For a fee charged to the male consumer, the agencies facilitate international communication with female recruits. It should be noted that translation of letters and responses by IMBs are known for their embellishment of the IMB recruit's responses to expedite and encourage marriage proposals. Agencies provide varying degrees of service, but typical features include providing the mailing addresses and phone numbers of the women, additional biographical information, visa and immigration consultation, and even letter writing on behalf of the male client (Chun, 1996; Lee, 1998). Some companies sponsor trips to other countries, where they facilitate the introduction of U.S.-based men to available single women. Others provide men only with the addresses of foreign women whom they have selected among photographs. Regardless of the scope of services, however, the IMB agency and the male consumer, rather than the female recruit, retain control over the disclosure and use of the woman's personal biographic information (O'Rourke, 2002). This approach is dramatically different from U.S.-based dating services, which charge and treat male and female clients equally. Both are paying clients, and women are not targeted for recruitment and marketed to male clients.

After the two parties are connected, and if the decision to marry is made, the couple must begin the process of securing lawful immigration status in the United States for the international bride. This is generally done in two ways. The couple may choose to marry in the foreign country and apply for an immigration visa based on the marriage that would allow the foreign bride to enter the United States as a conditional permanent resident. Under U.S. immigration laws, U.S. citizens and lawful permanent residents are allowed to confer lawful permanent resident status on their spouses and children provided they can prove to the United States Citizenship and Immigration Service (USCIS) that they entered into a valid marriage in good faith.

Although spouses of U.S. citizens are considered immediate relatives and are not subject to any statutorily determined waiting period before they can adjust their status

and obtain lawful permanent residency, in reality the entire process may take years to complete. Because the processing of these petitions is slow, many couples were previously required to face separation pending adjudication of the petition once they married abroad. However, because of more recent legislation, international spouses of U.S. citizens who were married abroad may await processing of their immigrant visa petition while in the United States by obtaining a K-3 visa for foreign spouses of U.S. citizens. This process nevertheless can also be costly and time-consuming.

As a far more popular alternative, a U.S. citizen may apply for a temporary fiancé visa, also called a K visa, so that their fiancé may enter the United States for marriage. U.S. citizens bringing their intended spouses to the United States on a fiancé visa are required to marry their fiancé within 90 days after their fiancé arrives in the United States. If they fail to marry their fiancé, or if they marry after the 90-day period has lapsed, the fiancé becomes an undocumented immigrant.¹ Because of the relative ease with which these visas are obtained, this process represents the manner of entry for a vast majority of foreign women recruited to marry U.S.-based husbands through IMBs. The popularity of this visa provision is evident as the total number of foreign fiancés entering the United States each year more than tripled between 1996 and 2004 (Office of Immigration Statistics, 2004).

Regardless of her manner of entry, until permanent resident status is conferred on the foreign bride, it is critical to note that the U.S. citizen husband retains total discretion under the law as to whether he will file or withdraw the family-based visa petition or attend necessary interviews to adjust the status of the foreign bride to that of a permanent resident.

Prevalence and Use of IMBs

There is a substantial IMB industry worldwide. A 1999 report by the Immigration and Naturalization Service (INS), now DHS (which encompasses the USCIS, Immigration and Customs Enforcement [ICE], and Customs and Border Patrol [CBP]), estimated that there were at least 200 such companies operating in the United States and that as many as 4,000 to 6,000 persons in the United States, almost all male, find foreign spouses through for-profit IMBs each year (Office of Immigration Statistics, 2004). The IMB business has significantly grown in recent years, greatly facilitated by the Internet.² Studies now suggest that at least 500 such companies operate in the United States, with thousands of others operating internationally (Brocato, 2004). It is currently conservatively estimated that at least 8,000 to 12,000 persons in the United States find foreign spouses through for-profit IMBs each year (Loder, 2003). The Gabriella Network estimates that as many as 5,000 women from the Philippines alone entered the United States each year through marriages arranged by IMBs.³ Although the Philippines banned the recruitment of Filipina women through IMBs in 1990, there is evidence that suggests that many IMBs have nevertheless evaded this law by operating via the Internet.⁴

The Women and Men Who Use International Matchmaking Agencies

International matchmaking companies operate globally. In the United States, women from the Philippines, Russia, and the newly independent states (Ukraine, Latvia, Lithuania, Kazakhstan, Estonia) dominate the market (Scholes, 1999). However, women are also recruited from other nations, including Thailand, Honduras, Poland, Bulgaria, China, Malaysia, Columbia, Brazil, Peru, Hong Kong, Singapore, Korea, Romania, Indonesia, Belarus, Taiwan, and Uzbekistan (Meng, 1994). Nations from which IMBs are best able to recruit women tend to be those most disenfranchised by globalization and global economic disparities (Meng, 1994).

Women who respond to recruitment by IMBs primarily do so, in part, to seek escape from countries in economic turmoil where employment and educational opportunities are limited for men and virtually nonexistent for women (Chun, 1996; O'Rourke, 2002). In addition to economic opportunities, women may seek immigration to the United States as a means of escaping gender-based violence in nations of origin (Chun, 1996; O'Rourke, 2002). Notably, many countries with high representation in the IMB industry have not been willing or able to take action to address the problem of violence against women (including sexual assault, sexual harassment, and domestic violence), thus perpetuating and/or socially sanctioning such forms of violence against women (Markee, 2001). Expectations of escape from such violence on immigration to the United States are reinforced by these women's stereotype of American men as a group who would protect and never violate women. In recruiting women to be potential brides, the IMB industry exploits, accentuates, and reinforces these potentially misleading images of the U.S. and American husbands.

Information regarding men who seek wives through the IMB's services was made available through a 1998 survey of American male IMB clients. Survey findings, reported by INS to Congress, revealed the men to be a median age of 37 years and mostly (94%) White; almost all (99%+) were high school educated, and 50% had 2 or more years of college. Notably, 57% had been married at least once before, and 75% hoped to father children through the IMB-arranged marriage (Scholes, 1999). The men were largely politically and ideologically conservative and financially successful (Markee, 2001). Their primary motivation for seeking a foreign wife tended to be "dissatisfaction with the 'liberated' Western woman." Many of these men believe U.S. women are aggressive, selfish, and focused on their own careers, whereas women from developing nations will be more loyal and devoted to their husband's needs (Chun, 1996; O'Rourke, 2002; Scholes, 1999).

The economic and immigration-related disparities for these male and female IMB users, advantaging the male and disadvantaging the female, combined with the men's expectations of a submissive wife, set the stage for potential abuse of power and U.S. men's domestic violence against their foreign-born wives. This power differential is reinforced by public sentiments in the United States regarding these

women, often referred to as mail-order brides. This term not only defines a woman solely by the way she met her husband, but it also simultaneously delegitimizes that marriage. It implies that the immigrant spouse has been purchased, can be sent back, and has less value than a U.S.-born wife. Furthermore, the term suggests that women who meet their husbands through IMBs are manipulators out to entrap a future husband (Cain, 2000), a view that has been used to justify U.S. husbands' abuse of these women.

The Impact of Domestic Violence Among Immigrants and the Unique Needs of IMB-Involved Survivors of Abuse

Domestic violence is a pattern of behavior that one intimate partner or spouse exerts over another as a means of control; this pattern may include physical violence, coercion, threats, intimidation, isolation, and emotional, sexual, or economic abuse (United Nations, 1994). It is estimated that 30% of all women in the United States are physically abused by their husbands or male cohabitants at some point in their lives (Tjaden & Thoennes, 2000). Although domestic violence does not occur at a higher frequency within one socioeconomic class, racial group, or geographic area (Burstein, 1995; Dutton, Orloff, & Hass, 2000; Fenton, 1998; Martin, 1998-1999), there is some indication that immigrant women may be at increased risk for longer exposure to and greater severity from domestic violence because of heightened vulnerability attached to their legal immigration standing and lack of access to culturally sensitive education and services in the community in which they live (Coto, 1999; Dutton et al., 2000; Espenosa, 1999; Family Violence Prevention Fund, 2006; Hass, Ammar, & Orloff, 2006; Orloff, 2001; Scholes, 1999; Seymour et al., 2000; Teran, 1999; Wang, 1996). Notably, recent evidence suggests this vulnerability may be even greater when the male partner has greater or more stable immigration standing than the woman; one study found that when U.S. citizen men marry foreign-born women, the abuse rate among the women rises to approximately 3 times the national average (Hass et al., 2006).

Immigration status can be a powerful tool of control for the abuser of an immigrant woman. Specifically, these forms of abuse can include, among other things, hiding or destroying important papers such as passports or other immigration-related documents (Orloff & Garcia, 2004). An abuser may lie to his partner about her immigration status, fail to complete the process to legalize her immigration status, or withdraw or threaten to withdraw applications filed for her residency (Ammar, 2005). He may isolate his spouse by preventing her from learning English and from communicating with family, friends, and those who speak her native language (Dutton et al., 2000). He may use economic abuse by threatening to report his spouse to authorities if she works while simultaneously denying her the funds necessary to apply for immigration status (Kelly, 1998; Orloff, Jang, & Klein, 1995).

Women in marriages arranged by IMBs have the same vulnerabilities to domestic violence all immigrant women face; however, these women are also often forced to contend with greater isolation from their community of origin and a husband with no familiarity with their culture or possibly even language. The barriers experienced by these women seriously impede their access to comprehensive domestic violence support and services (Calvo, 2004). Identification and provision of support for IMB-involved survivors of abuse is challenging.

Immigration Options for IMB-Involved Survivors of Domestic Violence

The VAWAs of 1994 and 2000 provide protection to immigrant spouses of U.S. citizens or lawful permanent citizens who never filed or filed but failed to complete the spousal petition process. The self-petitioning provision of the VAWA allows immigrant spouses of U.S. citizens and lawful permanent residents who are subjected to battering or extreme cruelty to file their own immigration cases by either filing a self-petition with the DHS or filing for VAWA cancellation of removal, a defense against deportation, if necessary, when a victim is in immigration proceedings before an immigration judge. For abused immigrant spouses of U.S. citizens with conditional permanent residence, additional relief exists in the form of the battered spouse waiver. Requirements for these forms of relief include a showing of battery or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse and good-faith marriage, which is defined as an intent to establish a life together, some period of joint residence, and good moral character.

Some foreign fiancés will be brought to the United States by citizens who will begin an intimate relationship with the foreign fiancé, subsequently abuse her, and then refuse to marry her. In these cases, the foreign fiancé who met her citizen fiancé through an IMB will not qualify for a battered spouse waiver, VAWA self-petitioning, or VAWA cancellation of removal. The VAWA of 2000 created an additional immigration remedy for immigrant victims trapped in abusive relationships with citizens and lawful permanent residents who never married them.⁵ VAWA 2000 created a crime victim visa (U visa) that offers immigration relief to immigrant crime victims who have suffered substantial physical or emotional injury as a result of criminal activity, including domestic violence and sexual assault. To obtain a U visa, a survivor must obtain certification from a law enforcement official confirming their willingness to help with an investigation or prosecution of the crime perpetrated against them. After holding such a visa for 3 years, a U visa grantee may obtain lawful permanent residency by establishing humanitarian need, family unity, or public interest.

Despite the protections that exist to help immigrant victims under U.S. immigration laws, many individuals entering the United States on fiancé visas to marry citizens of the United States and foreign-born spouses who marry citizens abroad are unaware of

U.S. laws regarding domestic violence. For example, although IMB-involved women seeking to enter this country must undergo criminal background checks, no corresponding requirement has existed to inform those seeking fiancé visas or spousal visas of any history of domestic violence or crimes of violence perpetrated by the prospective U.S. spouse. The government's failure to track the conduct of serial U.S. citizen petitioners has made the fiancé visa petition process ripe for abuse.⁶

Survivors of abusive IMB-sponsored marriages have not been informed about VAWA's immigration protections for immigrant victims of domestic violence, sexual assault, and stalking; about prohibitions on involuntary servitude; about protections from automatic deportation; and about the role of police and the courts in providing assistance to victims of domestic violence and other crimes. Laws and policies that require dissemination of this important information so as to strengthen immigrant women's familiarity with these provisions are a critical step in stemming the tide of abuse inflicted against battered immigrants in the United States.

Pre-2005 United States Law and Policy Regarding International Matchmaking

As a result of concerns raised by advocates for immigrant survivors of violence with respect to the high rate of abuse in IMB-initiated marriages, in 1996 Congress recognized for the first time the need to examine, understand, and regulate the IMB industry. Noting the growth of marriages brokered through IMBs and recognizing potential for abuse within such marriages, Congress enacted Section 652 of the Illegal Immigration and Immigrant Responsibility Act, which required that every international matchmaking organization doing business in the United States disseminate information to their women recruits on immigration law, domestic violence, and relevant remedies. Although Section 652 marked an important acknowledgement of issues pertaining to the safety of women entering marriage arranged through IMBs, this provision proved to be largely ineffective. Despite clear congressional intent to regulate the IMB industry, INS failed to promulgate final implementing regulations for these statutory provisions, thus rendering them largely unenforceable.

Since that time, the IMB industry has flourished, and until recent legislative developments passed as part of the VAWA of 2005, the U.S. government had not made any renewed efforts to regulate widespread abuses of the IMB industry. Any recourse for immigrant survivors of violence who met their spouses through IMBs up until 2006 came as a result of private civil litigation based in part on Illegal Immigration Reform and Immigrant Responsibility Act Section 652's requirement that IMB agencies inform recruits about U.S. laws, including laws offering protection to immigrant victims of domestic violence. Some immigrant victims who met their spouses through IMBs have been able to successfully sue their citizen abusers, and at least one successful lawsuit, described below, has been brought against an IMB agency.

On November 18, 2004, Nataliya Fox, a Ukrainian woman, won a significant victory in a Maryland federal district court against Encounters International, an IMB. This lower court ruling was affirmed by the Fourth Circuit Court of Appeals in 2006 (*Fox v. Encounters International*, 2006). Encounters International had arranged Nataliya's marriage to abusive U.S. citizen James Fox. When Nataliya confided to the president of the IMB that Mr. Fox was physically abusive to her, the president of this IMB told Nataliya that this was "normal," that American men were prone to violence, and that Nataliya had to stay in the marriage or would be deported. Because Nataliya did not know that domestic violence is a crime in the United States and knew no one else in the United States to whom she could turn for advice, she felt that she had no choice but to live with the abuse. The violence escalated. After a particularly vicious episode in which Mr. Fox's violence sent Nataliya to the emergency room, Nataliya finally learned that options did exist for her to escape the abuse. Encounters International persisted in this egregious pattern of misinformation by even publishing Nataliya's marriage to James Fox as a "success" story without her permission after she had already fled to a domestic violence shelter.

A unanimous jury held Encounters International liable for failing to tell Nataliya—as they were legally required to do under Section 652 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996—about a federal law that allows foreign nationals to escape abusive marriages in the United States without fear of automatic deportation. The jury also found this IMB liable for actively misleading Nataliya about her legal options. For these and other misrepresentations concerning Encounters International's alleged screening of male clients, Encounters International and its president were ordered to pay Nataliya \$433,500 in damages (*Fox v. Encounters International*, 2004).

The case marks the first time that an IMB has been held accountable for violating its obligations under federal law to tell a woman it recruited about legal protections that would allow her to escape domestic violence and maintain a valid immigration status. The case is also the first time that an IMB has been held liable for failing to screen its male clients for a violent or criminal history despite having said that it screened the men. Finally, this case marks the first time an IMB has been found liable for using a woman's name and photo and falsifying her personal story to promote its business without her permission.

Although this case is significant in holding IMBs accountable, the facts of this case made it clear to the wider antiviolence advocacy community that the government needed to play a much more active role in providing foreign fiancés and spouses access to information about legal rights and protections available to domestic violence victims in the United States. It was apparent that requiring IMBs to be solely responsible for conveying information about legal rights to women they recruit and match with citizen spouses was not effective. The need for a larger government role and stronger governmental regulation of IMBs was clear.

VAWA 2005 and IMBRA

In 1994 and 2000, Congress included in the VAWA immigration provisions designed to remove obstacles posed by immigration laws that had the inadvertent result of preventing immigrant victims from safely fleeing domestic violence, obtaining protection orders, and feeling empowered to seek the assistance of law enforcement.⁷ Along with substantially increasing access to protection and help for victims of violence against women, a key goal of VAWA's immigration protections is to cut off the ability of abusers, traffickers, and perpetrators of sexual assault to blackmail their victims with threats of deportation and thereby avoid prosecution. VAWA allows immigrant victims to obtain immigration relief without their abusers' cooperation or knowledge.

In a significant bipartisan victory, the VAWA was reauthorized on December 19, 2005. The bill was signed into law on January 5, 2006. The reauthorization increases protection for more victims and survivors of gender-based violence including immigrant victims who met their abusers through IMBs.⁸ Recognizing the potential for abuse inherent in the imbalance of social and economic power between U.S. citizen or lawful permanent resident men and the women they meet through IMBs, Congress included the IMBRA in VAWA 2005 to provide effective regulation of the IMB industry and to also involve the U.S. government in providing foreign spouses and fiancés with information critical to their safety.

As the legislative history demonstrates, the provisions of VAWA 2005 that address IMB-brokered relationships, fiancé visas, and foreign-born spouses married abroad are designed to foster informed choice by empowering immigrant spouses and fiancés with concrete information about their prospective citizen spouses.

In formulating the IMB-related provisions of VAWA 2005, Congress weighed the additional financial burden to DHS and the Department of State against the benefits immigrant women would receive by increased access to information about U.S. immigration and domestic violence laws and personal information about their intended U.S.-based spouse. Although many components of the spousal immigration process place almost plenary power in the hands of the U.S.-based spouse while scrutinizing the immigrant spouse's intent with respect to marriage (Calvo, 2004), it is important to note that these provisions do not authorize, and in fact include precautions against, additional scrutiny of the validity of marriages procured through IMBs.

Rather, the IMB provisions of VAWA 2005 work to level the imbalance of power and potential for abuse inherent in many IMB-arranged marriages by increasing an international fiancé's access to critical information about her future husband, the dynamics of domestic violence, and her rights in the United States. IMBRA was designed to provide foreign potential spouses and fiancés with information as early in the process of meeting a potential spouse as possible. Pursuant to the provisions in VAWA 2005, a female recruit of an IMB agency will now have the opportunity to learn of her potential spouse's criminal history prior to marriage (Scholes, 1999).

This is accomplished in the amendments to 8 U.S.C. Section 1375 by requiring IMB agencies to gather criminal and personal background history from the prospective U.S.-based spouses through both actual criminal record searches of the National Sex Offender Public Registry and from a personal attestation from the male client. This information must be provided to the foreign national recruit who must receive it and grant the IMB permission to share the foreign national's contact information with the U.S.-based IMB client. Under this provision, failure of the U.S.-based client to provide, at a minimum, an affidavit attesting to his lack of criminal convictions would bar the U.S.-based client, under law, from utilizing the IMB to access a foreign bride's contact information. This approach provides foreign women recruited by IMBs the opportunity to choose whether or not their personal contact information will be forwarded to any particular U.S. citizen IMB client.

As part of the IMBRA regulatory scheme, Congress understood that directly involving DHS officials and the Department of State in the provision of information to foreign spouses and fiancés was crucial both to victim safety and to effectively regulate the IMB industry. INA Sections 214(d) and 214(r), which establish statutory parameters for K visa applications, were amended by VAWA 2005 to require the petitioner to disclose his criminal history to the DHS as a requirement of the application. At present, both petitioners and beneficiaries alike are subjected to basic security screening by the DHS. The purpose of the screenings of petitioners is largely to ensure that the petitioner is not a fugitive of the law. It is important to note that the IMB-related provisions of VAWA do not require the DHS to conduct additional background checks of petitioners. Rather, information collected by the DHS in its normal course of business, coupled with information provided to the DHS under oath by the petitioner, will be shared by the government with the foreign fiancé or spouse beneficiary. This information will be provided to her by the U.S. government at two separate points in time. She will receive written information along with the visa packet she receives in advance of her visa interview appointment. The information will also be provided to her in person by the U.S. government official conducting her visa interview. As part of the IMB regulatory scheme, consular officers seek information about IMB involvement and conduct at visa interviews that will allow them to determine whether IMB agencies are complying with IMBRA.

Under VAWA 2005, a consular officer may not approve a K visa petition unless he or she has verified that the petitioner is not a serial K visa user.⁹ K visa applicants who are barred by this prohibition on serial petitions may request a discretionary waiver from DHS to allow the petition to move forward. Although the collection and finding of a petitioner's criminal history does not presumptively prohibit approval of the visa, this provision works hand-in-hand with the legislation's efforts to limit serial K visa petitioners.

Thus, although a finding of a violent criminal history will not alone trigger denial of the K visa petition, this finding, coupled with a finding that the petitioner has a history of serial K visa petitions, will effectively prevent the petitioner from seeking

a waiver to serial petitioning bar and is designed to stop him from abusing the K visa process in the future. Even when K visa petitioners are not deemed to be serial petitioners and are not barred from petitioning, it is critical to note that criminal history data gathered by the Secretary of Homeland Security on the U.S. citizen pursuant to the requirements of Section 832(a)(1) will be transmitted to the K visa fiancé or spousal beneficiary by the Department of State, thus allowing her to make a more informed choice with respect to marrying her U.S. citizen fiancé or immigrating to the United States with her U.S.-based spouse. Equally important, VAWA 2005 arms the foreign-born spouse or fiancé with information that will help her seek protection under U.S. laws should her spouse or fiancé become abusive.

IMB-related provisions of VAWA 2005 significantly expand prior attempts to regulate the IMB industry. The fact that regulations for Section 652 of the INA were never issued has undermined the effectiveness and enforceability of this prior law. The statutory language of the IMB-related provisions of VAWA 2005 is stronger. Specifically, VAWA 2005 requires the involvement of not only the IMB but also DHS and consular officers in collecting, monitoring, and disseminating critical information to foreign spouse and fiancé beneficiaries. As regulations for VAWA 2005 have yet to be issued, the full scope of enforcement mechanisms will shortly become known.

In addition to including IMBRA as part of VAWA 2005, another key focus of VAWA 2005 was the consolidation of all adjudications of immigration cases filed by immigrant victims of violence against women at the VAWA Unit of the Vermont Service Center. Congress stated in the legislative history of VAWA 2005 that the “specially trained” VAWA 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, January 31, 2002).

Congress then went on to consolidate the full range of cases filed by victims protected by VAWA, the Trafficking Victim Protection Act, and IMBRA, including adjudications, adjustments, and employment authorizations. The full list of cases to be decided by the specially trained VAWA Unit include VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (Sections 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 (Report of the Committee on the Judiciary). The creation of the VAWA Unit facilitates safe and confidential adjudication of violence against women cases and minimizes costs associated with VAWA adjudications. It is

expected that as a result of VAWA 2005's consolidation of the full range of violence against women cases in the VAWA Unit will lead to a greater level of financial support for the unit from the DHS.

The Importance of IMBRA

Although IMBRA is the first legislation to specifically provide protections for the growing population of immigrants who came to the United States through involvement with IMBs, some argue that the government should not intervene in a private matter of marriage between two individuals. In demanding effective state responses to domestic violence, the modern antiviolence movement has challenged this divide and held the state accountable to survivors of violence against women (Marshall, 1997). Arguments that protection order statutes deprive the abuser of his liberty interests in his home, family, reputation, freedom of association, free speech, due process, or equal protection rights have been consistently rejected by courts in upholding the constitutionality of protection order statutes (Klein & Orloff, 1993). Similarly, IMBRA provisions of VAWA 2005 represent an effort by Congress not to increase already existing scrutiny of marriages involving immigrants but to (a) acknowledge the need for additional regulation of IMBs to curb violence against women and reduce the imbalance of power between IMB clients and their female recruits, (b) increase the accountability of IMB agencies with respect to their recruits, (c) involve DHS and the State Department in collecting criminal history information and tracking multiple spouse and fiancé visa petitions filed by U.S. citizens, and (d) arm international brides with information that will allow them to make more informed choices when considering marriage to an IMB client.

Conclusion and Suggestions for Further Research

Foreign-born women using IMB agencies to meet and ultimately marry U.S. citizens may be at increased vulnerability to domestic violence because of their lower economic and immigrant status, as compared to their male partners, their cultural and possibly linguistic isolation, and their U.S. fiancés' or husbands' expectations of a submissive immigrant wife. With recognition that the IMB industry is profiting from these matches that maintain immigrants in a vulnerable position with their partners, VAWA 2005 and IMBRA strive to deter abusive men from using the K visa process toward abusive ends and make progress toward eliminating the imbalance of power between a citizen petitioner and his international bride primarily through the dissemination of information to the K visa beneficiary. These provisions hope to reduce the number of marriages arranged by IMBs that result in domestic violence by discouraging U.S. citizens with histories of domestic violence or criminal behavior from applying for fiancé

visas or spouse-based visas. Most importantly, however, the IMB-related provisions of VAWA 2005 arm foreign national women with critical information about their potential spouse along with their legal rights in the United States. This information allows a foreign national client to make more informed decisions about whether or not to marry a U.S. citizen or lawful permanent resident and to enter the United States with an awareness of the legal rights and remedies available to her should her marriage turn abusive. In addition, these provisions will allow consular officials to inquire about IMB agency involvement, allowing data to be collected on domestic violence prevalence in IMB-brokered marriages.

Although IMBRA legislation provides important protections for potential IMB-affiliated immigrant victims of domestic violence, more research is needed to better understand the scope of the issue and the specific needs of this group. Although in 1999 INS issued to Congress a report based on findings from a preliminary empirical study of IMB-brokered marriages, this report was by no means comprehensive. VAWA 2005 proposes a far more comprehensive mechanism for collecting, maintaining, and analyzing data about K visa applications, the effectiveness of information collection and provision of information to K visa recipients, and IMB agencies and their level of compliance with IMBRA. Although these provisions are a strong step toward gathering comprehensive data on the correlations between IMB-brokered marriages and domestic violence, the IMB-related provisions of VAWA 2005 must also serve as a call to legal and social service providers to increase their ability to identify and better serve the needs of immigrant women who met their spouses through international matchmaking agencies. Further research is also needed to examine attitudes of service providers with respect to survivors whose marriages were arranged by IMB agencies. This research must pay special attention to the role of cultural, racial, and sexual stereotyping in impeding immigrant victims' access to services.

Methods used by legal and social services agencies to screen and identify IMB-involved women need to be assessed. To assess optimal methods of identifying IMB-involved women, the language IMB-involved women use to self-identify and describe their experiences of marriage and abuse should be explored.

Advocates, attorneys, police officers, prosecutors, courts, and the media need training to learn about VAWA's protections for immigrant victims of violence against women and to learn that these legal protections are fully available to foreign-born fiancés and spouses whose relationships were brokered by IMBs. Service providers and researchers need to screen and identify IMB-involved survivors and the similarities and differences between their experiences and those of domestic violence survivors generally. Attitudes of legal and social service providers with respect to foreign-born, IMB-involved spouses and fiancés should be explored to serve as a basis for developing trainings that will help provide culturally competent services to this population of victims. If service providers and the justice system are to

effectively serve immigrant victims who met their spouses and fiancés through IMBs, research is needed to understand the experiences, attitudes, and expectations of IMB-involved women, particularly with regard to domestic violence, sexual abuse, and exploitation.

Notes

1. An undocumented immigrant is a person without current documents granting them permission to be in the United States (INA Section 245(d)).

2. A search for *mail-order bride* at www.google.com on August 7, 2005, produced approximately 444,000 hits. Nearly all of the first 50 hits were links to introduction agencies or informational sites on the mail-order bride process. In addition, one informational site (<http://www.goodwife.com>), the Mail Order Bride Warehouse, contains links to thousands of agencies searchable by international region (e.g., "Asian," "Latin," "Soviet," "Multi-ethnic").

3. The Gabriella Network is a United States–Philippine Women’s Solitary Organization. They work on issues arising from U.S. policy decisions that negatively affect women and children in the Philippines. For more information, see www.gabnet.org.

4. It should be noted that the Philippines banned agencies facilitating marriages between Philippine women and foreign men in 1990 (see Republic Act 6955 of the Philippines, "An Act to Declare Unlawful the Practice of Matching for Marriage Foreign Nationals on a Mail-order Basis and for Other Similar Practices," enacted June 13, 1990). However, newspaper reports have suggested that such agencies have found ways to evade this law ("After Mail-Order," 2005).

5. This immigration remedy is available to certain victims of crime, including survivors of domestic violence and sexual assault who are unmarried to their abusive partners. Victims of the following crimes may be eligible for a U visa: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of these crimes (INA Section 101(a)(15)(U)).

6. See, for example, Moore (1996), who describes the ongoing investigation and prosecution of Jack Reeves in the murder and missing persons cases of his mail-order brides.

7. Recognizing the legal invisibility of many immigrant survivors of domestic violence, the legislative history of the Violence Against Women Act (VAWA) 1994 stated that the Immigration and Naturalization Service was to accept "any credible evidence" and explicitly directed the "Attorney General to consider any credible evidence submitted in support of hardship waivers based on battering or extreme cruelty whether or not the evidence is supported by an evaluation by a licensed mental health professional" (see H.R. Rep No. 103-395 at 38).

8. See Pub. L. No. 109-162 at Section 106. VAWA 2005 expands access to employment authorization for battered spouses of certain nonimmigrant visa holders, including the popular H visa for certain temporary skilled workers.

9. See Pub. L. No. 109-162 at Section 833(a)(2),

Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that (i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and (ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

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Leslye E. Orloff is Director of the Immigrant Women Program (IWP) at Legal Momentum's Washington, D.C. office and is a co-founder and co-chair of the National Network to End Violence Against Immigrant Women. She was involved in drafting provisions of VAWA 2005 aimed at regulating International Marriage Brokers as well as the Protections for Battered Immigrant Women Provisions of VAWA 1994, 2000, and 2005. She has written local and national training curricula and manuals and is a nationally respected trainer on domestic violence, cultural competency, family law, protection orders, the Violence Against Women's Act's immigration provisions, welfare rights of battered immigrant women, and the nexus between domestic violence and immigration law.

Hema Sarangapani is a Staff Attorney at Greater Boston Legal Services working primarily with immigrant survivors of gender-based violence to access immigration relief under the Violence Against Women Act. Ms. Sarangapani is a 2005 graduate of Northeastern University School of Law and is committed to increasing awareness of the intersections of race, gender, sexuality, and economic status within the violence against women movement.