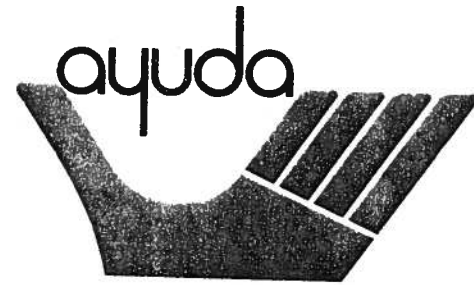


October 27, 1996



Office of the General Counsel
Legal Services Corporation
750 First Street, NE 11th Floor
Washington, D.C. 20002-4250

RE: Comments to LSC Interim Rule, 61 Federal Register 45750 (August 29, 1996)
Restrictions on Legal Assistance to Aliens

Dear General Counsel,

We write to urge you to amend interim rule 61 Federal Register 45750, Restrictions on Legal Assistance to Aliens, to incorporate the relevant section¹ of the Omnibus Appropriations Action for FY 1997 which allows the Legal Services Corporation to provide assistance to immigrant victims of domestic violence using non-LSC funds in matters "directly related" to the prevention of or obtaining relief from battery or extreme cruelty.

The regulations must reiterate the statute to make clear that Legal Services funded offices must not turn away victims of domestic violence, lest those offices turn away needy women and children and repeat the tragedy that inspired this relevant amendment to previously existing LSC regulations.

New final regulation regulations may also need to clarify all the types of actions that would qualify as directly related to the prevention of battery or extreme cruelty. Under the FY 1997 Omnibus Appropriations Act, battering and extreme cruelty is defined as under the immigration provisions of 1994 Violence Against Women Act regulations. VAWA intended to protect battered immigrant women from assaultive physical, and controlling mental and emotional abuse. Under VAWA,

... the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any

¹The FY 1997 Omnibus Appropriations Act at Title V of Division A, Title I, Section 101(a) states that

(C) subsection (a)(11) of such section 504 shall not be construed to prohibit a recipient from using funds derived from a source other than the Corporation to provide related legal assistance to --

(i) an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or parent, or a member of the spouse's or parent's family residing in the same household as the alien and the spouse or family member consented or acquiesced to such battery or cruelty; or

(ii) an alien whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty.

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forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.²

Battering and extreme cruelty manifest themselves in many ways in abusive relationships, including but not limited to, through emotional, psychological, economic and sexual abuse, through intimidation and manipulation, through use of coercion and threats minimizing, denying, blaming, by using children and by using immigration status, and deterrence may require a range of remedies depending upon the facts of each individual case. For example, batterers emotionally abuse their immigrant victims by lying to her about her immigration status; and lying about his ability to take away legal immigration status. Abusers intimidate their immigrant spouses by hiding or destroying important papers (i.e. her passport, her children's passports, ID cards, health care cards, etc.); destroying photographs of her family members; threatening persons who serve as a source of support for her; threatening to do something that will shame her family; telling her that he is allowed to physically punish her because he is the "man," blaming her for the breakup of the family if she leaves him because of the violence; and telling her that she is responsible for the violence because she did not do as he wished.

These typical examples of ways methods of power and control utilized by those who batter or subject immigrant partners or children to extreme cruelty demonstrate the breadth of scope of abuse and the wide range of remedies that are necessary to alleviate the abuse. The statute allows legal services funded agencies to provide services directly related to the prevention or obtaining relief from abuse. Services would therefore assistance in, but not limited to, civil protection orders, family law matters, child custody and support matters, juvenile proceedings and immigration matters. All these civil actions work to deter domestic violence in different ways in different cases.

While Congress clearly intended battered immigrant women and children, regardless of immigration status, to be able to seek assistance from LSC, Congress consciously did not limit the abuse prevention or relief actions with which LSC could assist battered immigrant women and children. Civil protection orders (also known in some states as restraining orders) offer temporary relief from domestic violence. The duration of a protection order varies from approximately six months or less to three years or longer. Permanent protection orders (for periods of time beyond six months or a year) are only available in permanent actions, such as marital dissolutions in many states. Therefore, "matters directly related to the prevention of or obtaining relief from battery or extreme cruelty" must include *not just protection order cases, but all relevant family law actions*.

Commonly, batterers use children as their most powerful tool in controlling their immigrant

²8 C.F.R. § 204.2(c)(1)(vi).

spouses. Abusers threaten to remove her children from the United States; threatening to report her undocumented children to the INS; taking the money needed to support her children; telling her he will have her deported and he will keep the children with him in the U.S; and convincing her that if she seeks help from the courts or the police the U.S. legal system will give him custody of the children. "Battering men use custodial access to the children as a tool to terrorize battered women or to retaliate for separation."³ Without resolution of child custody and visitation, the abuse continues. In most states, civil protection orders allow resolution of child support and custody; but in some, such matters may only be resolved in permanent actions such as marital dissolutions and paternity actions. Therefore, "matters directly related to the prevention of or obtaining relief from battery or extreme cruelty" must include *all child custody and visitation matters* in all procedural contexts.

Abusers commonly use economic abuse to control their immigrant victims, such as threatening to report her to INS if she works "under the table"; not letting her get job training or schooling; taking the money she needed to support herself, her children, and family back in her home country; harassing her at the only job she can work at legally in the U.S., so that she loses that job and is forced to work "illegally." Economic control is another power component that abuser exercises to batter and subject their victims to extreme cruelty. Therefore, "matters directly related to the prevention of or obtaining relief from battery or extreme cruelty" must include all *child and spousal support matters* as well as community property and equitable distribution issues.

Abusers control victims through immigration related threats as well. "[I]mmigration status is a factor that exacerbates the level of violence in abusive relationships when batterers use the threat of deportation as a tool to hold undocumented battered women in violent relationships."⁴ Abusers batter and subject their victims to extreme cruelty by threatening to report her to INS and get her deported; threatening her that he will harm someone in her family or that he will have someone harm her family members in her home country; using her undocumented immigration status to keep her from reporting abuse or leaving with the children; and telling her that the police will arrest her for being undocumented if she calls the police for help because of the abuse. Therefore, "matters directly related to the prevention of or obtaining relief from battery or extreme cruelty" must include *all immigration matters* to diminish the abuser's ability to exert control over his victim.

The legislation was intended to protect undocumented children as well and allow children to seek assistance and protection from abuse. Therefore, "matters directly related to the prevention of or obtaining relief from battery or extreme cruelty" must include *all juvenile proceedings*.

We hope that the final rule promulgated on legal assistance to aliens will reiterate that the Legal Services Corporation agencies are not forbidden from using their non-LSC funds from providing assistance to undocumented victims of domestic violence in related legal matters. We further encourage

³Barbara Hart, Remarks from the Task Force on Child Abuse and Neglect, Pennsylvania, 1992.

⁴Catherine F. Klein and Leslye E. Orloff, "Providing Legal Protections for Battered Women: An Analysis of State Statutes and Case Law," 21 Hofstra Law Review 801, 1019 (Summer 1993).

Office of the General Counsel

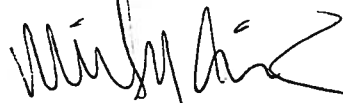
October 27, 1996

Page 4

a broad interpretation of "directly related matter" because remedies to violence needed to be addressed properly on a case-by-case basis because the types of control utilized by abusers can be so varied.

Thank you for your time and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Minty Siu Chung". The signature is fluid and cursive, with a long, sweeping line extending from the end of the name towards the right side of the page.

Minty Siu Chung
Staff Attorney