



How Specially Trained Adjudicators in a Centralized Unit, Rather than Generalists in Local USCIS Offices, Make a Critical Difference in the Quality of Decisionmaking in VAWA Cases

The Violence Against Women Act (VAWA) Unit at the Vermont Service Center (VSC) of the US Citizenship and Immigration Services (USCIS) was established to ensure specialized, centralized adjudications of “self-petitions” by battered immigrants married to US citizens (USCs) or lawful permanent residents (LPRs), who would otherwise have to depend on those abusive USC/LPR spouses to submit those petitions for them.

Currently, as explained further below, the VAWA Unit adjudicates all VAWA applications as a first step in the process, and local USCIS offices conduct an in-person interview as a later step in the process, before the VAWA applicant is actually granted LPR status. Over the course of VAWA’s reauthorization over 2012-2013, some in Congress proposed making changes to the current process so as to require local USCIS offices to conduct VAWA interviews in the future, at both steps in the process. Legal advocates for battered immigrants were alarmed that this proposed change would mean poor quality decisionmaking, more layers of bureaucracy, and many more months or even years that would stand in the way of a woman’s access to protection. Fortunately, such proposals failed to move forward, and rightly so, as the results of a survey of the field conducted by the Tahirih Justice Center in May 2012 underscored problems with local USCIS offices’ handling of VAWA cases.

This backgrounder explains the current process and summarizes those survey results, reflecting the experience of legal advocates with the VAWA interviews that are already conducted at local USCIS offices. The survey results indicate that many local offices are poorly equipped to handle VAWA cases, with advocates often giving low marks on both knowledge of the law and sensitivity to victims. Giving local offices any additional interview or adjudication responsibilities in VAWA cases, as the proposals had suggested, simply did not make sense – for victims, or the system – and defied decades of lessons learned and best practices in the domestic violence field about the critical importance of specialized training.

How the Process Works Now:

A grant of a “self-petition” does not itself confer LPR status (a “green card”); it is effectively only permission for the self-petitioner to proceed to the next step (actually applying for LPR status, and going through an interview to “adjust” to LPR status at a local USCIS office) on her own, without depending on or involving the abusive USC/LPR spouse any further in the process.

In this way, the “self-petition” simply replaces the petition that should have been filed by the abusive USC/LPR spouse anyway, as part of the normal family-based immigration process—recognizing that in abusive marriages, USC/LPR spouses deliberately block victims’ access to the legal status to which they are entitled. The self-petition does not accelerate access to a “green card,” nor let victims skip steps in the process; it simply un-blocks a step, taking away abusers’ ability to manipulate the immigration process.¹

¹ It is important to clarify that VAWA self-petitioning is an *immigration* matter, not a *criminal* or *family law* matter, and is a confidential process; thus, a self-petition does not result in any legal or other consequences to the alleged abuser (for example, no criminal charges are brought and no protection orders are issued). If a victim pursues a separate criminal or family court matter, then the alleged abuser is entitled to all the due process protections of those court proceedings (for example, notice of the charges against him and an opportunity to rebut allegations).

In any case in which an immigrant is married to a USC/LPR and that USC/LPR spouse *has not already petitioned for LPR status* for their immigrant spouse, it raises the question, *why* is that USC/LPR spouse “holding out” on the immigrant spouse? There is a strong inference, supported by research² and by decades of frontlines experience by domestic violence service-providers, that the USC/LPR spouse has withheld filing the petition in order to maintain power and control over the immigrant spouse as part of an overall abusive relationship involving “battery or extreme cruelty” (the VAWA standard for self-petitions).

Back in 1997, a memo from headquarters urged local USCIS offices that handle “adjustment interviews” (to receive LPR status) for VAWA self-petitioners to designate specific officers to handle these cases, who would receive special training:

“While centralizing 1-360 [self-petition] adjudications was motivated in part by the goal of having a small corps of officers well-trained in domestic violence issues, district adjudications officers will still interact with self-petitioners during the adjustment process. The nature of domestic violence and the sensitivity needed in dealing with victims are topics to which few INS officers will have had exposure. District offices are strongly encouraged to identify two or more officers (depending on the size of the district) to handle all adjustments following from 1-360 [self-petition] approvals. The designated officers should have the experience, discretion and communications skills to be able to balance sensitivity in dealing with true victims with vigilance against fraud, and would ideally also serve as the designated [Vermont] Service Center liaison officer...”

– Paul Virtue, then-Acting Executive Associate Commissioner of the INS, “Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues,” May 6, 1997, sent to Regional Directors, District Directors, Officers-in-Charge, and Service Center Directors (emphasis added).

And yet in 2012, as the survey results below document, many local USCIS offices had still not designated *any* particular officers, let alone ones with specialized training, to handle these cases; and officers’ understanding of both the applicable law and of domestic violence and sexual violence dynamics, varied widely both within and between offices. This lack of understanding can profoundly impact not only the quality of the decisions that untrained local officers make, but also compromise victims’ safety and expose them to re-traumatization.

Summary of Survey Results

This survey was open from May 7th to May 9th, 2012 and asked advocates (legal services-providers) to characterize their experiences with officers at USCIS field offices during VAWA adjustment interviews.

One-hundred eleven (111) respondents took the survey, reflecting experiences with 44 different field offices around the country. The survey consisted of four main questions and an opportunity to provide further comments. The four questions respondents answered were:

1. Has your local USCIS field office designated a particular adjudicator(s) to handle VAWA adjustment interviews?
2. Please rate the average knowledge of the VAWA-relevant laws, regulations, and policy guidance of the adjudicators you have encountered at your local USCIS field office during VAWA adjustment interviews on a scale from 1-10, with 1 being “terrible” and 10 being “outstanding”.

² Research has shown how often abusers use immigration status as a tool of abuse and control. Nearly 75% of abused immigrant women in one survey reported that their spouse had never filed immigration papers to give them legal status. Abusers who eventually filed papers for their immigrant spouses waited almost 4 years to file. See Mary Ann Dutton, Leslye E. Orloff, & Giselle Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 Geo. J. Poverty Law & Pol’y 245, 259 (2000). 65% of 157 battered immigrants interviewed in another study reported that their abusers had threatened them with deportation. See Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An exploratory Study* at p. 92 (2003), available at www.ncjrs.gov/pdffiles1/nij/grants/202561.pdf.

3. Please rate the average sensitivity to victims, and awareness of domestic violence and sexual assault dynamics and their impact on victims of the adjudicators you have encountered at your local USCIS field office during VAWA adjustment interviews on a scale from 1-10, with 1 being “terrible” and 10 being “outstanding”.
4. Please tell us the name of the local USCIS field office to which you refer above.

The results of this online survey show that:

- Nearly 50% (49.6%) of respondents who answered question #1 responded “no,” there was not an officer who dealt particularly with VAWA cases.
 - Only 20 respondents (17.7%) reported “yes”.
 - Approximately one third (32.7%) indicated that they did not know.

Overall, therefore, over 80% of respondents either said “no” or “I don’t know” when asked whether a particular adjudicator(s) had been designated to handle VAWA adjustment interviews (despite the 1997 INS memo urging field offices to do so).

- When asked to use a 1-10 scale in characterizing the local USCIS office’s competencies to conduct adjustment interviews,
 - **The average rating was only 4.58 when assessing the *knowledge of VAWA-related laws and policy guidance of local USCIS adjudicators during adjustment interviews.***
 - 44.2% gave a rank of 4 or below;
 - 77% gave a rank of 5 or below;
 - Only one (1) respondent gave a rank of 10 to the adjudicators they had encountered.
 - **The average rating was only 4.36 when assessing the *sensitivity and awareness of domestic violence dynamics of local USCIS adjudicators during adjustment interviews.***
 - Over forty-five percent (45.1%) gave a rank of 3 or below;
 - 70% (69.9%) gave a rank of 5 or below on that question;
 - Again, only one (1) respondent gave a rank of 10 to the adjudicators they had encountered.

Respondents were also given the opportunity to provide additional comments, which generally centered around four key topics:

- Widely inconsistent experiences and treatment from different officers
- Lack of knowledge of VAWA laws, regulations and policy guidance
- Lack of sensitivity to victims
- General comments about positive or improving experiences

Widely inconsistent experiences and treatment from different officers. This was the strongest and most consistent theme that emerged from the survey:

- Respondents reported, for example, that “it’s hit and miss”; “quality depends on the officer”; “there is a big discrepancy”; “[e]xaminers have ranged from very sensitive and well-informed, to hostile aggressive people”; “range of VAWA knowledge/sensitivity among adjudicators ranges widely.... There is little consistency and a lot of turnover”; “varies from adjudicator to adjudicator”; “knowledge and sensitivity vary a lot”; “always depends on the officer...no known special training for adjudicators in terms of VAWA cases”; “The problem is consistency. Some officers might understand/have some background on VAWA and others have no clue and are totally insensitive and

unaware of the power and control dynamics that dominate a relationship plagued by domestic violence.”; “some are good, and others are bad...it’s very hard for the adjudicators to adjust to such a different standard that they use so infrequently”; “We never know what to expect at VAWA adjustment interviews”; “We have a wonderful local office and director and there are still problems with individual adjudicators.”

Lack of knowledge of VAWA laws, regulations and policy guidance. This was a common theme in the survey—that because local officers handle so many different kinds of applications, and only infrequently handle VAWA cases, they lack the necessary expertise.

- Respondents repeatedly reported that local USCIS officers asked questions that inappropriately re-examined the underlying VAWA self-petition already approved by the Vermont Service Center.
- Respondents also generally lamented that they often had to educate the officers they encountered, that local officers even confused the applicable legal standards or were wholly unaware of VAWA, let alone aware of specific VAWA-relevant policy memos:
 - Some adjudicators “have no idea what VAWA is. It can be very frustrating”; “I always go armed with my VAWA regs & guidance just in case”; adjudicator “did not have knowledge of relevant law/provisions”; “adjudicators are not knowledgeable of the regulations and sometimes hold adjustments for months even though the cases are approvable”; “I have a VAWA AOS [adjustment of status] delayed 2 years b/c officer did not know how to adjudicate VAWA I-601 waiver—lack of knowledge of the standards ..is a routine problem”; “Significant problem: Officers repeatedly requesting I-864 Affidavits of Support & Co-sponsors even where I-864W [affidavit of support exemption] has been filed”; “officers handling Adjustment interviews seem to know very little about VAWA, what is required for an adjustment”; “AO [adjustment officer] in a recent interview seemed unfamiliar with the USCIS memo regarding the limited circumstances in which a recommendation to rescind can be made (i.e., new evidence)”; “We have to do a fair amount of educating of adjudicating officers...[especially] when VAWA intersects with other benefits ...Even for straightforward family-based benefits we have had to clarify some matters.”; “I have had at least 2 VAWA adjustments in which the adjudicator was poorly informed about protections afforded to VAWA applicants.”; “Some new officers in particular treat VAWA cases like typical I-130 cases which is problematic.”; “I have found a lack of specific knowledge with these laws.”
 - *We have seen a consistent misunderstanding of VAWA. The most significant difficulties have been with respect to I-751 waivers. Officers do not understand this process...I have even had an officer tell me that I filed the wrong paperwork - that I should have simply filed a VAWA...When asked to speak with a supervisor, the supervisor asked me why I hadn't just filed a VAWA Self-petition - she had no idea what to do with an I-751 waiver. I had to give her a complete lesson on my client's eligibility for an I-751 waiver...oftentimes [they] have no idea what they are doing. They also seem like they have very little interest in adjudicating these.*
- Several respondents reported that officers breached VAWA confidentiality³ by contacting abusers, either on purpose or inadvertently because the local office did not appreciate the differences between a normal marriage-based adjustment interview and a VAWA-based adjustment interview:
 - “[a]djudicators have attempted to contact the victim’s abuser in interviews to ‘verify’ the story”; “I had an officer breach Section 384 confidentiality by sending the I-485 approval notice to the abusive spouse even though I repeatedly warned him during the...interview to make sure all was mailed to my office address”; in two cases, “the local USCIS office sent interview appointment notices to clients at their home mailing addresses (one of which was not safe - abusive husband lived there). Both notices were addressed to the client and her abusive spouse, and instructed clients to bring their spouse to the interview....this was horribly alarming to both clients.”

³ The confidentiality of VAWA applications is required under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 § 384.

Lack of sensitivity to victims. This was also a common theme. In addition to frequent comments that officers lack sensitivity and awareness of domestic and sexual violence dynamics and the ways in which violence can affect victims, several disturbing case examples were cited by respondents:

- Respondents reported aggressive interview tactics by some officers intended to intimidate, alarm or “test” VAWA applicants:
 - *Officers ask about DV, presumably to assess credibility, and keep asking questions until the applicant gets visibly upset or cries. Sometimes they start this while children are present and we have to ask to let the children wait outside. Lately all family-based interviews are more aggressive.*
 - *At one VAWA-based I-751 interview that was conducted by a supervisor, the USCIS officer noticed that the abuse happened while the couple was living with my client’s mother-in-law. Officer proceeded to threaten to call the mother-in-law to ask if my client’s story was true. I was there, and objected to this blatant violation of VAWA confidentiality. At that point officer claimed she didn’t intend to actually call, just wanted to see client’s reaction. I was appalled.*
 - *Adjudicators have attempted to contact the victim’s abuser in interviews to “verify” the story. When an attorney pointed out that this is unacceptable, the adjudicator took it as a sign the marriage was not in good faith and [the applicant] was trying to cover it up.*
- Respondents reported that officers asked incredibly detailed questions about abuse already extensively explained in the VAWA self-petition that had already been approved by the Vermont Service Center, or second-guessed the VSC’s finding of abuse, discrediting or downplaying what the victim endured:
 - *“I went for a VAWA adjustment interview with a[n insensitive] female adjudicator....My client left in tears and felt degraded”; “[O]ne adjudicator made a client recount her rape in detail while she was obviously traumatized. Client was allowed to take a break, but the officer made her finish the story after the break.”; “I have multiple clients who have suffered tremendous emotional distress during and after their interviews conducted by insensitive officers....”*
 - *I’ve had adjudicators grill teenage boy derivative applicants about how many times they’d see dad/step-dad hit, push, or rape their mother....VAWA adjustment interviews are bad enough that I have to plan for a full day of debriefing with clients to deal with the trauma in the aftermath of a bad/insensitive interview.*
 - *One officer reviewed the VAWA petition and said that if there was no police report nor medical to show injury, where was the abuse?”; some officers “clearly do not understand domestic violence and make inappropriate observations along the lines of ‘you didn’t call the police? so it couldn’t have been that serious.’; “I’ve had adjudicators say to victims ‘you[r] VAWA was approved but I don’t think what happened to you really falls within the definition of abuse.’”*
- Respondents also reported other inappropriate or insensitive questions or comments by officers:
 - *Have had horrible experiences ...In one [interview], the adjudicator used my client’s abuser’s accusations of infidelity against my client, denying the application by saying she must have been having affairs if her husband suspected her of it.*

- *I have had an officer admonish a client during an interview that she should leave her abusive husband. This is not relevant to the case adjudication, the officer is in no way trained to advise victims of domestic violence, and left my client shaken and scared.*

General comments about positive or improving experiences: A number of respondents did make positive comments, at least about some offices, officers and supervisors they had encountered, with respect to both their knowledge and sensitivity; almost invariably, however, these comments were made in the same breath as respondents reported other negative experiences.

- Qualified positive comments like this from respondents included:
 - “Some officers are sensitive while others are not”; “for a while, some time ago, we had a GREAT officer. Now, we do not”; “Some adjudicators are marvelous. Others have no idea what VAWA is.”; “Examiners have ranged from very sensitive and well informed, to hostile, aggressive people”; “Some officers seem well-trained and knowledgeable on VAWA/DV, but some officers do not”.
- A minority of respondents commented that their experiences with local offices were positive (without qualification), or had improved:
 - “Our local office does avoid digging into the abuse and tends to adjudicate just the I-485, thankfully.”; “I’ve never had them deny one of my VAWA clients ...and they are very professional interviewers.”; “I have only interacted with the field office a couple of times...my clients were never asked anything about their cases and the interviews always went well. For one particular case ...the agent was very helpful...”; “When VAWA first became law, adjudicators were awful, but they’re fine now.”; “Things have improved recently because there are now designated officers. Previously, our experience...was terrible.”; “There has been significant improvement recently with the set up of [a] working group that meets regularly to discuss VAWA-related issues”; “My interviews with VAWA victims have gone well only because I have requested VAWA trained officers.”; “Our field office is generally wonderful. They adjudicate as best they can, but it’s clear they aren’t as thoroughly trained on VAWA matters as VSC [Vermont Service Center].”