

## Extreme Hardship in VAWA Cancellation of Removal and VAWA Suspension of Deportation Cases

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### Extreme Hardship and the Violence Against Women Act Immigration Protections

Applicants for VAWA cancellation of removal or VAWA suspension of deportation are required as part of their immigration case to prove that their deportation would cause extreme hardship to themselves, their child or in the case of in immigrant child abuse victim their parent. Extreme hardship is determined based on the facts of each case,<sup>1</sup> taking into account the particular facts and the totality of the circumstances of each case.<sup>2</sup> In VAWA cancellation and suspension cases it is important to consider how the battering or extreme cruelty experienced by the immigrant victim applicant or their child influences extreme hardship. The battering or extreme cruelty often exacerbated the hardship an immigrant may suffer if deported. Deportation can interfere with a victim's ability to overcome the harms caused by the battering or extreme cruelty. For this reason the following extreme hardship factors are to be considered in VAWA cases in addition to traditional extreme hardship factors:<sup>3</sup>

#### VAWA Extreme Hardship Factors:

- The nature and extent of the physical and psychological consequences of the battering or extreme cruelty;
- The impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, alimony, maintenance, child custody, and visitation);
- The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, particularly those related to the abuse or surviving the abuse, which would not be available or reasonably accessible in the foreign country;
- The existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the applicant or applicant's child for leaving an abusive situation, or for taking action to stop the abuse;
- The abuser's ability or lack thereof to travel to the foreign country, and the ability, willingness, or lack thereof of foreign government authorities to protect the applicant and/or the applicant's child from future abuse;

<sup>1</sup> Matter of Ige, 20 I. & N. Dec. 880, 882 (BIA 1994); Matter of Chumpitazi, 16 I. & N. Dec. 629 (BIA 1978); Matter of Kim, 15 I. & N. Dec. 88 (BIA 1974); Matter of Sangster, 11 I. & N. Dec. 309 (BIA 1965).

<sup>2</sup> 8 C.F.R. § 1240.58

<sup>3</sup> 8 C.F.R. §§ 1240.20(c) and 1240.58(c). See also INS Memorandum from Paul Virtue, INS General Counsel, Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children (October 16, 1998) (VAWA self-petitioning cases adjudicated between 1994 and 2000 required proof of extreme hardship. This factor was removed from VAWA self-petitioning cases in VAWA 2000).

- The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the foreign country would physically or psychologically harm the applicant or the applicant's children if they were deported.

#### Traditional Factors to Prove Extreme Hardship<sup>4</sup>

Abused immigrants applying for VAWA cancellation or suspension can also prove extreme hardship under the traditional extreme hardship factors. The following provides some non-exclusive examples that illustrate how battering or extreme cruelty can intersect with extreme hardship:

- Age of the applicant upon entry into the United States and at the time of application for cancellation of removal.
  - Victims who entered the U.S. at a young age or who have been in the U.S. for many years will lose their social/cultural support system essential to healing and overcoming abuse if deported
- Age, number and immigration status of the applicant's children and the children's ability to speak applicant's native language and to adjust to life in another country.<sup>5</sup>
  - The effect that the children's moving to another country would have on their ability to overcome the harmful effects of hearing, witnessing or experiencing domestic violence.
- The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned<sup>6</sup>
  - The immigrant victim's serious illness may have been caused or exacerbated by the battering or extreme cruelty. The victim may be receiving coordinated services to address the illness, the abuse, and the effects of the abuse.
- The financial impact of the victim's removal and/or the victim's ability to obtain employment in the country to which the alien would be returned<sup>7</sup>
  - The victim's ability to find and maintain employment in the home country may be connected to the abuse. For example: the victim's status as a divorcee precludes employment; the abuser's power and influence in the home country prevent the victim from securing employment; adequate employment sufficient to support the victim is not open to women in her home country.
- Person and her children's length of residence in the United States<sup>8</sup>
  - The victim was in a long term marriage to (and has children with) a U.S. citizen or lawful permanent resident who never filed immigration papers on the victim's or children's behalf and used power and control over immigration status as part of the abuse in the relationship.
- Immigration history, including authorized residence in the United States;
  - The perpetrator may have brought the victim to the U.S. lawfully (e.g. on a fiancé visa) and not filed a family based visa petition for the immigrant victim. The abusive spouse may have played a role in the victim's unlawful entry or entries into the U.S.

<sup>4</sup> Matter of Anderson, 16 I&N Dec. 596 (BIA 1978); 8 C.F.R. §1240.58 (b)(1).

<sup>5</sup> 8 C.F.R. §1240.58 (b)(2).

<sup>6</sup> Matter of Anderson, 16 I&N Dec. 596 (BIA 1978); 8 C.F.R. §1240.58 (b)(3).

<sup>7</sup> 8 C.F.R. §1240.58 (b)(4).

<sup>8</sup> 8 C.F.R. §1240.58 (b)(5).

- Existence of other family members residing legally in the United States<sup>9</sup>
  - Family members lawfully in the U.S played a role in providing the victim with emotional support, helped the victim escape, survive, or heal from the effects of having suffered abuse;
- Family and other ties to the country to which the alien would be returned
  - The victim may lack of family members in their home country or because of the abuse, the victim's seeking help related to the abuse or the victim's divorce the victim may be ostracized and not have supportive family members in the home country
- Irreparable harm arising from a disruption of educational opportunities<sup>10</sup>
  - The victim's children have special education needs that arose from or were exacerbated by having been victims of or having witnessed domestic violence; the battered immigrant spouse is pursuing educational opportunities provided in the U.S. to help victims of domestic violence or is pursuing post-secondary education as a victim under VAWA.
- Adverse psychological impact of removal<sup>11</sup>
  - When the abuser used threats of deportation as part of the battering or extreme cruelty or the abuser's actions contributed to the victim being placed in proceedings the adverse psychological impact of removal is exacerbated because it carries out the threats of the abuser.
- Impact of separation on both mother and children if the mother is removed and the children do not accompany her<sup>12</sup>
  - The victim's deportation can result in the victim's children being placed in the custody of the abuser, undermining state laws designed to grant custody of children to the non-abusive parent.
- The extent to which deportation would interfere with court custody, visitation, and child support awards<sup>13</sup>
  - Removal of the victim may interfere with state court child custody, visitation and support awards designed to protect the safety of the children and the victim.
- Contributions to and ties to a community in the United States, including the degree of integration into U.S. society<sup>14</sup>
  - The immigrant victim may be involved in educating other immigrant women in the community about domestic and sexual violence in the community. The support system for the victim and/or her children to overcome the abuse is in the U.S.

<sup>9</sup> Matter of Anderson, 16 I&N Dec. 596 (BIA 1978); 8 C.F.R. §1240.58 (b)(6); 8 C.F.R. §1240.58 (b)(11).

<sup>10</sup> 8 C.F.R. §1240.58 (b)(8).

<sup>11</sup> 8 C.F.R. §1240.58 (b)(9).

<sup>12</sup> 8 C.F.R. §1240.58 (b)(9).

<sup>13</sup> Matter of Anderson, 16 I&N Dec. 596 (BIA 1978).

<sup>14</sup> Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,067 (Mar. 29, 1996) (to be codified at 8 C.F.R. pts. 103, 204, 205 and 216).