

**Memorandum**

To: Alejandro Mayorkas, Deputy Secretary, U.S. Department of Homeland Security  
From: Leslye E. Orloff, Director, National Immigrant Women's Advocacy Project (NIWAP) & Benish Anver, Immigrant Women, Law and Policy Fellow, NIWAP  
Date: February 4, 2014  
Re: Improving the Vermont Service Center VAWA Unit Staffing

**I. Introduction**

Over the past 30 years, specialized units have been created within state and federal courts, prosecutors' offices, police departments and state and federal government agencies whose work is dedicated to improving access to justice, protection and informed fair adjudication of domestic violence, sexual assault, stalking and human trafficking cases. It is well established that specialized training is needed to detect, investigate, prosecute and adjudicate violence against women cases. This approach has been a cornerstone for best practices that are supported and promoted with funding from the Violence Against Women Act (VAWA) for almost two decades. Congress, in VAWA 2005, confirmed its support for the direction that the Immigration and Naturalization Service (INS) took in 1997 when it created the VAWA Unit ("the VAWA Unit" or "the Unit") at the Vermont Service Center (VSC), modeled after best practices for domestic violence and sexual assault adjudications throughout the justice system. It has long been established that having specialized units composed of personnel with specialized training on domestic violence, sexual assault, stalking and human trafficking accomplishes three very important goals.<sup>1</sup>

1. Improves and facilitates access to justice and protection for crime victims in a manner that protects their safety and is mindful of the urgency of their need for protection;
2. Strengthens the ability of police, sheriffs and prosecutors to detect, investigate and prosecute perpetrators and hold them accountable for their crimes, enhancing victim, community and officer safety; and
3. Ensures the expertise needed to detect patterns that enable adjudicators to ferret out and deny fraudulent cases while, at the same time, having the training that promotes recognition of patterns of coercive control and abusive behavior that simultaneously

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<sup>1</sup> For a discussion of the social science research explaining the why specially trained professionals are required to fairly adjudicate domestic violence and sexual assault cases based on an understanding of the dynamics of abuse and coercive control *see generally* NAWAL AMMAR, HELENE BERMAN, JACQUELYN CAMPBELL, ANINDITA DASGUPTA, MARY ANN DUTTON, GISELLE HASS, STEPHANIE J. NAWYN, LESLYE E. ORLOFF, ANITA RAJ, RACHAEL RODRIGUEZ, EVAN STARK, JAY G. SILVERMAN, CRIS M. SULLIVAN, DAVID B. THRONSON, VERONICA TOBAR THRONSON, HANNAH BRENNER, J. RUBEN PARRA-CARDONA, JULIA L. PERILLA, VAWA IV LEGISLATIVE HISTORY HOUSE MARK-UP RESEARCHER'S PERSPECTIVE ON IMMIGRATION PROTECTIONS FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/VAWA-IV-House-Researcher-Data-Sign-on.pdf/view>

allows officers to identify and offer swift protections to victims filing valid cases under VAWA's immigration protections.

The VAWA Unit serves a special critical purpose: the efficient and effective adjudication of VAWA Self-Petitions and U and T visa applications in a manner that maintains the safety of immigrant victims. The lives and safety of immigrant victims and their children and the crime fighting effectiveness of law enforcement agencies across the country depends the VAWA Unit's successful and timely adjudication of all victim related cases that United States Citizenship and Immigration Services (USCIS) is responsible for adjudicating.<sup>2</sup>

The VAWA Unit was formed by the INS in 1997 because it was recognized that domestic violence adjudications are a "category of very sensitive cases"<sup>3</sup> that require special handling."<sup>4</sup> "[C]entralizing I-360 [VAWA self-petition] adjudications was motivated in part by the goal of having a small corps of officers well-trained in domestic violence issues"<sup>5</sup> and the goal of Congress and the INS to "limit the ability of an abusive U.S. citizen ("USC") or lawful permanent resident ("LPR") to utilize the spouse's or child's immigration status in order to perpetuate the abuse."<sup>6</sup> "Centralization allows the Service to have a small corps of officers well-versed in the complexity and sensitivity of VAWA adjudications, and will also allow for better monitoring of the caseload and any fraud trends."<sup>7</sup> Creation of the VAWA Unit at the VSC also provided a centralized "clearinghouse"<sup>8</sup> with the capacity to implement 1996 welfare provisions which make certain battered aliens -- including self-petitioners and others -- eligible for public benefits,"<sup>9</sup> and to implement VAWA confidentiality protections that became law as part of 1996 immigration reform legislation.<sup>10</sup>

The importance and success of the VAWA Unit's role as a specially trained unit dedicated to adjudication of applications for immigration relief filed by immigrant victims of domestic violence, sexual assault, human trafficking and other U visa covered crimes was

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<sup>2</sup> See NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT, REPORT: THE IMPORTANCE OF THE U VISA AS A CRIME FIGHTING TOOL FOR LAW ENFORCEMENT OFFICIALS – VIEWS FROM AROUND THE COUNTRY (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/how-the-u-visa-helps-law-enforcement-statements-from-the-field/U-visa-Crime-Fighting-Tool-Views-12.3.12.pdf/view>

<sup>3</sup> Memorandum from Paul Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, to Regional Directors, District Directors, Officers-in-Charge, & Service Center Directors, Immigration and Naturalization Service, *Supplemental Guidance on Battered Alien Self-petitioning Process and Related Issues* 1 (May 6, 1997), available at: [http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA\\_INSOP%20VAWA%20Self-Petition%20memo\\_5.6.97\\_OVW\\_3.31.09.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA_INSOP%20VAWA%20Self-Petition%20memo_5.6.97_OVW_3.31.09.pdf/view)

<sup>4</sup> *Id.* at 2

<sup>5</sup> *Id.* at 7

<sup>6</sup> *Id.* at 1

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2

<sup>9</sup> *Id.* at 2

<sup>10</sup> *Id.* at 4; See also Memorandum from Paul Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, to All INS Employees, Immigration and Naturalization Service, *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384* (May 5, 1997), available at: [http://niwaplibrary.wcl.american.edu/vawa-confidentiality/government-memoranda-and-factsheets/c\\_VAWAConf\\_DHSGuidanceSec%20384\\_05.05.97\\_FIN.pdf](http://niwaplibrary.wcl.american.edu/vawa-confidentiality/government-memoranda-and-factsheets/c_VAWAConf_DHSGuidanceSec%20384_05.05.97_FIN.pdf)

underscored when, in VAWA 2005, Congress statutorily mandated the adjudication of all VAWA, U and T applications by the VAWA Unit.<sup>11</sup> In order to fulfill the role the Congress envisioned for the VAWA Unit, it must be sufficiently staffed with well trained staff that is dedicated to working on cases that impact the lives of immigrant victims.

The National Immigrant Women’s Advocacy Project (NIWAP) commends USCIS for its leadership in remedying the consistent backlogs that have been a growing problem plaguing VAWA Unit adjudications since 2008. In the winter of 2013, the VAWA Unit’s staffing was increased dramatically, resulting in a reduction of the backlog in adjudications by 74%. As a result, VAWA self-petitioners and U visa applicants are receiving work authorization based on adjudication of their immigration applications within 6 to 7 months of filing.<sup>12</sup> The increased staffing has also enabled the VAWA Unit to adjudicate the cases of VAWA self-petitioners and U visa victims who had been waiting a year or longer for their case to be adjudicated.

This accomplishment has helped immigrant victims of domestic abuse, sexual assault, trafficking and other violent crimes. It provides them with work authorization, which this report has found frees them to leave abusive homes, enables them to support themselves and their children without dependence on their perpetrator, and supports their participation in the criminal and civil justice systems. This initiative will improve the quality of life and safety for this vulnerable population and will greatly enhance the ability of law enforcement agencies, prosecutors, and courts to bring perpetrators of crimes against immigrant victims to justice. We encourage the Department of Homeland Security (DHS) and USCIS leadership to ensure that the VAWA Unit continues to efficiently and effectively adjudicate cases in this manner and maintains the specially trained and experienced staffing needed to allow the Unit to capably adjudicate the immigrant victim caseload, meeting and maintaining the goal of ensuring that all immigrant crime victims receive work authorization and/or full adjudication of their cases within 6 months of filing.

These recent positive changes to the VAWA Unit’s staffing demonstrate the VSC’s capacity to provide work authorization within 6 months of filing for crime victim cases. It is important to establish an enduring policy that ensures that the VAWA Unit is properly staffed

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<sup>11</sup> See Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009, Extension of Remarks, 151 Cong. Rec. E2615 (December 17, 2005) (statement of Rep. Conyers):

Section 811 defines a “VAWA petitioner” as an alien who has applied for classification or relief under a number of provisions of the INA. I want to emphasize the importance of the fact that the law assures that adjudication of all forms of immigration relief related to domestic violence, sexual assault, trafficking or victims of violence crime continue to be adjudicated by the specially trained VAWA Unit....This specially trained VAWA unit assures consistency of VAWA adjudications, and can effectively identify eligible cases and deny fraudulent cases.

<sup>12</sup> Scott Whelan, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Webcast: *State Courts and the Protection of Immigrant Crime Victims and Children*, American University, Washington College of Law (Jan. 31, 2014) (Judicial training on U visa certification by courts), available at: <http://niwap.org/training/>.

and impervious to rotation policies that remove experienced and well trained staffers out of the Unit.

In the past, the Unit has suffered from inadequate staffing, insufficient funding for stable and secure staff positions, reductions in essential training, and a lack of consistent policy and support for the VAWA Unit within VSC and Service Center Operations (SCOPS). It is imperative that DHS and USCIS leadership, including the VSC and SCOPS, consistently act to ensure that well trained managers, with significant experience in domestic violence, sexual assault, trafficking, and crime victimization issues, consistently staff both first line supervisory positions and supervisory positions throughout the ultimate chain of command with responsibility for supervision of the VAWA Unit. Expertise gained by VAWA Unit staff working at the adjudicator level has not always been maintained.

Although, during the initial years of the VAWA Unit's development the policies and practices of the VSC and the VAWA Unit prevented routine rotation of trained staff out of the VAWA Unit and promoted experienced VAWA Unit staff into both first line and more senior supervisory positions, such practices changed and/or were not sustained. Since approximately 2008, too often, specialized VAWA Unit staff and supervisors who had received specialized training, gained valuable experience, and attained good performance ratings while working in the VAWA Unit were rotated out of the Unit to work on other case types as part of a routine VSC-wide rotation. Also, at times, staffers specially trained for the VAWA Unit were assigned other case types to adjudicate that were to take precedence over VAWA Unit adjudications. These SCOPS and VSC staffing practices caused a significant backlog in VAWA self-petition and U visa adjudications.

This backlog had a detrimental impact on the safety of victims and their children. It also undermined the ability of police and prosecutors to investigate and prosecute perpetrators of crimes against immigrant victims. Victims who continue to live with or work in abusive environments are more vulnerable to coercion and threats from perpetrators. When victims cannot predictably know whether they will receive work authorization in 8 or 18 months, prosecutors dismiss criminal cases and police deter criminal investigations and referrals for prosecution of abusers, traffickers and crime perpetrators.

This report outlines steps that DHS can take to ensure that the VAWA Unit is always adequately staffed with experienced adjudicators and supervisors and to consistently implement the VSC's existing policy to prevent rotation or reassignment of qualified staff out of the VAWA Unit. Section II of this report discusses the history of the formation of the VAWA Unit at the VSC and the Congressional findings, legislation, and INS/DHS policies and regulations that support maintaining, sustaining and growing the specialized expertise of the VAWA Unit and its staff. Section III discusses the procedures, structures and challenges faced by the VAWA Unit in recent years. Finally, Section IV proposes recommendations regarding what should become established in DHS policies and regulations that will both provide guidance and will direct

SCOPS and VSC to create and maintain a stable VAWA Unit that is impervious to rotation in order to maintain expertise and an adequate number of staffers and VAWA Unit experienced supervisors to secure VAWA Unit operations that maintain the high level of expertise needed for timely and effective adjudication of immigrant crime victim cases in a manner that carries out the intent of Congress and DHS' Blue Campaign priorities to offer immigration relief protections to immigrant crime victims both now and in the future.

## **II. History, Creation of, and Ongoing Congressional Support for the VAWA Unit**

### **A. Why Specially Trained Units Have Over the Past 20 Years Become Justice System Best Practices For Work on Domestic Violence and Sexual Assault Cases**

In the Violence Against Women Act of 1994, Congress created special protections for immigrant domestic violence victims. This was the first time that DHS<sup>13</sup> was statutorily charged with the responsibility for awarding protection to crime victims. Granting access to legal immigration status to victims is a key element in the safety net that helps immigrant victims of violence, particularly women, overcome the impact of the abuse on their lives and on the lives of their children.

These immigrant protections, at the same time, significantly improve the government's ability to prosecute crime. Since 1994, Congress has repeatedly expanded this successful program beyond domestic violence offering the protection of legal immigration status to victims of sexual assault, trafficking, child abuse, elder abuse and other crimes.

In implementing VAWA's immigration protections for battered immigrants, in 1997, the Immigration and Naturalization Service created a special adjudication and case processing team at the Vermont Service Center for Violence Against Women Act Cases – The VAWA Unit. The creation of a special unit with dedicated staff who has chosen to work in the VAWA Unit builds upon the practices that other justice system and law enforcement agencies have developed for handling domestic violence cases.<sup>14</sup> From 1997 through 2007, the VAWA Unit was staffed by a specialized VAWA Unit staffed by non-rotating staff who wanted to serve in the VAWA Unit. The INS adopted a system for adjudicating VAWA self-petitions that was patterned after the models that courts and other justice system entities have found to be most successful.

### **B. Purpose of INS Formation of the VAWA Unit**

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<sup>13</sup> This was prior to the creation of DHS and the agency delegated this authority by VAWA was legacy Immigration and Naturalization Service (INS).

<sup>14</sup> See Memorandum from NOW Legal Defense and Education Fund to Grace Carswell, Director, VAWA Unit, Vermont Service Center, Immigration Naturalization Service 1-3 (Mar. 28, 2001) (regarding the VAWA Unit), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/Carswell%20VAWA%20Unit%20Mmo%203.28.01.pdf/view>

In 1997, in response to numerous complaints about INS District Offices mishandling, refusing to decide, losing and/or incorrectly denying VAWA self-petitioning cases, INS decided to consolidate adjudication of VAWA cases in one location.<sup>15</sup> All cases filed under the VAWA self-petitioning provisions were transferred to the VAWA Unit of the INS Vermont Service Center (VSC) facility.<sup>16</sup> The VSC was chosen because it had a good track record for handling VAWA self-petitions and it was extremely responsive to requests by victim advocates and attorneys to improve the processing and adjudication of VAWA cases.

Consolidating all VAWA self-petitioning adjudications accomplished five equally important goals.

- First, it enhanced the safety and security of victims by ensuring that their VAWA, T or U visa cases would be adjudicated by a team of properly trained experts who understood the serious nature of domestic violence, sexual assault, trafficking and crime victimization and the impact of these crimes on victims and their children.
- Second, this centralized office was organized based upon successful models for handling domestic violence cases throughout the criminal justice system.

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<sup>15</sup> See Letter from Leslye Orloff, Director of Program Development, Ayuda to T. Alexander Aleinikoff, Executive Associate Commissioner for Programs, Immigration and Naturalization Service (June 13, 1996) (regarding INS documenting field office adjudication problems in VAWA Self-Petitioning cases), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/1996.6.13%20Orloff-Aleinikoff%20letter%20June%2013%201996.pdf/view>; see also Letter from T. Alexander Aleinikoff, Executive Associate Commissioner, Immigration and Naturalization Service, to Leslye Orloff, Director of Program Development, Ayuda, (Aug. 22, 1996) (regarding June 13, 1996 letter from Ayuda about VAWA Self-Petitioning cases), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/1996.8.22%20Aleinikoff-Orloff%20letter%20Aug%2022%201996.pdf/view>

<sup>16</sup> Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009, Report of the Committee on the Judiciary, House of Representatives, to Accompany H.R. 3402, H.R. Rep. No. 109-233, at 116 (2005)

The Unit was created ‘to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants [VAWA self-petitions and VAWA related cases]...’ 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.’

(citing 62 Fed. Reg. 16607-16608 (1997)).

See also Statement of Rep. John Conyers, *supra* note 11, at E2606:

In 1997, the Immigration and Naturalization Service Consolidated adjudication of VAWA self-petitions...in one specially trained unit that adjudicates all VAWA immigration cases nationally....T visa and U visa adjudications were also consolidated in the specially trained VAWA unit.

(Citing USCIS Interoffice Memorandum from Michael D. Cronin to Michael A. Pearson, HQINV 50/1, August 20, 2001, 67 Fed. Reg. 4784 (Jan. 31, 2002)).

- Third, it allowed DHS to assure compliance with VAWA confidentiality statutory requirements in every aspect of each process involved with receipt, file management, adjudication, work authorization, adjustment and benefits and employment eligibility verification for all VAWA, T and U visa cases.
- Fourth, was necessary for implementation of 1996 welfare law reforms providing VAWA self-petitioners and their children access to public benefits as qualified immigrants based on receipt of a prima facie determination issued by the VAWA Unit.<sup>17</sup>
- Fifth, as we have seen throughout the justice system, having a specialized unit with expertise on violence against women issues is the best approach to detecting fraud. Having experts who see violence against women cases every day allows for effective identification of fraudulent applications in a manner that protects victims. Expert adjudicators have the training and experience to identify victims with valid cases and protect against denials of legitimate applications by untrained decision-makers who too often impose their own views of domestic violence or sexual assault on the case and will deny the case because they believe the victim did not suffer “enough violence” or did not report the rape or abuse soon enough.

Congress enacted VAWA confidentiality provisions in 1996 and enhanced confidentiality protections in VAWA 2000 and VAWA 2005.<sup>18</sup> The VAWA confidentiality provisions prohibit the release of any information about a VAWA confidentiality protected case and was designed to stop immigration officials from informing abusers about a victim’s immigration case and relying upon perpetrator provided information.<sup>19</sup> To guard against such exploitation and manipulation of the immigration system by abusers and crime perpetrators, Congress imposed three basic forms of safeguards:

- (1) Prohibitions Against Disclosure - The nondisclosure provisions impose restrictions on the use and disclosure of information by the Department of Homeland Security, the Department of Justice, or the Department of State in order

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<sup>17</sup> Memorandum from Paul Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, to Regional Directors, District Directors, Officers-in-Charge, & Service Center Directors, Immigration and Naturalization Service, *Supplemental Guidance on Battered Alien Self-petitioning Process and Related Issues 2* (May 6, 1997), available at: [http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA\\_INSOP%20VAWA%20Self-Petition%20memo\\_5.6.97\\_OVW\\_3.31.09.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA_INSOP%20VAWA%20Self-Petition%20memo_5.6.97_OVW_3.31.09.pdf/view)

<sup>18</sup> See LESLYE ORLOFF, *VAWA Confidentiality: History, Purpose and Violations of VAWA Confidentiality Protections*, in EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT (2013) (originally developed for training of Senior ICE Trial Attorneys and Managers conducted in August 2007 in New Orleans).

<sup>19</sup> Memorandum from Paul Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, to All INS Employees, Immigration and Naturalization Service, *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384 2* (May 5, 1997), available at: [http://niwaplibrary.wcl.american.edu/vawa-confidentiality/government-memoranda-and-factsheets/c\\_VAWAConf\\_DHSGuidanceSec%20384\\_05.05.97\\_FIN.pdf](http://niwaplibrary.wcl.american.edu/vawa-confidentiality/government-memoranda-and-factsheets/c_VAWAConf_DHSGuidanceSec%20384_05.05.97_FIN.pdf)

to prevent abusers, traffickers and other perpetrators from using the information to locate or harm the victim.<sup>20</sup>

- (2) Source Limitation Protections – The source limitation protections prohibit immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator (and his relatives and family members), to take an adverse action regarding admissibility or deportability against an immigrant victim.<sup>21</sup>
- (3) Restrictions on Enforcement Actions – Discourages enforcement actions in certain designated locations, such as domestic violence shelters and supervised visitations centers, by requiring DHS to certify in immigration court that any such enforcement action did not violate the confidentiality and source limitation protections.<sup>22</sup>

Violations of VAWA Confidentiality by DHS staff can result in a \$5,000 and disciplinary sanctions per incident. In 2008, DHS established procedures for reporting and investigating VAWA confidentiality violations committed by DHS employees. Complaints are to be filed with the DHS Office of Civil Rights and Civil Liberties, Review and Compliance Unit.<sup>23</sup>

The manner in which the VAWA Unit functioned was unique in many respects from all other adjudications conducted by U.S. Citizenship and Immigration Services. Several of these unique features are described below:

a. VAWA Confidentiality Case Processing

By creating the VAWA Unit and sending virtually all<sup>24</sup> VAWA confidentiality protected cases to the VAWA Unit for adjudication, DHS protected against VAWA confidentiality

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<sup>20</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRAIRA”), Pub. L. No. 104-208, § 384 (a)(2); 8 U.S.C. 1367(a)(2).

<sup>21</sup> *Id.* at § 384 (a)(1); 8 U.S.C. 1367(a)(1).

<sup>22</sup> Immigration and Nationality Act (“INA”) § 239(e), 8 U.S.C. §1229(e) (“Initiation of Removal Proceedings: Certification of compliance with restrictions on disclosure”).

<sup>23</sup> See U.S. DEP’T OF HOMELAND SECURITY, VAWA CONFIDENTIALITY PROVISIONS AT THE DEPARTMENT OF HOMELAND SECURITY (2008) (instructions on how to file a complaint in the event of a violation of VAWA confidentiality by a DHS employee), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/government-memoranda-and-factsheets/VAWA-CONF\\_DHS-Complaint-Instructions\\_2008.pdf](http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/government-memoranda-and-factsheets/VAWA-CONF_DHS-Complaint-Instructions_2008.pdf)

<sup>24</sup> It is important to note that, as of this writing, there remains one VAWA confidentiality protected case type that USCIS has failed to transfer to the VAWA Unit for adjudication – applicants for battered spouse waivers under INA section 216(c)(4)(C). Congress called for all battered spouse waiver cases to be adjudicated by the VAWA Unit’s staff with special training on the dynamics of domestic violence in VAWA 2005. See U.S. Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009, Report of the Committee on the Judiciary, House of Representatives, to Accompany H.R. 3402, H.R. Rep. No. 109-233, at 116 (2005)

Consistent with these procedures, the Committee recommends that the same specially trained unit that adjudicates VAWA self- petitions, T and U visa applications, process the full range of



violations by DHS officials. The VAWA Unit's protections against VAWA confidentiality violations include:

- Mailroom staff at the VSC receives special training on handling of cases entitled to VAWA confidentiality protection.
- Each case is screened carefully for a safe address check as the first step in case processing.
- Cases are marked clearly on the outside of the file that the case so it is clear to all DHS officials who see the file that the case has VAWA confidentiality protection.
- A Class of Admission Code "384" is assigned to each VAWA confidentiality protected case that the VAWA Unit enters into the Central Index System to notify all DHS components that the case is receiving VAWA confidentiality protection signifying that no information about the case, the victim, the victim's location, case status or any other information about or contained in the case file can be released.<sup>25</sup> It also notifies DHS officials about restrictions and prohibitions that apply to reliance on information provided by a perpetrator or the perpetrator's family member as a basis for an enforcement action against the VAWA confidentiality protected victim.<sup>26</sup>
- Use of a specialized hotline answered only by VAWA Unit supervisors that allows for verification to protect against release of information about any VAWA confidentiality protected case to any person other than the victim's authorized victim advocate or attorney.

b. Specialized Training on Domestic Violence, Sexual Assault and Human Trafficking Dynamics

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adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§§ 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.

(emphasis added).

As a result of continuing to be adjudicated at each of the USCIS Service Centers, battered spouse waivers, are adjudicated by USCIS Service Center staff that do not receive the same specialized training that VAWA Unit staff receive. The result is inconsistency in case adjudications between service centers and battered immigrant spouses whose abusive U.S. citizen spouses filed immigration papers on the abused immigrant spouse's behalf and who were granted conditional resident status receiving less access to VAWA protections than battered immigrant spouses of citizen or lawful permanent residents who self-petition. This is true despite the fact that battered spouse waiver applicants are afforded VAWA confidentiality protection as VAWA self-petitioners (INA Section 101(a)(51)(C); 8 U.S.C. 1367(a)(1)(F)).

<sup>25</sup> U.S. DEP'T OF HOMELAND SECURITY, BROADCAST MESSAGE ON NEW 384 CLASS OF ADMISSION CODE (2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message-to-DHS-384-COA-Final-12.21.10.pdf/view>

<sup>26</sup> U.S. DEP'T OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, INTERIM GUIDANCE RELATING TO OFFICER PROCEDURE FOLLOWING ENACTMENT OF VAWA 2005 (2007), available at: [http://niwaplibrary.wcl.american.edu/vawa-confidentiality/government-memoranda-and-factsheets/VAWA-CONF\\_Torres-ICE-VAWA-Confidentiality-Memo-Jan-22-2007.pdf/view](http://niwaplibrary.wcl.american.edu/vawa-confidentiality/government-memoranda-and-factsheets/VAWA-CONF_Torres-ICE-VAWA-Confidentiality-Memo-Jan-22-2007.pdf/view); See also Memorandum from William I. Howard, Principal Legal Advisor, VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007).

The first trainings INS VAWA staff conducted on the VAWA self-petitioning provisions were conducted at District Offices in 1995. Faculty for those trainings generally included both INS VAWA experts and faculty with expertise serving immigrant victims of domestic violence and sexual assault as advocates and attorneys.<sup>27</sup> Once the VAWA Unit was founded at the VSC in 1997, national experts in the field of domestic violence, sexual assault and human trafficking<sup>28</sup> regularly joined INS/DHS staff in conducting most of the trainings for the VAWA Unit between 1997 and 2009, at which point the new leadership at the VAWA Unit ceased involving experts in the field in VAWA Unit trainings. Topics routinely covered in these ongoing specialized trainings included:

- Domestic violence, sexual assault and human trafficking dynamics
- The intersection of culture and crime victimization including how culture and immigration experience affect the dynamics of abuse
- Immigration related abuse, power and control
- The legislative history and purpose of the VAWA, U and T visa immigration protections
- Special issues and questions that arise for adjudicators in VAWA self-petitioning, U and T visa cases

The value in involving faculty from the domestic violence, sexual assault and human trafficking field in training VAWA Unit adjudicators and managers was recognized early on by INS.<sup>29</sup> In person training involving national experts in the field and DHS staff who were experts on VAWA Unit case types occurred regularly from the founding of the VAWA Unit in 1997 through fiscal year 2009.<sup>30</sup> From 2010-2013, all training at the VAWA Unit became exclusively

<sup>27</sup> Leslye Orloff served as faculty together with Karen Fitzgerald of INS for several of the 1995 field office trainings.

<sup>28</sup> Faculty members included Leslye E. Orloff and Janice Kaguyutan (Ayuda and Legal Momentum); Maria Jose Fletcher (VIDA), Sujata Warriar (New York City Program of the New York State Office for the Prevention of Domestic Violence), Aparna Bhattacharyya (RAKSHA; also has experience training ICE Trial Attorneys), Florrie Burke (NY Anti-Trafficking Network), Gail Pendleton of the National Lawyers Guild National Immigration Project served as faculty for early trainings in the late 1990s. Leslye Orloff, who also has experience training ICE field officers, ICE trial attorneys, immigration judges and the BIA, served expert faculty for virtually all the trainings beginning in 1997 that involved outside experts. Lead training staff from within DHS included Laura Dawkins, Michelle Young, and Walter Laramie.

<sup>29</sup> See Letter from T. Alexander Aleinikoff, Executive Associate Commissioner for Programs, Immigration and Naturalization Service) to Leslye Orloff, Director of Program Development, Ayuda (Aug. 22, 1996) (Regarding VAWA Self-Petitioning Cases), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/1996.8.22%20Aleinikoff-Orloff%20letter%20Aug%201996.pdf/view>; see also Memorandum from Paul W. Virtue, Acting Executive Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, District Directors, Officers-in-Charge, and Service Center Directions, Immigration and Naturalization Service, *Supplemental Guidance on Battered Alien Self-petitioning Process and Related Issues* 7 (May 6, 1997), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/VAWA\\_INSOP%20VAWA%20Self-Petition%20memo\\_5.6.97\\_OVW\\_3.31.09.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/VAWA_INSOP%20VAWA%20Self-Petition%20memo_5.6.97_OVW_3.31.09.pdf/view)

<sup>30</sup> U.S. DEP'T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER: REPORT TO CONGRESS 9- 10, 13 (Oct. 22, 2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/USCIS%20-%20Operations%20of%20the%20Violence%20Against%20Women%20Act.pdf/view>

an in house training that did not include national experts and, less often, included VAWA expert staff from the USCIS Office on Policy and Strategy in the trainings. The VAWA Unit and the Vermont Service Center are now under new leadership, who has been implementing positive changes, adding adjudicators, and rebuilding an effective VAWA Unit. The sustainability and the expertise of the Unit would greatly benefit from reinstatement of the annual in-person trainings involving experts in the field who are up to date with the most current VAWA legislative amendments, legislative history, social science research and evolution of best practices in the field of professionals serving immigrant victim of domestic violence, sexual assault, stalking human trafficking and other U visa covered criminal activities.<sup>31</sup>

Historically, training coupled with peer to peer collaboration fostered by the VAWA Unit contributed to the VAWA Unit's effectiveness. This included:

- An annual in person multi-day training<sup>32</sup>
- On the job training and mentorship<sup>33</sup>
- Post basic follow up training – 6 hours<sup>34</sup>
- Bi monthly team meetings<sup>35</sup>
- Promotion of a work environment in which adjudicators were encouraged to talk to each other and share information about case work, difficult issues, and patterns they were seeing in cases. This fostered a work environment that grew the expertise of staffers who were encouraged to learn from each other and helped the Unit identify patterns of fraud.<sup>36</sup>

### C. The Benefits of Specialized Units for Victim Safety and the Justice System's Ability to Hold Perpetrators Accountable

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<sup>31</sup> Trainings conducted in-person by experts in the field has been particularly helpful to adjudicators and managers of the VAWA Unit, providing context and an opportunity for VAWA Unit staff to work through some of the more difficult issues they encounter in adjudicating cases with experts who provide technical assistance to other adjudicators and justice system professionals on similar issues that arise in domestic violence, sexual assault, stalking and human trafficking cases. Such training would be particularly useful for the newly assigned adjudicators to the VAWA Unit and for addressing the changes to VAWA confidentiality, VAWA self-petitioning and the U visa that were contained in VAWA 2013. Of particular interest for all VAWA Unit staff would be gaining training explaining stalking and the impact it has on a victim. This will help adjudicators understand how state courts have been adjudicating stalking cases and the dynamics of the ways in which stalking causes "substantial harm" to victims. Experts in the field can provide data from research on this issue, including stories of victims and the trauma they suffer, cyber stalking, and tools on how to better identify the crime of stalking and indicia of the debilitating emotional injuries stalking causes that will be very useful to adjudicators in stalking based U visa cases and when the crime of stalking is an underlying offense in a VAWA self-petitioning case.

<sup>32</sup> U.S. DEP'T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER: REPORT TO CONGRESS 9- 10, 13 (Oct. 22, 2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/USCIS%20-%20Operations%20of%20the%20Violence%20Against%20Women%20Act.pdf/view>

<sup>33</sup> *Id.* Historically, training was provided by first line supervisors and senior VAWA Unit staff with significant durations of service in the VAWA Unit and experience working on VAWA case types.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 3.

It is a well-established best practice in the justice system that specialized training is needed to conduct effective interviews of domestic violence and sexual assault victims.<sup>37</sup> Police officers and prosecutors working in domestic violence and sexual assault units receive training on the dynamics of these crimes so that they can understand the impact that the resulting trauma will have on how the victim describes the crime perpetrated against her. Without specialized training, interviewers will lack the skill they need to recognize signs of trauma, abusive behavioral patterns, and the perpetrator's coercive control over the victim. Unskilled interviewers without this training are highly likely to discount evidence of abuse, power, and control and misconstrue the effects of trauma when making credibility determinations.<sup>38</sup>

Similarly, sexual assault has a long-term impact on a victim's life, including her privacy, physical safety, housing, education, employment, immigration status, and/or economic stability. For some victims, even a single sexual assault can lead to a life plagued with homelessness, depression, and suicide.<sup>39</sup> Nearly one-third of all sexual assault victims develop sexual assault-related Post-Traumatic Stress Disorder (PTSD).<sup>40</sup> Sexual assault victims were over four times more likely than non-victims of crime to report that they had seriously contemplated suicide and thirteen times more likely than their non-victim counterparts to have made a suicide attempt.<sup>41</sup>

Domestic violence is a pattern of coercive behavior aimed at gaining – and then maintaining – power and control over the behavior of an intimate partner. The dynamics of domestic violence, power, control, and coercion and how victims cope with abusive relationships all effect how a domestic violence victim is able to describe the abuse they have suffered. Victims of domestic violence suffer from a range of physical and emotional injuries ranging from injuries, wounds, and chronic pain to emotional and psychological injuries including depression, anxiety, panic attacks, decreased self-esteem, symptoms of post-traumatic stress

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<sup>37</sup> See generally NAWAL AMMAR, HELENE BERMAN, JACQUELYN CAMPBELL, ANINDITA DASGUPTA, MARY ANN DUTTON, GISELLE HASS, STEPHANIE J. NAWYN, LESLYE E. ORLOFF, ANITA RAJ, RACHAEL RODRIGUEZ, EVAN STARK, JAY G. SILVERMAN, CRIS M. SULLIVAN, DAVID B. THRONSON, VERONICA TOBAR THRONSON, HANNAH BRENNER, J. RUBEN PARRA-CARDONA, & JULIA L. PERILLA, VAWA IV LEGISLATIVE HISTORY HOUSE MARK-UP RESEARCHER'S PERSPECTIVE ON IMMIGRATION PROTECTIONS FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/VAWA-IV-House-Researcher-Data-Sign-on.pdf/view>

<sup>38</sup> *Id.* at 5.

<sup>39</sup> BEYOND THE CRIMINAL JUSTICE SYSTEM: USING THE LAW TO HELP RESTORE THE LIVES OF SEXUAL ASSAULT VICTIMS: A PRACTICAL GUIDE FOR ATTORNEYS AND ADVOCATES 3 (Jessica E. Mindlin & Susan Vickers eds., Victim Rights Law Center 2007).

<sup>40</sup> DEAN G. KILPATRICK, CHRISTINE N. EDMUNDS & ANNE K. SEYMOUR, RAPE IN AMERICA: A REPORT TO THE NATION 7 (National Center for Victims of Crime 1992).

<sup>41</sup> *Id.*

disorder, and social isolation. These problems lead to higher than average risk among victims of suicide, future victimization, and perpetration of abuse.<sup>42</sup>

The abuser's power and control over a victim's immigration status significantly increases the likelihood of abuse for immigrant victims.<sup>43</sup> There is a growing body of research data demonstrating that immigrant women are a particularly vulnerable group of victims of domestic violence. They tend to have fewer resources, stay longer in the relationship, and sustain more severe physical and emotional consequences as a result of the abuse and the duration of the abuse than other battered women in the United States.<sup>44</sup> In particular, research studies have found that abusers of immigrant domestic violence victims actively use their power to control their wives and children's immigration status: they utilize threats of deportation as a tool, preying upon their abused spouses and children's fears so as to keep them from seeking help or calling the police to report the abuse.<sup>45</sup>

Adjudications of cases filed by battered immigrant victims require both knowledge about violence against women and an understanding about the particular dynamics that additionally affect immigrant victims. These include power and control over the victim's immigration status, cultural control, and isolation as a result of limited English proficiency. Additionally, many battered immigrants come from countries where domestic violence is not considered a crime and

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<sup>42</sup> NAWAL AMMAR, HELENE BERMAN, JACQUELYN CAMPBELL, ANINDITA DASGUPTA, MARY ANN DUTTON, GISELLE HASS, STEPHANIE J. NAWYN, LESLYE E. ORLOFF, ANITA RAJ, RACHAEL RODRIGUEZ, EVAN STARK, JAY G. SILVERMAN, CRIS M. SULLIVAN, DAVID B. THRONSON, VERONICA TOBAR THRONSON, HANNAH BRENNER, J. RUBEN PARRA-CARDONA, & JULIA L. PERILLA, VAWA IV LEGISLATIVE HISTORY HOUSE MARK-UP RESEARCHER'S PERSPECTIVE ON IMMIGRATION PROTECTIONS FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT 5 (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/VAWA-IV-House-Researcher-Data-Sign-on.pdf/view>

<sup>43</sup> GISELLE AGUILAR-HASS, NAWAL AMMAR & LESLYE ORLOFF, BATTERED IMMIGRANTS AND U.S. CITIZEN SPOUSES (Legal Momentum, Immigrant Women Program 2006), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/copy\\_of\\_BB\\_RSRCH\\_ImmVictims\\_Battered\\_Imm.pdf](http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/copy_of_BB_RSRCH_ImmVictims_Battered_Imm.pdf)

<sup>44</sup> *Id.*

<sup>45</sup> Martina J. Acevedo, *Battered Immigrant Mexican Women's Perspectives Regarding Abuse and Help-Seeking*, 8 J. MULTICULTURAL SOC. WORK 243-82, no. 3-4 (2000); Nawal Ammar & Leslye Orloff, *Battered Immigrant Women's Domestic Violence Dynamics and Legal Protections*, in *IT'S A CRIME: WOMEN AND JUSTICE* 430, 430-443 (R. Muraskin & T. Alleman eds., 2007); Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton & Giselle Aguilar-Hass, *Calls to Police and Police Response: A Case Study from the Latina Immigrant Women in the USA*, 7 J. INT'L POLICE SCI. & MGMT. 230-44 (2005); Nawal Ammar, S. Alvi, A. Couture & J. San-Antonio, *Experiences of Muslim and Non-Muslim Battered Immigrant Women with the Police in the United States: A Closer Understanding of Commonalities and Differences* (2012, pending publication); Nawal Ammar, Leslye Orloff, Mary Ann Dutton & Giselle Hass, *Battered Immigrant Women in the U.S. and Protection Orders*, CRIM. JUST. REV. (2012, pending publication); EDNA EREZ & NAWAL AMMAR, VIOLENCE AGAINST IMMIGRANT WOMEN AND SYSTEMIC RESPONSES: AN EXPLORATORY STUDY (2003) (report submitted to National Institute of Justice in fulfillment of requirements for Grant #98-WT-VX-0030); GISELLE AGUILAR-HASS, NAWAL AMMAR & LESLYE ORLOFF, BATTERED IMMIGRANTS AND U.S. CITIZEN SPOUSES (Legal Momentum, Immigrant Women Program 2006), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/copy\\_of\\_BB\\_RSRCH\\_ImmVictims\\_Battered\\_Imm.pdf](http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/copy_of_BB_RSRCH_ImmVictims_Battered_Imm.pdf); J. McFarlane, A. Malecha, J. Gist, K. Watson, E. Batten, I. Hall & S. Smith, *Intimate Partner Violence Against Immigrant Women: Measuring the Effectiveness of Protection Orders*, 16 AM. J. FAM. L. 244-52 (2002).

intervention by parties outside of the family or community can arouse distrust, suspicion, and even hostility.<sup>46</sup>

Immigrant women are also subject to rampant sexual violence at work.<sup>47</sup> Where the perpetrator of the violence is an employer or a supervisor, these individuals use poverty and employer dependence against immigrant women. Like immigrant victims of domestic violence, these women are considered by perpetrators to be “perfect victims” for sexual exploitation because they are often isolated, are thought to lack credibility, generally do not know their legal rights, and may lack legal status to live and work in the United States.<sup>48</sup>

The relationship between the abuser and the abused has been likened to that of captors and captives in a prisoner-of-war situation. The complexities of the coping mechanisms developed by the victim in abusive relationships include the victim’s control of anger, survival vs. escape, viewing the captor as a protector, and mutual dependence. Key ingredients of brainwashing include isolation of the victim from the outside world and humiliation and degradation of the victim; these are followed by acts of kindness coupled with the threat of a return to the degraded state if some type of compliance is not obtained.<sup>49</sup>

Adjudication of cases involving women who are victims of abuse requires a trained adjudicator who understands the woman’s fears for herself and her children, her guilt and shame, her immobilization and shock, and the process of self-blame.<sup>50</sup> These issues are compounded by her abuser’s ongoing threats of deportation meant to keep her from seeking help, cooperating with law enforcement, and – in the case of sexual assault in the work place – leaving her

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<sup>46</sup> NAWAL AMMAR, HELENE BERMAN, JACQUELYN CAMPBELL, ANINDITA DASGUPTA, MARY ANN DUTTON, GISELLE HASS, STEPHANIE J. NAWYN, LESLYE E. ORLOFF, ANITA RAJ, RACHAEL RODRIGUEZ, EVAN STARK, JAY G. SILVERMAN, CRIS M. SULLIVAN, DAVID B. THRONSON, VERONICA TOBAR THRONSON, HANNAH BRENNER, J. RUBEN PARRA-CARDONA, & JULIA L. PERILLA, VAWA IV LEGISLATIVE HISTORY HOUSE MARK-UP RESEARCHER’S PERSPECTIVE ON IMMIGRATION PROTECTIONS FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT 5 (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/VAWA-IV-House-Researcher-Data-Sign-on.pdf/view>

<sup>47</sup> Mary Bauer & Mónica Ramírez, *Injustice on Our Plates: Immigrant Women in the U.S. Food Industry* 42-44 (Southern Poverty Law Center 2010), available at: [http://www.splcenter.org/sites/default/files/downloads/publication/Injustice\\_on\\_Our\\_Plates.pdf](http://www.splcenter.org/sites/default/files/downloads/publication/Injustice_on_Our_Plates.pdf).

<sup>48</sup> *See id.*

<sup>49</sup> NAWAL AMMAR, HELENE BERMAN, JACQUELYN CAMPBELL, ANINDITA DASGUPTA, MARY ANN DUTTON, GISELLE HASS, STEPHANIE J. NAWYN, LESLYE E. ORLOFF, ANITA RAJ, RACHAEL RODRIGUEZ, EVAN STARK, JAY G. SILVERMAN, CRIS M. SULLIVAN, DAVID B. THRONSON, VERONICA TOBAR THRONSON, HANNAH BRENNER, J. RUBEN PARRA-CARDONA, & JULIA L. PERILLA, VAWA IV LEGISLATIVE HISTORY HOUSE MARK-UP RESEARCHER’S PERSPECTIVE ON IMMIGRATION PROTECTIONS FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT 5 (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/VAWA-IV-House-Researcher-Data-Sign-on.pdf/view>

<sup>50</sup> Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1046-47 (1997); Sara Benson, *Interviewing the Domestic Violence Victim: Incorporating Interdisciplinary Lawyering Skills into the 1L Curriculum* 1-14 (Law and Economics, Working Paper No. 107 2010).

employment. Many immigrant victims suffer through years of threats of deportation and separation from their children should they take any steps to leave the abusive relationship. With ongoing immigration-related abuse accounting for 68.3% of protection order violations, it is clear that even when obtained, these orders are less than effective in stopping immigration-related threats and abuse.<sup>51</sup>

Adjudicators not only need to have knowledge of intimate partner violence, but an understanding of cultural differences as well. When adjudicators are untrained in these dynamics, they discount or fail to identify the abuse; as a result, the cycle of violence continues.<sup>52</sup> More particularly for battered immigrant women, any assessment requires not only knowledge about violence against women issues, but also about culturally-sensitive aspects of communication and interaction.<sup>53</sup> Many immigrant victims come to the United States from countries in which domestic violence – and often sexual assault – is not prosecuted. Cultural norms discourage intervention by parties outside of the cultural community, and such interventions can produce suspicion, distrust, and hostility.<sup>54</sup>

Throughout the justice system, courts, police, and prosecutors are called upon to address the same dual functions Congress required of INS and, now USCIS, in VAWA self-petitioning cases. They must fairly adjudicate the merits of domestic violence cases while at the same time carrying out these adjudications in a manner that protects and fosters victim safety. Program after program in courts, prosecutors' offices and police departments across the country have found that due to the nature and dynamics of domestic violence, it is virtually impossible to fairly

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<sup>51</sup> MARY ANN DUTTON, NAWAL AMMAR, LESLYE ORLOFF & DARCI TERRELL, USE AND OUTCOMES OF PROTECTION ORDERS BY BATTERED IMMIGRANT WOMEN: REVISED FINAL TECHNICAL REPORT #2003-WG-BX-1004 (2006) (Prepared for National Institute of Justice Office of Justice Programs); Mary Ann Dutton, Leslye E. Orloff & Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 245-305 (2000).

<sup>52</sup> EDWARD W. GONDOLF & ELLEN R. FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (Lexington Books/D.C. Heath & Co. 1988).

<sup>53</sup> Tricia B. Bent-Goodley, *Culture and Domestic Violence: Transforming Knowledge Development*, J. INTERPERSONAL VIOLENCE 193-203 (2005); Erica Burman, Sophie L. Smailes & Khatidja Chantler, "Culture" as a Barrier to Service Provision and Delivery: Domestic Violence Services for Minoritized Women, CRITICAL SOCIAL POLICY 332-57 (2004); Jacquelyn C. Campbell, *Sanctions and Sanctuaries: Wife Battering Within Cultural Contexts*, in TO HAVE AND TO HIT: CULTURAL PERSPECTIVES ON WIFE BEATING 261, 261-85 (Dorothy Ayers Counts, Judith K. Brown & Jacquelyn C. Campbell eds., 2nd ed. 1999); Aarati Kasturirangan, Sandhya Krishnan & Stephanie Riger, *The Impact of Culture and Minority Status on Women's Experience of Domestic Violence*, TRAUMA, VIOLENCE, AND ABUSE 318-32 (2004); Janet L. Lauritsen & Norman A. White, *Putting Violence in Its Place: The Influence of Race, Ethnicity, Gender, and Place on the Risk for Violence*, CRIMINOLOGY & PUB. POL'Y 37-60 (2001).

<sup>54</sup> Muhammad M. Haj-Yahia & Elisheva Sadan, *Issues in Intervention with Battered Women in Collectivist Societies*, J. MARITAL & FAM. THERAPY 1-13 (2008); Muhammad M. Haj-Yahia, *Wife Abuse and Battering in the Sociocultural Context of Arab Society*, FAM. PROCESS 237-55 (2000); Y. Leshem, *The Lived Experience of Ultra-Orthodox Divorced Women with Intimate Partner Violence* (2011) (Initial results of research for a doctoral dissertation) (on file with author); Jae Yop Kim & Ji Hyeon Lee, *Factors Influencing Help-Seeking Behavior Among Battered Korean Women in Intimate Relationships*, J. INTERPERSONAL VIOLENCE 2991-3012 (2011).

adjudicate cases with frequent staff turnover or rotation and without specialized training. Staff and managers well-trained on the dynamics of abuse, culture, immigration status and the ways in which these factors intersect in the lives of immigrant crime victims make it possible for the VAWA Unit staff to timely, efficiently, and fairly adjudicate cases keeping in mind the victim safety VAWA immigration relief was created to promote.<sup>55</sup>

Expert staff devoted exclusively to VAWA, T, U and other crime victim cases provide the DHS's best defense against fraudulent applications. Expert adjudicators who handle domestic violence cases on a daily basis are best suited to distinguish a legitimate application filed by a pro se applicant from a fraudulent application. Further, they can do this while preserving victim safety and without running the risk of violating the special confidentiality provisions that apply to VAWA cases.<sup>56</sup>

#### D. Congressional Support for the Unit

Congress has repeatedly expressed its support for the Unit through legislation. In 2001, Congress expressed support for Unit funding, by including a line item in INS appropriations for staffing of the VAWA Unit, as well as for direct training of all VAWA Unit staff and any other INS staff that come into contact with VAWA, T and U visa cases. The 2001 Appropriations Bill, H.R. 2500, 107<sup>th</sup> Congress 1<sup>st</sup> Session, September 13, 2001 included:

Immigration and Naturalization Service, Salaries and Expenses.... \$5,500,000 shall be for the Violence Against Women Act Unit of the Eastern Adjudication Service Center to provide for the processing of immigration self-petitions and U visas under the Violence Against Women Act (Public Law 103-322, reauthorized in Public Law 106-326) and T visas under the Victims of Trafficking and Violence Protection Act (Public Law 106-326), out of which \$500,000 shall be for the Eastern Adjudication Service Center to provide for the production and distribution of training materials to State Department, Justice Department, and other Government officials concerning the immigration provisions of the Violence Against Women Act.<sup>57</sup>

Despite this explicit funding for VAWA self-petitioning, the Unit remained underfunded. In 2003, Congress restated its support with the following language from the 2003 Appropriations Bill from February 12, 2003:

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<sup>55</sup> Memorandum from NOW Legal Defense and Education Fund to Grace Carswell, Director, VAWA Unit, Vermont Service Center, Immigration and Naturalization Service (Mar. 28, 2001) (regarding the VAWA Unit) at 1-3, available at:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/Carswell%20VAWA%20Unit%20Mmo%203.28.01.pdf/view>

<sup>56</sup> *Id.*

<sup>57</sup> Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 2002, H.R. 2500, 107th Cong. (2001).



Trafficking - To continue efforts to combat the illegal trafficking into the country of some 50,000 women and children every year, the conference agreement includes an increase of 3,662,000 for costs associated with effectively implementing the provisions of the Victims of Trafficking and Violence Protection Act. The conferees continue to be supportive of the INS Violence Against Women Act Processing Unit which is responsible for the adjudication of immigration cases filed by victims of violence including battered immigrants, trafficking victims and other immigrant victims of crime. The conferees encourage the Administration to ensure that sufficient funding is available for the Unit to continue to adjudicate and process immigration cases.<sup>58</sup>

In VAWA 2000, Congress reiterated its respect for the VAWA Unit by for the first time in statute directing that specific kinds of cases be sent to the VAWA Unit for adjudication.<sup>59</sup> Again, in 2005, Congress restated its support statutorily for sending these matters to the VSC.<sup>60</sup> Section 106 of the Immigration and Nationality Act, which is the section on employment authorization for battered spouses of nonimmigrants present in the U.S. with several forms of work authorized visas. Congress stated the expectation that Section 106 work authorizations based on battering or extreme cruelty also be sent to the VAWA Unit in Vermont for adjudication.<sup>61</sup>

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<sup>58</sup> House of Representatives Conference Report on H.J. Res. 2 Consolidated Appropriations Resolution 2003, 149 CONG. REC. H885 (daily ed. Feb. 12, 2003), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/2003%20Approps%20CREC-2003-02-12-pt3-PgH707-2.pdf/view>

<sup>59</sup> The Violence Against Women Act in Section 1503 directed that all VAWA self-petitions filed from abroad by battered immigrant spouses and children of citizens “shall file such petition with the Attorney General under procedures that apply to self-petitioners under clause (iii) or (iv), as applicable” See e.g., INA § 204(a)(1)(A)(v)(II). Similarly, battered immigrant spouses and children filing from abroad “shall file such petition with the Attorney General under procedures that apply to self-petitioners under clause (ii) or (iii), as applicable” (204(a)(1)(B)(iv)(II)). These first statutory references to case processing at the VAWA Unit were included in the Violence Against Women Act of 2000 Section 1503(b)(3) and 1503(c)(3).

<sup>60</sup> See generally Statement of Rep. John Conyers, *supra* note 11, at E2606

Maintaining a specially trained unit with consistent and stable staffing and management is critically important to the effective adjudication of [VAWA related and U and T visa] applications. Consistent with these procedures, I recommend that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS....

<sup>61</sup> See Statement of Rep. John Conyers, *supra* note 11, at E2606

Consistent with these procedures, I recommend that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§§ 202 or 203), and VAWA HRIFA petitions, **106 work authorization under section 814(c) of this Act**, **battered spouse waiver adjudications under 216(c)(4)(C)**, applications for parole of VAWA petitioners and their children and applications for children of victims who have received VAWA cancellation. I also encourage DHS to promote consistency in VAWA adjudications by defining references to “domestic violence” in the INA as “battery or extreme cruelty,” the domestic abuse definition codified in the Violence Against Women Act of

The consistent and clear support of Congress for the Unit to continue its work in an efficient and effective manner in the interest of maintaining victim safety demonstrates its intent and how it envisioned the function of the Unit. In addition to funding the Unit through appropriations, Congress has also demonstrated its interest in the Unit by requiring reporting on its functions, retention of staff, and maintaining adequate expertise within the Unit.<sup>62</sup> The report required USCIS to submit a report to Congress within six months of the reauthorization of the Trafficking Victim Protection Act in 2008. The report required USCIS to report on funds expended by Unit in its work, information about the training adjudicators, victim liaison officers, managers and other staffers underwent at the Unit, measures taken to retain specially trained

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1994 (“VAWA 1994”), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) and regulations implementing the battered spouse waiver.

(emphasis added).

*See also id.* at E2608

I worked closely with Chairman SENSENBRENNER to develop legislative history for the protections offered to immigrant victims contained in Protection of Battered and Trafficked Immigrants Title of the Violence Against Women Act of 2005. The Committee on the Judiciary of the House of Representatives Report to accompany H.R. 3402 that was published on September 22, 2005, provides important legislative history on this Title. Since section numbers have changed in the final bill, I include here cross reference list that will facilitate relating the sections of the final VAWA 2005 provisions we are voting on today with the legislative history sections that describe and support these provisions.... **814 (c) and (d) (Work Authorization for Abused A, E-3, G, H Spouses)—933.**

(emphasis added)

*See also* Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009, Report of the Committee on the Judiciary, House of Representatives, to Accompany H.R. 3402, H.R. Rep. No. 109-233, at 116 (2005)

Consistent with these procedures, the Committee recommends that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§§ 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.

(emphasis added)

The work authorization for spouses of A, E-3, G and H visa holders who were battered or subjected to extreme cruelty placed as amendments in the INA at section 214(c) (15) of the House VAWA 2005 bill, but were moved in the final VAWA 2005 that passed the Senate and became law to Section 106 of the INA. INA § 106, 8 U.S.C. § 1106 states:

...the Secretary of Homeland Security may authorize the alien spouse to engage in employment in the United States and provide the spouse with an ‘employment authorized’ endorsement or other appropriate work permit if the alien spouse demonstrates that during the marriage the alien spouse or a child of the alien spouse has been battered or has been the subject of extreme cruelty perpetrated by the spouse of the alien spouse. Requests for relief under this section shall be handled under the procedures that apply to aliens seeking relief under section 204(a)(1)(A)(iii).

<sup>62</sup> Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 238 (2008) (“TVPRA 2008”).

staff and a core of supervisors, and information about adjudication of cases, including information on the time it took to issue work authorization.<sup>63</sup> USCIS submitted its report to Congress on October 22, 2010<sup>64</sup> and the findings reported will be discussed in further detail below.

#### E. Problems With Stability and Management of the VAWA Unit

In 2008, the management structure of the Unit changed significantly. The management scheme that was implemented in early fiscal year 2008 has led to a disturbing increase in the VAWA self-petition denial rate and many wrongly denied self-petitions. VAWA denials have always been somewhat higher than other family based petition case types. The VAWA self-petitioning denial rate for the 5-year period from 2003 to 2007 remained more or less steady, averaging approximately 23.3% per year. In FY 2008 and 2009, the year in which the changes discussed above were implemented the VAWA self-petitioning denial rate climbed to 39.5%<sup>65</sup>. This was a 58.9% increase over the average denial rate in prior years.

As a part of the restructuring of the Unit, new managers were brought in. The managers brought into the unit had very limited VAWA expertise. These new managers reduced the time given to adjudicators for training and increased the pressure on them to move cases as quickly as possible, going against the training requirement mandated by Congress. It is clear that the less experienced managers, reductions in training, and an emphasis on moving cases as opposed to following the mandate that adjudicators had historically been given to carefully adjudicate these complex cases them had an adverse effect on the rights of immigrant crime victims eligible for VAWA, T and U visa relief.

An illustration of the need for increased numbers of trained staff at the VAWA Unit could be seen from the data on T and U visa processing of cases. As of October 2008, there were 12,092 pending U-visa cases and two VAWA Unit adjudicators assigned to those cases. The T visa backlog was 212 pending and five adjudicators assigned to T visa cases. As cases of wrongful denials at the time illustrated, the Service Center Operations allowed VSC to reduce backlogs on VAWA Unit cases by sacrificing the quality of adjudications to the detriment of statutorily eligible victims. Victims' cases were denied at a rate much higher than had been occurring when the VAWA Unit's staff and supervisors had better training and more expertise.

The National Network to End Violence Against Immigrant Women conducted a survey of attorneys and advocates across the country that regularly represent immigrant victims applying for VAWA, T and U visa immigration relief. This survey documented the problems that

<sup>63</sup> *Id.* at § 238(b) (2008).

<sup>64</sup> U.S. DEP'T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, REPORT TO CONGRESS: REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER (2010), available at: <http://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf>

<sup>65</sup> See U.S. Citizenship and Immigration Services Approvals and Denials for All Forms Types Fiscal Years 2003 – 2011

the field was experiencing with the sharp increase in VAWA denials in 2008, coinciding with the restructuring of the Unit. The problems discovered include:

- VAWA Unit adjudicators applying the incorrect legal standards and then denying VAWA self-petitions or U-visa cases;
- Denying VAWA self-petitions based on lack of good faith marriage;<sup>66</sup>
- Denial based upon a lack of understanding of domestic violence that can then affect the adjudicator's judgment regarding the victim's credibility;<sup>67</sup>
- Denials that evidence lack of understanding of or outright violation of VAWA's "any credible evidence" statutory requirements.<sup>68</sup>

The recent management improvements and staffing increases at the VAWA Unit have been important and are having a favorable effect in the field and on cases of immigrant victims. In recent months, USCIS has demonstrated a commitment and the capacity to bring into the VAWA Unit the staffing needed to reduce backlogs in VAWA self-petitioning and U visa case processing. Providing training for the all VAWA Unit staff on an ongoing basis and returning to policies and practices that shield trained and experienced staff and managers with good performance ratings from VSC rotation is needed to stabilize and maintain and sustain the Unit going forward.

Written policies need to be developed and implemented that make staffing permanent to avoid a recurrence of the treatment the Unit receive beginning in 2008. These changes should be codified in any final VAWA and U visa regulations issued by USCIS. Without such policies in place as occurred in 2008, the VAWA Unit will continue to be susceptible to restructuring of both the staff and the management. It is imperative that the VSC implement the retention policy

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<sup>66</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) contained a provision that was designed to regulate international matchmaking organizations the "mail order bride" industry. As part of these provisions sponsored and included in IIRAIRA by Senator Kohl, INS was required to investigate the connection between international matchmaking agencies and domestic violence. When INS submitted this report to Congress, one of the issues that was discussed was the fact that when domestic violence exists in a relationship, the review of cases found no instances in which marriage fraud was also found to exist. *See generally*, Robert J. Scholes, *The "Mail Order Bride" Industry and its Impact on U.S. Immigration*, in INTERNATIONAL MARRIAGE BROKERS: A REPORT TO CONGRESS, Appendix 3 (1999), available at: <http://www.aila.org/content/fileviewer.aspx?docid=13775&linkid=151742>

These findings make sense. The fact of the domestic violence in a relationship provides evidence that supports a finding that there was not marriage fraud and that the marriage is valid. If the marriage was fraudulent (e.g. there was no real marriage or real relationship) the dynamics of power and control and abuse would not be present.

<sup>67</sup> *See Lopez-Umanzor v. Gonzales*, 405 F.3d 1049, 1056 (9th Cir. 2005) for an analysis of the importance of adjudicators understanding the domestic violence and how untrained adjudicators who do not understand the dynamics of domestic violence can issue erroneous credibility decisions that are not sustainable on appeal.

<sup>68</sup> Memorandum from National Network to End Violence Against Immigrant Women to Michael Aytes, U.S. Citizenship and Immigration Service, U.S. Dep't of Homeland Security, (Feb. 18, 2009) (regarding detailed examples of wrongful denial issues), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/Aytes%20letter%20redacted%202.18.09.pdf/view>; USCIS responded to this memorandum in a letter to Gail Pendleton, Co-Director, ASISTA on March 18, 2009 from Barbara Valarde, Chief, Service Center Operations, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/CIS%20VAWA%20Unit%20Response%20Aytes3-25-09.pdf/view>

that it already has in place<sup>69</sup> to ensure that the Unit is impervious to arbitrary changes in the structure of the Unit that cause experienced and specially trained staffers from being rotated out or in the case of supervisors promoted out of the Unit.

### III. Current Procedures, Structure and Challenges of the VAWA Unit

#### A. Current Operations

The VAWA Unit currently processes the following applications:

- VAWA I-130 Self-Petitions
- U Visa I-918 application and I-918B Certification
  - I-192 inadmissibility waivers
- T Visa I-914 application and I-914B Declaration
- VAWA, U and T related I-764 application for Work Authorization
- INA § 106 Work Authorizations
- U and T I-539 (extensions)
- U and T I-485 (adjustment)

Currently, the VAWA Unit is comprised of Immigration Service Officers (level 1 and 2- “ISO-1” & “ISO-2”), adjudicators, and supervisory staff, which includes managers/section chiefs.

Applications are initially reviewed by ISO-1 staffers who perform:

- Prima facie determinations
- A “safe address” review to determine whether the address provided on the application is a legitimate address where the applicant can safely receive mailings from USCIS.
  - This review is also the initial fraud check because a significant amount of fraud can be traced at this stage to fraudulent addresses.
- Customer services related to answering questions received on the VAWA Unit hotline in a manner that complies with VAWA confidentiality requirements.

The case then moves to contractors who enter cases into the Central Index System assigning a 384 Code of Admission<sup>70</sup> and send the prima facie determination letter to the VAWA self-petitioner at their safe address.

<sup>69</sup> U.S. DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, REPORT TO CONGRESS: REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER 14 (2010), available at: <http://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf>.

<sup>70</sup> U.S. DEP’T OF HOMELAND SECURITY, BROADCAST MESSAGE ON NEW 384 CLASS OF ADMISSION CODE (2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message-to-DHS-384-COA-Final-12.21.10.pdf/view>

ISO-2 officers adjudicate the VAWA self-petition, U Visa or T visa case, determine approvability of the application, issue any needed requests for evidence (RFE), receive the responses to the RFEs and adjudicate work authorization and waiver requests.

1<sup>st</sup> line supervisors review 100% of all denials at the adjudicator level. To maintain consistency among adjudicators and identify emerging issues where additional training is needed, 1<sup>st</sup> line supervisors also review a certain percentage of approvals and a certain percentage of RFEs. 1<sup>st</sup> line supervisors are also involved in responding to hotline calls and questions that are not routinely or simply answered questions.

Managers/Section Chiefs manage work and resources of the Unit in adjudicating VAWA, T and U applications and also address the more complex issues and questions that get raised through hotline calls. There are several important resources that VAWA Unit Managers/Section Chiefs used to routinely provide that were very useful and should be reinstated as standard practice for the VAWA Unit. Managers/Section Chiefs should, as they did in the past, report quarterly to the field on processing of VAWA, T and U visa cases including case processing times and should receive input regularly from the field on issues affecting VAWA T and U visa cases. This will be discussed more fully below. Additionally, Managers/Section Chiefs should be responsible for reinstating mandatory yearly in person trainings for all VAWA Unit staff and managers that include outside experts.

## B. Current Challenges

Staffers that work in the Unit are currently subject to a department wide rotation system. Even though USCIS reported to Congress that the VSC has a policy against such rotations, both rotations out of the Unit and promotions of senior staff out of the VAWA Unit have occurred. This system allowed other sections of DHS to rotate staffers based on changes in operations that result from a surge in other filings (e.g., TPS and H1B visa surges). This means that staffers are not permanently stationed in the Unit and can be rotated out *at any time* based on the needs of other sections of DHS. It is important for specially trained staff to remain in the VAWA Unit and to maintain, as a primary responsibility, adjudication of VAWA Unit special case types.

Both rotation out of the Unit and requiring VAWA Unit staff to adjudicate other case types impedes the development and maintenance of the appropriate level of staffing, expertise, and specialized training needed for efficient adjudication of VAWA, T and U visa cases. Keeping staffing at sufficient levels to meet adjudication or work authorization within six (6) months of filing provides much needed relief to immigrant victims of domestic violence, sexual assault, trafficking and other crimes, as expected by Congress.<sup>71</sup>

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<sup>71</sup> See House of Representatives Consideration of H.R. 7311, TVPRA 2008, 145 CONG. REC. H10888, H10905 (December 10, 2008):

The rotation of experienced staffers and/or supervisors out of the Unit was demonstrated in the report to Congress from USCIS, which states that three out of four staffers at the supervisor level (two 1<sup>st</sup> Line Supervisors and a GS-14 Manager) that were no longer with the Unit were “reassigned at government initiative.” The two supervisors had 72 and 17 months of experience in the Unit, respectively, and the Manager with 20 months of experience; all three were rotated out of the Unit despite the policy in place against such a rotation.<sup>72</sup> In fact, the three staffers that were rotated out had a combined experience of 119 months; the remaining six 1<sup>st</sup> Line Supervisors and one Manager had a combined experience of 75 months. These statistics clearly illustrate the detrimental effect of the rotation system in the supervisory level of the Unit.

Additionally, this inability to maintain and develop expertise leads to a backlog in processing by:

- Reducing efficiency in application assessment;
- Causing issuance of more requests for evidence by inexperienced officers who request additional evidence that more experienced adjudicators would not need to adjudicate the case;
- Longer delays in adjudication from unnecessary RFEs combined with inexperienced officers who are just beginning to learn about how to correctly process these case types;
- Requiring more supervisor time spent on responding and correcting problems in cases identified through supervision, in responding to the VAWA Unit hotline and inquiries from the field;
- Requiring more CIS policy office time and DHS Ombudsman office time responding to problems;
- Increasing denials of legitimate cases; and
- An inability to distinguish between fact patterns that are part of a pattern and dynamics of abuse and fact patterns that are believed by the untrained, inexperienced adjudicator to indicate fraud can lead to more work related to investigating fraud in cases in which no fraud is present.

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Immigrant victims of domestic violence, sexual assault and other violent crimes should not have to wait for up to a year before they can support themselves and their families. The Vermont Service Center should therefore strive to issue work authorization and deferred action in most instances within 60 days of filing, consistent with the need for safe and competent adjudication.

<sup>72</sup> U.S. DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, REPORT TO CONGRESS: REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER 10 (2010), available at: <http://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf>

Staffers in the Unit can also be subject to a change in casework focus. This allows them to stay in the Unit, but has them focus on areas where a surge in filing has occurred and takes them away from their work in the Unit on VAWA, U and T visa applications and INA Section 106 work authorizations. This has the same effect as the rotation system because these staffers are required to work on the adjudication of other applications and not those that the Unit was created to focus on. This leads to adjudication delays and backlogs when staff with specialized expertise on VAWA Unit case types because they are assigned other cases to work on.

#### IV. Proposed Changes

We recommend that the specially trained VAWA Unit at the USCIS Vermont Service Center should build and maintain a VAWA Unit staffing infrastructure designed to promote retention of VAWA Unit adjudication staff and experienced managers. The priority should be retaining staff and managers in the Unit who have training, experience, expertise and good performance ratings within the VAWA Unit. Experienced VAWA Unit supervisory staffers who have historical knowledge and experience with implementation of VAWA and VAWA related statutes should be responsible for resource allocation, policy, program development, training and other substantive or operational issues affecting the Unit.<sup>73</sup> Ideally, managers would be promoted in the future exclusively from among VSC staff who have served in the VAWA Unit, have gained sufficient expertise to manage the Unit, and who have good job performance ratings at the VAWA Unit. There are also a significant number of former VAWA Unit adjudicators with good performance records in the VAWA Unit who were, in recent years, rotated out of the Unit who should be recruited in the future to return to serve in the Unit. The maintenance of a core staff and supervisory staff will ensure the proper and efficient adjudication of VAWA, U and T applications by preserving the level of expertise within the Unit.

##### A. Creating and Retaining Experienced Staff

Congress has always envisioned the Unit to maintain staff that is well trained and experienced to efficiently and effectively adjudicate VAWA, U and T cases and provide consultations to other government officials on complex VAWA related issues.<sup>74</sup> Training and

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<sup>73</sup> TVPRA 2008 at § 238(b)(4) (2008).

<sup>74</sup> See Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009, Extension of Remarks, 151 Cong. Rec. E2615 (December 16, 2005) (statement of Rep. Schakowsky):

Currently, a specially-trained VAWA unit exists within DHS that adjudicates all VAWA immigration cases nationally. Because ICE officers often do not have the expertise and training in domestic violence that this VAWA unit does, the VAWA unit is best equipped to assure consistency of VAWA adjudications, effectively identify eligible cases and deny fraudulent cases. This unit should have exclusive jurisdiction to grant, deny and revoke deferred action. Maintaining a specially-trained unit with consistent and stable staffing and management is also critically important to the effective adjudication of VAWA cases.



experience is critical to the proper adjudication of these cases, especially considering their sensitive and complex nature, including victim safety and maintaining confidentiality.<sup>75</sup> Based on historical data over the years since the founding of the VAWA unit, the adjudication of VAWA cases will take longer and will involve more precision and care than other case types. Granting VAWA self-petitions, T-visas, and U-visas requires a review of significantly more documentation and consideration of many more factors than are involved in adjudicating family-based visa petitions. Evidence of the care the VAWA Unit takes in adjudicating VAWA unit cases compared to other case types can be found in an examination for Requests for Further Evidence (RFE) rates. A comparison of USCIS data (2003-2011) finds that family based visa petitions I-130 have RFE rates of 20.2%, compared to the much higher rates in VAWA self-petitioning cases of 68.3%.<sup>76</sup>

In FY 2008, the VAWA Unit was run in a manner that resulted in processing more cases, but also resulted in wrongfully denying significant numbers of cases filed by victims legally eligible for relief. The goal was to reduce the backlog of cases, but this emphasis on backlog reduction in the context of crime victim cases has dire consequences for immigrant victims whom Congress created special laws to protect. Reducing the backlog can best be accomplished by increasing the numbers of adjudicators in the Unit and requiring that all new adjudicators complete four full days of training, consistent with what USCIS reported to Congress.

We commend USCIS for the training program outlined in its report to Congress and recommend that it continues training adjudicators and supervisors in that manner.<sup>77</sup> The VAWA Unit should reinstate this four day training as soon as possible and should include, as faculty, experts in the fields of domestic violence, sexual assault, and human trafficking experienced by immigrant crime victims. The faculty and curriculum should be made up of both USCIS VAWA experts and outside experts and the curriculum should be similar to that used between 1997 and 2009, updated to reflect new statutory protections included in VAWA 2013 and new policies issued by DHS in recent years.

Of particular importance is the additional training to officers that are assigned to the adjudication of U and T visa applications. The report to Congress states that these officers receive an additional two days of training from Senior Adjudicators and participate in “mentoring, follow-up training, and bi-monthly staff meetings in the same manner as officers

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*See also* House Report to Accompany H.R. 3402, *supra* note 2, at 122 (“Government officials are encouraged to consult with the specially trained VAWA Unit in making determinations under the special “any credible evidence standard”).

<sup>75</sup> TVPRA 2008 at § 238.

<sup>76</sup> U.S. CITIZENSHIP AND IMMIGRATION SERVICES APPROVAL RATES AND REQUEST FOR EVIDENCE (RFE) FOR ALL FORMS TYPES FISCAL YEARS 2003 – 2011 (attached hereto as Attachment B).

<sup>77</sup> U.S. DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, REPORT TO CONGRESS: REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER 14 (2010), available at: <http://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf>

assigned to adjudicate VAWA special immigrant petitions.”<sup>78</sup> We encourage VSC to continue the training for officers and supervisors as reported to Congress.

Training is especially important when the Unit staff is dramatically expanded. Generally, such an expansion involves the hiring of inexperienced adjudicators. USCIS reported adjudicators’ seniority, or experience in the Unit, in months, as follows:<sup>79</sup>

- 2 months: 22.9%
- 3 months: 20.8%
- 4-5 months: 16.7%
- 7-9 months: 10.4%
- 10-47 months: 0%
- 48-87 months: 6.3%
- 88 months: 22.9%

It would be important for DHS and USCIS leadership to obtain information about the levels of VAWA Unit experience staffers and managers at the VAWA Unit currently have. This will serve as a basis to determine training needs going forward. Additionally, since the VAWA Unit has been based at the VSC for over 16 years, VSC and the VAWA Unit should take steps to identify the quantity of training and VAWA Unit experience adjudication staff and managers have who are working on other case types throughout the VAWA Unit. Having this knowledge will facilitate recruitment back into the VAWA Unit of already trained staff to meet future VAWA Unit staffing needs, provided those individuals had good job ratings while employed in the VAWA Unit.

As the data that USCIS reported illustrates, it is critical that management monitors the training that new adjudicators receive and consistently review their performance to determine whether additional training is necessary. It is also important that management promotes experienced adjudicators to the senior adjudicator position. USCIS reported that three senior adjudicators worked in the Unit as of October 2010 and had 88, 48, and 2 months of experience.<sup>80</sup> USCIS also reported that 22.9% or 12 adjudicators had 84-88 months of experience in the Unit.<sup>81</sup> In a situation where a senior adjudicator position is available, we recommend that VSC look to adjudicators with experience like the 12 that had 84-88 months of experience in the Unit to fill that position, rather than hiring an inexperienced adjudicator that had only two months of experience in the Unit. The Unit’s goal should be to retain current management that has been instrumental in staffing up the VAWA Unit and returning it to the success that the Unit has had in the past and has demonstrated is capable of achieving and maintaining in the future. As new managers are needed they should be

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 8-9 (USCIS reported the months of seniority for each employee in the Unit. NIWAP calculated the percentage data based on these numbers).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

recruited from within current experienced VAWA Unit adjudicators and from among VSC staff who have prior significant VAWA Unit experience.

In order to ensure that the Unit is properly staffed, we recommend that current staffing levels achieved during the winter of 2013-2014 that resulted in reduction of the VAWA Unit's long standing case backlog be maintained. Going forward, staffing consisting of specially trained officers should be kept at sufficient levels to result in all case types handled by the VAWA Unit being adjudicated within six (6) months of filing. VAWA Unit staff must not be subject to any rotation system that would remove them from the Unit, unless they are promoted, advance to other areas of DHS in the interest of career development, relocate, retire, or do not have high caliber ratings on VAWA, T or U case types that merit remaining in this highly trained specialized unit. This will help reduce backlog because the Unit will be adequately staffed at all times with experienced adjudicators.

An initial outreach to all DHS departments should take place to recruit staffers that wish to work in the Unit and have expertise or knowledge of the issues the Unit works on. This will give a chance to adjudicators that worked in the Unit in the past, but were rotated out of the Unit to address a surge of filings in another area. If the initial outreach does not yield an adequate amount of staffers, the current rotation system can be used to increase the size of the Unit until it reaches the ideal number of adjudicators and senior adjudicators.

The VSC should be mindful of certain factors when rotating new staffers into the Unit, such as prior history of domestic violence as a perpetrator or as a victim. Any staffers that have this history should not be included in the rotation considering the sensitive nature of the work the Unit does. In the event that a surge of VAWA self-petitions or U or T visa applications occurs, a rotation system that brings back staffers either temporarily or permanently from other sections that have prior experience in the Unit should be implemented. This helps ensure that the permanent staff remains in place and that a contingency plan that accounts for surges in applications is in place that allows experienced staffers to return to the Unit on a temporary basis to fill emerging needs.

#### B. Creating and Retaining Experienced Supervisory Staff

Experience at the top of the chain of command is critical to the stability of the Unit because supervisors monitor the function of the Unit and can determine how best to maintain efficiency and efficacy and promote full and fair adjudications needed to protect victim safety, timely approval of valid cases, and ferret out fraud. The DHS and USCIS leadership should take steps to ensure the creation and retention of a core of supervisory staff within the VAWA Unit and the VSC with responsibility over resource allocation, policy, program development, training and other substantive or operational issues affecting the Unit, who have historical knowledge and experience with the implementation of VAWA and related

statutes.<sup>82</sup> These include: the Trafficking Victims Protection Act of 2000, the Violence Against Women Act of 1994, Violence Against Women Act of 1994 confidentiality, and the specialized policies and procedures of the Department of Homeland Security and its predecessor agencies in such cases.

When senior positions in management are available, we recommend that VSC look to its experienced core staff and promote from within that core. An example that illustrates the importance of recruitment from within the core staff is that 30.9% of the adjudicators, including senior adjudicators, in the Unit as of 2010 had 48 or more months of experience in the Unit; in comparison, the *maximum* number of months of experience in the Unit any supervisor had was 28 months.<sup>83</sup> In the same report, USCIS stated that a former Manager of the Unit had been “reassigned at government initiative” in 2009 had 20 months of experience and was replaced by a Manager with three months of experience in the Unit.<sup>84</sup> At that time, there were two Supervisors that had 22-28 months of experience and the 12 adjudicators and that had 84-88 months of experience in the Unit and three senior adjudicators with 48-88 months of experience.<sup>85</sup> Proper training and retention of core staff below the supervisory and managerial level in the Unit will allow VSC to select properly trained and well experienced staffers for positions at the managerial/supervisory level.

Again, we commend USCIS and VSC for providing training to supervisors and managers and encourage the continued efforts to train and educate them in emerging issues and changes in the law.<sup>86</sup> This effort will be made easier if VSC looks to its core staff with experience working in the Unit for a minimum of one year experience in the Unit and with positive ratings to fill positions at the supervisory level and a minimum of three years’ experience and positive ratings to fill the Manager/Section Chief position.

This policy is in line with other federal agencies that require expertise at the top of the chain of command when the agencies are responsible for addressing violence against women issues including domestic violence, sexual assault and human trafficking. Three significant examples include the office at the U.S. Department of Health and Human Services (HHS) that administers the Family Violence Prevention and Services Program, the Office on Violence Against Women (OVW) at the U.S. Department of Justice and directives from the

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<sup>82</sup> See TVPRA 2008 at 238(b)(4).

<sup>83</sup> U.S. DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, REPORT TO CONGRESS: REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER 8-10 (2010), available at: <http://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf> (USCIS reported the months of seniority for each employee in the Unit. NIWAP calculated the percentage data based on these numbers).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 14 (“To the extent that supervisors attend the same training as adjudicators on VAWA-related adjudications, supervisors are afforded similar opportunities for training when their schedule and availability of appropriate alternate internal or external training sessions permit.”)

OVW funded agency, the National Council of Juvenile and Family Court Judges (NCJFCJ), that developed the best practices guide for prosecutors.

The Family Violence Prevention and Services Program at HHS administers the Family Violence Prevention and Services Act (FVPSA), which is the “primary federal funding stream dedicated to the support of emergency shelter and related assistance for victims of domestic violence and their children.”<sup>87</sup> FVPSA has an expertise requirement for HHS appointees that carry out provisions of FVPSA that includes “expertise in the field of family violence and domestic violence prevention and services and, to the extent practicable, have expertise in the field of dating violence.”<sup>88</sup> This expertise is critical because the program provides technical assistance to FVPSA grantees that provide shelter and other related support services to victims of domestic violence and their children, as well as working with local communities, service providers, and state domestic violence coalitions to improve services. Work at the FVPSA office and with FVPSA grantees requires a level on knowledge and experience on violence against women issues that is similar to what would be required of an adjudicator and all supervisory staff at the VAWA Unit.

The Office on Violence Against Women is governed by a similar statutory mandate. OVW “administers financial and technical assistance to communities across the country that are developing programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking...[including] three formula-based and 18 discretionary grant programs established under VAWA and subsequent legislation.”<sup>89</sup> The Violence Against Women Office Act<sup>90</sup> outlines the duties and functions of the Director of OVW.<sup>91</sup> These duties include “maintaining liaison with judicial branches of the Federal and State Governments on matters relating to violence against women;”<sup>92</sup> “providing information to the President, the Congress, the judiciary, State, local, and tribal governments, and the general public on matters relating to violence against women;”<sup>93</sup> “serving, at the request of the Attorney General, as the representative of the Department of Justice on domestic task forces, committees, or commissions addressing policy or issues relating to violence against women;”<sup>94</sup> “carrying out the functions of the Department of Justice under [VAWA]” including “development of policy...and management of grant programs;”<sup>95</sup> and “providing

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<sup>87</sup> See generally Family Violence Prevention and Services Program <http://www.acf.hhs.gov/programs/fysb/programs/family-violence-prevention-services>

<sup>88</sup> 42 U.S.C. § 10404(b)(1).

<sup>89</sup> See generally Office on Violence Against Women Overview <http://www.ovw.usdoj.gov/overview.htm> (formula-based programs include STOP (Services, Training, Officers, Prosecutors), SASP (Sexual Assault Services Program), and State Coalitions).

<sup>90</sup> See generally 42 U.S.C.A. § 3796gg-o (2002).

<sup>91</sup> 42 U.S.C.A. § 3796gg-ob (2002).

<sup>92</sup> 42 U.S.C.A. § 3796gg-ob(1) (2002).

<sup>93</sup> 42 U.S.C.A. § 3796gg-ob(2) (2002).

<sup>94</sup> 42 U.S.C.A. § 3796gg-ob(3) (2002).

<sup>95</sup> 42 U.S.C.A. § 3796gg-ob(5)(A)-(C) (2002).

technical assistance, coordination, and support”<sup>96</sup> to other departments of the Department of Justice, state and local agencies, and grantees. These mandated duties require the Director to have expertise on issues related to domestic violence so that the provisions of VAWA are enforced effectively through OVW and grant funding and technical assistance is effectively provided to programs that are dedicated to assisting and providing services to victims of domestic violence. Supervisors and managers of the VAWA Unit at the VSC should have expertise levels on immigrant crime victims akin to what is required of OVW.<sup>97</sup>

NCJFCJ is an OVW grantee. It is a judicial membership organization that “serves an estimated 30,000 professionals in the juvenile and family justice system including judges, referees, commissioners, court masters and administrators, social and mental health workers, police, and probation officers.”<sup>98</sup> As an OVW grantee, it provides technical assistance to juvenile and family court judges and other practitioners and develops training curricula and best practices. NCJFCJ developed best practices that require ongoing training for prosecutors’ offices so that prosecuting attorneys develop and maintain expertise in the dynamics of domestic violence, safety planning, effects of domestic violence on children, and the use of technology by perpetrators of domestic violence to continue victimization.<sup>99</sup>

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<sup>96</sup> 42 U.S.C.A. § 3796gg-ob(6)(A)-(C) (2002).

<sup>97</sup> The current management of the VAWA Unit that has been responsible for effective implementation of the changes that resulted in substantial reduction of VAWA, T and U visa case processing backlogs should remain in place. Decisions on future managers of the VAWA unit should place a high priority on promoting experienced adjudicators who currently served or have served in the VAWA Unit and received stellar performance ratings in the Unit into management positions within the Unit.

<sup>98</sup> See generally National Council of Juvenile and Family Court Judges <http://www.ncjfcj.org/about>

<sup>99</sup> Emily Meyer et al., *Civil Protection Orders: A Guide for Improving Practice*, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (2010), available at: [http://www.ncjfcj.org/images/stories/dept/fvd/pdf/cpo\\_guide.pdf](http://www.ncjfcj.org/images/stories/dept/fvd/pdf/cpo_guide.pdf) (outlines strategies to effectively represent victims of domestic violence through training and development of expertise in issues related to domestic violence)

“Expand *expertise* by receiving ongoing training *in the dynamics of domestic violence*, firearms restrictions, full faith and credit, and other issues related to protection order issuance and enforcement.”

*Id.* at 35 (emphasis added)

“[Implementing] *regular cross-training* for advocates and other professionals *on the dynamics of domestic violence*, the role of system professionals, and a wide range of topics such as firearms law and full faith and credit.”

*Id.* at 63 (emphasis added).

“Seek *ongoing training* on domestic violence and become *knowledgeable of behaviors that pose higher risk for victims*, such as stalking and sexual abuse.”

*Id.* at 69 (emphasis added).

“[Educated] about the *effects of exposure to violence on children and the effects of coercive and controlling behaviors on parenting*.”

*Id.* (emphasis added).

“Develop the *expertise necessary to provide competent assistance to victims of domestic violence* and establish relationships with local and national resources.”

*Id.* (emphasis added).

“[O]btain *training on safety planning*.”

Best practices developed by NCJFCJ also encourage cross-training with other law enforcement agencies, advocates and other professionals to facilitate collaborative learning across disciplines.<sup>100</sup>

The training model that the VAWA Unit historically conducted between 1997 and 2009 was modeled on and consistent with best practices recommended for judges, police and prosecutors and other justice system personnel and upper level managers who work on violence against women cases. Therefore, in order to ensure that the VAWA Unit is properly staffed, we recommend that the appropriate number of well-trained Managers/Section Chiefs and 1<sup>st</sup> Line Supervisors should be in the Unit to ensure that resources are being applied towards a goal of adjudicating cases within six (6) months and that they not be subject to any rotation system that would remove experienced managers or adjudicators from the Unit, unless they are promoted, advance to other areas of DHS in the interest of career development, relocate, retire or have performance ratings in the unit that do not reflect high performance levels or sufficient expertise and understanding of the unique dynamics involved in violence against women case types.

We also recommend that, similar to the core staff policy, staffers at the managerial/supervisory level not be subject to rotation out of the Unit to in order to address surges in other filings. According to its report to Congress, USCIS stated that two GS-13 Supervisors and one GS-14 Manager were “reassigned at Government initiative.”<sup>101</sup> The two Supervisors had 72 and 17 months of experience in the Unit, respectively, and the Manager had 20 months of experience in the Unit.<sup>102</sup> Rotation of experienced supervisors and managers is detrimental to the Unit because it undermines the functioning and effectiveness of the Unit at the top of the chain of command. Hiring for these positions from the core staff allows VSC to select someone with institutional knowledge of how the Unit works, how to address problems at the adjudication level, and has the requisite knowledge and experience to manage staff at the adjudication level properly. This approach to staffing and managing the Unit is consistent with the successful models developed for handling domestic violence and

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*Id.* at 70 (emphasis added).

“Cross-training on technology and abuse is important. For example, advocates can work with specialized law enforcement and prosecution units to ensure they understand the ways perpetrators use technology. Law enforcement, prosecutors, and courts can benefit from additional training and access to a technology crime unit.”

*Id.* at 168 (emphasis added).

<sup>100</sup> “Coordinate joint training with other law enforcement agencies, including campus, tribal, and federal law enforcement, U.S. Attorneys’ offices, and state attorneys’ general offices on law and issues related to domestic violence, including firearms and the federal domestic violence crimes.”

*Id.* at 123 (emphasis added).

<sup>101</sup> U.S. DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, REPORT TO CONGRESS: REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER 10 (2010), available at: <http://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf>.

<sup>102</sup> *Id.*

sexual assault cases elsewhere throughout the justice system by courts, prosecutors' offices and law enforcement officials across the country.<sup>103</sup>

In addition to adequately staffing the managerial/supervisory level of the Unit with experienced and well trained staffers, we recommend that the upper level of the Unit, which consists of the Associate Director and the Director of the Unit have and maintain a certain level of experience and knowledge in the case types being processed in the Unit. We recommend that priority be given to an applicant with significant experience in working on the issues that the Unit works on. This experience is not necessarily limited to work within the Unit; for example, this can include any experience working on humanitarian issues in other areas of DHS or in private practice. We also recommend that priority be given to an applicant that has general familiarity with the case types and issues that the Unit works on in addition to administrative experience. Familiarity with the case types and issues will allow for more effective management and understanding of how to address problems that arise in the course of the Unit's work.

### C. Reporting to Stakeholders in Quarterly Meetings

Historically, quarterly stakeholder meetings played a critical for both the field and USCIS VAWA Unit and Office of Policy and Strategy experts on VAWA, T and U visa cases. For many years, these quarterly meetings provided an important forum through which USCIS would update the field on case processing issues, levels of staffing in the VAWA Unit, new policies, and timelines from filing to adjudication and/or work authorization. This was important information that advocates and attorneys working in the field with victims needed in order to be able to effectively safety plan with victims. This included being able to advocate that VAWA, T and U visa victims could stay longer in shelters while they awaited adjudication and advocating with police and prosecutors that criminal investigations continued and criminal cases were not dropped while the victim awaited adjudication of their case.

Currently, the sessions are conducted by the USICS Office of Public Engagement (Customer Service) and do not involve quarterly reports from managers of the VAWA Unit. The only information provided at these quarterly meetings is a general overview of the requirements and function of VAWA, T and U relief. While it can be important to offer this once a year to newer attorneys and advocates who are just starting to work on VAWA, T or

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<sup>103</sup> Memorandum from NOW Legal Defense and Education Fund to Grace Carswell, Director, VAWA Unit, Vermont Service Center (March 28, 2001), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/Carswell%20VAWA%20Unit%20Mmo%203.28.01.pdf/view>. (Discusses examples of specialized criminal misdemeanor domestic violence dockets can be found in Winnipeg, Ontario. E. Jane Ursel, *The Family Violence Court of Winnipeg*, Manitoba L.J. 100, 100-102 (1994). More examples of specialized domestic violence dockets can be found in Denver County, Colorado, Philadelphia County, Pennsylvania, and Marion County, Indiana. See Mirtha Merryman, *Specialized Domestic Violence Courts: A New Means to Address an Age Old Problem*, 33, 51, 62 (1994) (unpublished manuscript on file with author). Another example of specialized domestic violence dockets for criminal misdemeanor and felony cases can be found in San Francisco, California. See San Francisco District Attorney's Office, *The San Francisco District Attorney's Office Domestic Violence Felony and Misdemeanor Prosecution Protocol*, San Francisco, California, 13, 22, 26 (Jan. 1997)



U visa cases, this approach is a missed opportunity for both the field and for USCIS. We suggest that the basic presentation on VAWA self-petitioning, T and U visas be held at a separate event specifically targeted for advocates and attorneys newer to these case types.

Instead the quarterly meetings should return to the format that used to provide details of the staffing levels of the Unit, the current processing times for adjudication, deferred action and work authorizations on VAWA, T and U applications and other victim related case types processed by the VAWA Unit. At these meetings, presentations by VAWA managers and Office of Policy and Strategy officials should be followed by an open question and answer session that provides experts in the field working on VAWA, T and U visa cases more access to information they need to help victims applying for relief. This approach also provides USCIS, the VAWA Unit and Office of Policy and Strategy staff with an opportunity to learn about problems in the field earlier so that they can act to address them quickly. We recommend that these quarterly meetings return the previous format which included a detailed report on the levels of staffing in the VAWA Unit, the processing times of each case type and any developments in the work of the Unit that impact the work of stakeholders in the field. Question and answer sessions should remain in place because it is an unscripted opportunity for information sharing between stakeholders in the field and officers in the VAWA Unit. VSC should be more involved in answering these questions from a technical standpoint and to provide data on what is currently happening in the Unit to address these issues.

## V. Conclusion

In conclusion, we commend USCIS and DHS for the great strides made during the last quarter of 2013 and the beginning to 2014 in staffing up the VAWA Unit and significantly reducing the VAWA self-petitioning and U visa case processing backlogs. Safety of immigrant crime victims and the ability of prosecutors and police to investigate, prosecute and bring perpetrators to justice have been greatly enhanced by this development. The information contained in this report provides the legislative and administrative history, and the Congressional intent justification for making the improvements to VAWA Unit case processing and management permanent. Policies and/or department guidance should be issued that describe how the VAWA Unit should work, be managed, and be trained so that the current level of staffing and commitment to furthering, valuing and preserving the expertise of the VAWA Unit is maintained in years to come.

The policies should articulate staff recruitment and retention policies, training requirements and the process that will be used to ensure that the Unit has highly trained managers. The goal is to ensure that VAWA Unit managers have a “documented history of

effective work”<sup>104</sup> and “demonstrated experience and expertise”<sup>105</sup> working on cases of immigrant victims of domestic violence, sexual assault, stalking, human trafficking and other U visa listed criminal activities. The priority for recruitment and rotation into the VAWA Unit should be for VSC staff who were successful members of the VAWA Unit previously and trained in VAWA Unit case types. Finally, training for all staff and managers in the VAWA Unit should be ongoing and sustained at a high level to ensure that all VAWA Unit staff are up to date with VAWA, T and U visa policies, procedures and statutory changes as well as the current best practices and evidence based trauma informed research in the violence against women field.

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<sup>104</sup> See 42 U.S.C. § 13925(a)(43).

<sup>105</sup> See 42 U.S.C. § 13925(a)(21).