May 14, 1997

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, 62 Federal Register 19409-417 (April 21, 1997)
Restrictions on Legal Assistance to Aliens

Dear General Counsel,

These comments will address interim final LSC regulations on the "Kennedy Amendment," on the definition of battering and extreme cruelty, and the definition of directly related legal assistance. These comments applaud the interim regulations recognition of importance of confidentiality when working with victims of family violence and laud the provisions directed thereto. The most significant problem with these regulations is statutorily based and cannot be ameliorated in these regulations. The legislation still prohibits LSC from providing assistance to those battered by someone other than a spouse, parent or member of that spouse or parent's family. This legislation uses a definition of family member that is significantly narrower than the definition of family member used in every state's protection order statute and leaves many individuals who need legal assistance to obtain protection orders without any access to legal representation. Those abused by a non-spouse intimate partner, by a blood relative other than a parent, by an individual with whom the victim has had a dating relationship, by an individual with whom the victim shares common children still need to be protected by new legislation.

1. Battery or Extreme Cruelty Must Be Defined More Broadly than the VAWA Regulations

We urge you to expand the definition of "battery and extreme cruelty" to comply with the 1996 Appropriations Act. Please note that the perpetrator of battery or extreme cruelty is more broadly defined under the LSC legislation than under the immigration provisions of the Violence Against Women Act ("VAWA"). Further, under the narrower VAWA regulations, only "qualifying abuse" is recognized as battery or extreme cruelty sufficient to meet the self-petitioning requirements.

> . . . [O]nly certain types of abuse will qualify a spouse or child to self-petition. . . . The qualifying abuse must have taken place during the statutorily specified time. A spousal self-petitioner must show that the abuse took place during the marriage to the abuser. A self-petitioning child must show that he or she was abused while residing with the abuser. . . . The qualifying abuse also must have been committed by the abusive citizen or lawful permanent resident spouse or parent. . . . 61 Fed. Reg. 13061, 13065.

The VAWA restrictions that the battery or extreme cruelty is based upon qualifying abuse are related to the specific time requirements of the immigration laws and are not relevant to an interpretation of the Kennedy Amendment. Under VAWA, only abuse that took place during the marriage, and in the United States constitute qualifying abuse. Under the Kennedy Amendment to the LSC restrictions, there is no requirement that the abuse occur within any statutorily limited time frame, as in the VAWA regulations. Nor is there a requirement that the abuse occurred within the United States. This approach was taken in the Kennedy Amendment so that amendments would be consistent with the approach taken by protection order statutes across the country. State protection order statutes in 46 jurisdictions in the United States place no time limits following abuse within which an abused party must file for a protection order.[1] When an immigrant domestic

[1] C. Klein and L. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21(4) HOFSTRA LAW REVIEW 800, 901 (Summer 1993).

violence victim has been abused by a spouse, parent or member of that spouse or parent's family there is no reason to place time restrictions upon when the abuse must have occurred. The net effect of this approach will be to cut off access to legal services to a broader class of needy immigrant abuse victims than required by the statute.

To reiterate, the Kennedy Amendment was intended to assure battered women and children access to legal assistance for safety and to ameliorate the effects of family violence. Unlike VAWA, the Kennedy Amendment does not require that the abuse take place in the United States or that it occur during marriage. Therefore, the construct of "qualifying abuse" is irrelevant in this context. These regulations should replace the current proposed language with the definition of "was battered by or was the subject of extreme cruelty" contained in the immigration regulations at 8 CFR 216.5(e)(3)(i). This is the definition of battery or extreme cruelty that was initially developed to facilitate the filing and adjudication of requests for battered spouse waivers and it is the definition that is the correct definition used as well in the VAWA regulations.[2] Thus, rather than cross referencing the definition of battering and extreme cruelty contained in the VAWA regulations which include time restrictions thr cross reference should be to the original definition of battery and extreme curelty upon which VAWA relies -- 8 CFR 216.5(e)(3)(i) which states:

> For the purpose of this chapter, 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 forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (it the victim is a minor), or forced prostitution shall be considered acts of violence.

a. The Perpetrator Must Not Be Limited to US Citizens and Lawful Permanent Resident Spouses and Parents

We urge that the interim regulations definition acknowledge the difference between the LSC legislation's definition of battery and extreme cruelty and the definition contained in the VAWA regulations that include time and location restrictions. Under VAWA, qualifying abuse may only be committed by a US citizen ro lawful permanent resident spouse or parent. The LSC legislation and last year's Illegal Immigration Reform and Immigrant Responsibility Act and the Personal Responsibility Act (IIRAIRA) expanded the class of perpetrators to include members of the spouse or parent's family By directly cross references the VAWA regulations, and ignoring the more recent statutory expansions the interim regulations may inappropriately limit the definition of perpetrator to a group of perpetrators that is narrower than the group explicitly covered in the LSC legislation.

The 1996 Appropriations Act offers protection to those battered or subject to extreme cruelty by a spouse or parent *or a member of the spouse or parent's family* residing in the same household as the alien. VAWA, on the other hand, defines the perpetrator of abuse more narrowly. VAWA was intended to shift control of the immigration process out of the hands of specific categories of abusers who under immigration law were placed in total control of the immigration status of their abused spouses and children. When last year's immigration reform legislation moved into areas that were no longer restricted by categories of relationships narrowly defined in immigration laws and began address the problem of welfare benefits for abused immigrants Congress recognized in that legislation.

Similarly, the Appropriations Act was intended to be broader than traditional immigration law. First, unlike VAWA, note that the victim is not required to be battered or subject to extreme cruelty *by a US citizen or lawful permanent resident.* Congress passed the 1996 Appropriations Act in response to the tragic killing of Mariela Bautista in Southern California, who was killed by a man who was neither an US citizen nor a lawful permanent resident. The Act's purpose was to assure battered women and children access to legal assistance for safety and to ameliorate the effects of family violence, regardless of the perpetrator's immigration status. The lists of categories of abusers contained in the 1996 Appropriations Act and in

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[2] *See* discussion at Federal Register Vol. 61 No. 59, Tuesday March 26, 1996, page 13065.

IIRAIRA's provisions providing welfare access for immigrant abuse victims was intended to be broader than and not parallel the limited categories of abusers who could file for visas for their family members in the family petitioning process. In each of these pieces of legislation, Congress recognized that family violence, particularly among extended families, is often perpetrated by someone other than a spouse or parent.

Furthermore, we also urge a broad definition of spouse or parent's family, when defining perpetrator of family violence. State protection order statutes generously define family to protect individuals from abuse perpetrated by blood relatives, current and former relatives by marriage, current and former cohabitants, a person who shares common children with the victims, people who have dated the victim, and various others.

These regulations must be amended to allow agencies that receive LSC funding to represent those battered or subject to extreme cruelty by a spouse or parent *or a member of the spouse or parent's family* residing in the same household as the alien. The definition of family member that is used by each office should be the definition of family member contained in the protection order statute of the state in which each LSC funded legal services program operates.

b. These LSC Regulations Omit Certain Well-Stated Definitions of Battering and Extreme Cruelty Contained in the VAWA Regulations Preamble

As we stated earlier these regulations should not quote the VAWA regulations on the definition of battering or extreme cruelty but should instead quote the battered spouse waiver regulations upon which VAWA substantially relies. However, if these LSC regulations wish to quote the VAWA regulations the appropriate quotes should come from the VAWA preamble which includes a very clear paragraph demonstrating the Immigration and Naturalization Services understanding of and sensitivity to the dynamics of domestic violence they include in the preamble the following language:

> The acts mentioned in the definition -- rape, molestation, incest if the victims ins a minor, and forced prostitution -- will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions, however, May also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violence may be part of an overall pattern of violence. It is not possible to cite all perpetration s that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase "was battered by or was the subject of extreme cruelty."

Incorporating this definition with the proposed strikeout in the LSC regulations would help assure that LSC funded programs look as broadly as INS at the types of battering or extreme cruelty that would qualify a victim to receive assistance from legal services programs and would allow that definition to include certain forms of emotional and economic abuse that amount to extreme cruelty.

2. Directly Related Legal Assistance

We heartily applaud the recognition in these regulations that the question of whether a particular service is "directly related" to the abuse should be made on a case-by-case basis. It is well established that there is no single domestic violence dynamic and that abusers exert power and control over victims in many different ways.[3] Battering and extreme cruelty manifest themselves in many ways in abusive relationships, including but not limited to, through physical, emotional, psychological, economic and sexual abuse, through intimidation and manipulation, through use of coercion and threats minimizing, denying, blaming, by using

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[3]Mary Ann Dutton, *Psychological and Sociological Dynamics of Domestic Violence*, *in* FLORIDA DOMESTIC VIOLENCE LAW 3-1 (The Florida Bar Continuing Legal Education, Susan Swihart ed., 1995).

children and by using immigration status, and stopping ongoing abuse may require a range of remedies depending upon the facts of each individual case.

Batterers inflict abuse in myriad ways and a wide range of remedies 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 provide assistance in, but not limited to, civil protection orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, abuse and neglect and juvenile proceedings, contempt actions and immigration matters. All these civil actions work to deter domestic violence in different ways in different cases.

However, we do urge that the definition of directly related legal assistance be broadened to more than ". . .assist victims escape from an abusive situation, ameliorate the current effects of the abuse, or protect against future abuse." This definition correctly recognizes that there is often particularly working with immigrant abuse victims a need to offer legal assistance to battered immigrant women who decide to reunite with or not to leave their abusers and allows LCS programs to help abuse victims obtain protection orders that simply state that although they will remain together continuing abuse and harassment are prohibited. However, this definition needs to be expanded to include "protecting against future abuse includes deterring potentially dangerous reconciliations and assisting the establishment of self-sufficiency." In the alternative the preamble accompanying the final LSC regulations should include this language to provide guidance to LSC programs about the breadth of services they might provide abuse victims.

By offering victims of domestic violence assistance in establishing self-sufficiency, whether in familial relationships, in economic survival, or immigration status, Legal Services deters against future abuse. If victims cannot become self-sufficient and undermine the abuser's ability to exert control, there is a strong likelihood that she and her children will be return to the violence. If assisting a woman in a housing or benefits matter, even after she has left the abuser, prevents her from vulnerability to the abuser and having to return to her abuser to obtain shelter or food, then this is directly related legal assistance.

Many abusers continue their attempts to exert control over the victim long after the relationship has terminated. A battered woman may find herself suffering a host of economic problems after her abuser fails to comply with child and spousal support orders or harasses her upon the job. She may need legal assistance to temporarily stave off eviction as she evaluates the safest measures she can take to pay the rent.

The definition must also recognize the lingering effects of domestic violence. While the woman who needs assistance with welfare eligibility because she is unable to meet her work requirements may at first blush not appear to have legal service needs directly related to the prevention or obtaining relief from abuse, she may be failing to meet work requirements because the abuser is committing ongoing abuse and sabotaging her efforts to work. She may also be suffering lingering psychological effects of abuse that may affect her decision making and her ability to comply with work requirements.

Further, these LSC regulations or the preamble must clarify absolutely that LSC funded programs can and should represent immigrant abuse victims who have suffered battering or extreme cruelty perpetrated by a spouse, parent or a member or the spouse or parents family residing in the same household as the abuse victim need legal service attorney representation in domestic violence related immigration cases. Because immigration status is so often used as a tool by abusers, any immigration assistance that stabilizes a victim's immigration status was intended by this statute to be considered legal assistance directly related to the prevention of, or obtaining relief from, battery or extreme cruelty. We appreciate the interim regulations acknowledgment that assistance in VAWA cases is directly related to assisting victims escape from an abusive situation and ameliorate the current effects of the abuse.

We would also like to point out however, that any immigration case that takes away the abuser's ability to use immigration against the victim is directly related legal assistance, not just VAWA cases. Some women battered by their citizen or lawful permanent resident spouses may have family based visa petitions filed by their spouse pending before INS. She may also be eligible for VAWA, but if she can obtain her lawful permanent residency through her spouse's petition she will not have to prove battering or extreme cruelty,

extreme hardship or good moral character that would be required under VAWA. Other women may have gender based asylum claims because they were abused by their lawful permanent resident spouse both in the United States and in their home country which is a country whose laws cannot protect her from ongoing abuse if she is deported. Battered immigrant women whose lawful permanent resident abusers were deported after being convicted of domestic violence may only be able to file a gender based asylum claim because the abuse lost his status before she could have her VAWA application approved. Legal assistance in her immigration case in each of these instances is directly related to the abuse. If a victim of domestic violence needs work authorization because it is the only way she can support herself and her children independent from her abuser, then this is directly related legal assistance. If a victim of domestic violence needs help naturalizing because this is the only way to obtain food stamps necessary to facilitate her escape from abuse, then this is directly related legal assistance.

We urge that the preamble to these LSC regulations be expanded to provide these types of examples as guidance to legal services programs to encourage them include non-VAWA related immigration cases among the types of immigration actions that LSC attorneys can undertake on behalf of immigrants who have been battered or subjected to extreme cruelty by a perpetrator covered by the 1996 Appropriations Act. The preamble should direct that the determination of whether a particular form of immigration representation is directly related legal assistance should be made on a case-by-case basis.

Thank you in advance for the work the Legal Service Corporation is doing on behalf of battered women and for your attention to these matters. If you need any further clarification of these comments, have any additional questions or need other examples how the changes we propose will affect immigrant abuse victims, please do not hesitate to contact us.

Sincerely,

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Minty Siu Chung
Staff Attorney

convincing" evidence that the earlier marriage was bona fide.

Before determining that a self-petition must be denied under section 204(c), 204(g), or 204(a)(2) of the Act, the Service will allow a self-petitioner the opportunity to provide additional evidence or arguments concerning the case. A denial under section 204(g) or 204(a)(2) of the Act is without prejudice to the filing of a new self-petition when the spouse or child is able to comply with these requirements.

The Service has previously determined that a variety of evidence may be used to establish a good-faith marriage, and a self-petitioner should submit the best evidence available. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983). Other types of readily available evidence might include the birth certificates of children born to the relationship; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. Self-petitioners who submit affidavits are encouraged to submit affidavits from more than one person. Other types of evidence may also be submitted; the Service will consider any relevant credible evidence.

Residence in the United States and Residence With the Abuser

Section 40701 of the Crime Bill requires the self-petitioner to be residing in the United States and to have resided in the United States with the abuser. A self-petition will not be approved if the self-petitioner is not living in the United States or has never lived with the abuser in the United States. Under the provisions of this rule, however, the self-petitioner is not required to be residing with the abuser when the petition is filed. The rule also does not limit the time that may have elapsed since the self-petitioner last resided with the abuser.

"Residence" is defined in section 101(a)(33) of the Act as a person's general place of abode. It is also described as a person's principal, actual dwelling place in fact, without regard to intent. A self-petitioner cannot meet the residency requirements by merely visiting the United States or visiting the abuser's home in the United States while continuing to maintain a general place of abode or principal dwelling place elsewhere. This rule, however, does not require the self-petitioner to have lived in the United States or with the abuser in the United States for any specific length of time. It also does not mandate continuous physical presence in the United States. A qualified self-petitioner may have moved to the United States only recently, made any number of trips abroad, or resided with the abuser in the United States for only a short time.

Evidence of residency with the abuser in the United States may take many forms. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born to the spouses in the United States, deeds, mortgages, rental records, insurance policies, or similar documents have been accepted as evidence of residency. This rule allows the submission of one or more documents showing the self-petitioner and the abuser residing together. It also allows the submission of two or more documents that, when considered together, establish that the self-petitioner and the abuser were residing at the same location concurrently. A self-petitioner may also submit affidavits to establish residency with the abuser. Self-petitioners who file affidavits are encouraged to provide the affidavits of more than one person. Other types of evidence may also be submitted; the Service will consider any relevant credible evidence.

Battery or Extreme Cruelty

Section 40701 of the Crime Bill requires a self-petitioning spouse to have been battered by, or been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident spouse; or to be the parent of a child who was battered by, or who was the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage. It requires a self-petitioning child to have been battered by, or to have been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while the child was residing with that parent. This rule reflects the statutory requirements by specifying that only certain types of abuse will qualify a spouse or child to self-petition. "Qualifying abuse" under this rule is abuse that meets the criteria of section 40701 of the Crime Bill concerning when, by whom, to whom, and to what degree the domestic abuse occurred.

The qualifying abuse must have taken place during the statutorily specified time. A spousal self-petitioner must show that the abuse took place during the marriage to the abuser. A self-petitioning child must show that he or she was abused while residing with the abuser. Battery or extreme cruelty that happened at other times is not qualifying abuse. There is no limit on the time that may have elapsed since the last incident of qualifying abuse occurred.

The qualifying abuse also must have been committed by the abusive citizen or lawful permanent resident spouse or parent. Battery or extreme cruelty by any other person is not qualifying abuse, unless it can be shown that the citizen or lawful permanent resident willfully condoned or participated in the abusive act(s).

Only abuse perpetrated against the self-petitioning spouse, the self-petitioning child, or the self-petitioning spouse's child will be considered qualifying. Acts ostensibly aimed at some other person or thing may be considered qualifying only if it can be established that these acts were deliberately used to perpetrate extreme cruelty against the self-petitioner or the self-petitioning spouse's child. Battery or extreme cruelty committed solely against a third party and in no way directed at or used against the spouse or child is not qualifying abuse.

The qualifying abuse also must have been sufficiently aggravated to have reached the level of battery or extreme cruelty. Service regulations at 8 CFR 216.5(e)(3)(i) currently define the phrase "was battered by or was the subject of extreme cruelty." This definition was initially developed to facilitate the filing and adjudication of requests to waive certain requirements for removal of conditions on residency. These waivers are based on the applicant's claim of battery or extreme cruelty perpetrated by the citizen or lawful permanent resident spouse or parent. Since the regulatory definition has proven to be flexible and sufficiently broad to encompass all types of domestic battery and extreme cruelty, this rule adopts an identical definition for evaluating claims of battering or extreme cruelty under section 40701 of the Crime Bill. The definition reads as follows:

> For the purpose of this chapter, 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 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.

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The acts mentioned in this definition—rape, molestation, incest if the victim is a minor, and forced prostitution—will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions, however, may also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. It is not possible to cite all perpetrations that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase "was battered by or was the subject of extreme cruelty."

This rule requires a self-petitioner to provide evidence of qualifying abuse. If the self-petition is based on a claim that the self-petitioning spouse's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, this rule requires the self-petition to be accompanied by evidence of the abuse and evidence of the relationship between the self-petitioner and the abused child. Available relevant evidence will vary, and self-petitioners are encouraged to provide the best available evidence of qualifying abuse. A self-petitioner is not precluded from submitting documentary proof of non-qualifying abuse with the self-petition; however, that evidence can only be used to establish a pattern of abuse and violence and to bolster claims that qualifying abuse also occurred.

The rule provides that evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. This rule also provides that other forms of credible evidence will be accepted, although the Service will determine whether documents appear credible and the weight to be given to them.

Self-petitioners who can provide only affidavits are encouraged to submit the affidavits of more than one person. The Service is not precluded from deciding, however, that the self-petitioner's unsupported affidavit is credible and that it provides relevant evidence of sufficient weight to meet the self-petitioner's burden of proof.

Good Moral Character

Section 40701 of the Crime Bill requires all self-petitioners to be persons of good moral character, but does not specify the period for which good moral character must be established. This rule requires self-petitioning spouses and self-petitioning children who are 14 years of age or older to provide evidence showing that they have been persons of good moral character for the 3 years immediately preceding the date the self-petition is filed. It does not preclude the Service from choosing to examine the self-petitioner's conduct and acts prior to that period, however, if there is reason to believe that the self-petitioner may not have been a person of good moral character in the past. The rule provides that self-petitioning children who are less than 14 years of age are not required to submit evidence of good moral character when filing the self-petition. A self-petitioner who is less than 14 years of age will be presumed to be a person of good moral character. This presumption does not preclude the Service from requesting evidence of good moral character, however, if there is reason to believe that the self-petitioning child may lack good moral character. The rule provides that a self-petition filed by a person of any age may be denied or revoked if evidence establishing that the person lacks good moral character is contained in the Service file.

It also provides that the Service will evaluate claims of good moral character on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. Section 101(f) of the Act lists the classes of persons who cannot be found to be persons of good moral character, and specifies that persons not within any of those classes may also be found to be lacking good moral character. The Service cannot find a person to be of good moral character under section 101(f) if he or she: (1) is or was a habitual drunkard; (2) is or was engaged in prostitution during the past 10 years as described in section 212(a)(2)(D) of the Act; (3) is or was involved in the smuggling of a person or persons into the United States as described in section 212(a)(6)(E) of the Act; (4) is or was a practicing polygamist; (5) has been convicted or admits committing acts that constitute a crime involving moral turpitude other than a purely political offense, except for certain petty offenses or offenses committed while the person was less than 18 years of age as described in section 212(a)(2)(A)(ii) of the Act; (6) has committed two or more offenses for which the applicant was convicted and the aggregate sentence actually imposed was 5 years or more, provided that, if an offense was committed outside the United States, it was not a purely political offense; (7) has violated laws relating to a controlled substance, except for simple possession of 30 grams or less of marijuana; (8) earns his or her income principally from illegal gambling activities or has been convicted of two or more gambling offenses; (9) has given false testimony for the purpose of obtaining immigration benefits; (10) has been confined as a result of conviction to a penal institution for an aggregate period of 180 days or more; or (11) has been convicted of an aggravated felony.

The Service must conclude that a person who has been convicted of an offense falling within section 101(f) of the Act lacks good moral character. The Service may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, Int. Dec. 3148 (BIA 1991).

Extenuating circumstances may be taken into account, however, if the person has not been convicted of the offense in a court of law but admits to the commission of an act or acts that could show a lack of good moral character. The Board of Immigration Appeals (BIA) has ruled that a person who admitted to having engaged in prostitution under duress but had no prostitution convictions was not excludable as a prostitute under section 212(a)(12) of the Act (currently section 212(a)(2)(D) of the Act) because she was involuntarily reduced to such a state of mind that she was actually prevented from exercising free will through the use of wrongful, oppressive threats, or unlawful means. *Matter of M–*, 7 I&N Dec. 251 (BIA 1956). A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable, therefore, would not be precluded from being found to be a person of good moral character if the person has not been convicted for the

commission of the offense or offenses in a court of law.

This rule also provides that a person will be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she: (1) willfully failed or refused to support dependents; or (2) committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character.

Under this rule, primary evidence of good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The Service of the Department of State will conduct additional record checks before issuing an immigrant visa or granting a self-petitioner's application for adjustment of status. If the results of these record checks disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a period of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Extreme Hardship

Section 40701 of the Crime Bill also requires a self-petitioning spouse to show that his or her deportation would cause extreme hardship to himself, herself, or his or her child. It similarly requires a self-petitioning child to show that his or her deportation would cause extreme hardship to himself or herself. The self-petitioner has the burden of proof; a self-petition must be denied if the petitioner does not show that his or here deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the child of a self-petitioning spouse, such as extended family members, cannot be the basis for a self-petition under this rule.

The phrase "extreme hardship" is not defined in the Act, and sections 40701 and 40703 of the Crime Bill provide no additional guidelines for the interpretation of this requirement. The phrase "extreme hardship" has acquired a settled judicial and administrative meaning, however, largely in the context of suspension of deportation cases under section 244 of the Act.

It has been found that the personal deprivation contemplated in a situation characterized by "extreme hardship" within the meaning of section 244 of the Act is not a definable term of fixed and inflexible content or meaning; it necessarily depends upon the facts and circumstances peculiar to each case. *Matter of Hwang*, 10 I&N Dec. 448 (BIA 1964). The hardship requirement encompasses more than the mere economic deprivation that might result from an alien's deportation for the United States. *Davidson* v. *INS*, 558 F.2d 1361 (9th Cir. 1977); and *Matter of Sipus*, 14 I&N Dec. 229 (BIA 1972). It has also been found that the loss of a job and the concomitant financial loss incurred is not synonymous with extreme hardship. *Lee* v. *INS*, 550 F.2d 554 (9th Cir. 1977). Similarly, readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. *Matter of Uy*, 11 I&N Dec. 159 (BIA 1965).

"Extreme hardship" must be evaluated on a case-by-case basis after a review of all the circumstances in the case. This rule, therefore, does not include a list of "factors" that would automatically establish an applicant's claim to extreme hardship. Each self-petitioner is encouraged to cite and document all the reasons that he or she believes that deportation would cause extreme hardship.

Some precedent suspension of deportation cases have discussed the reasons why a particular applicant was found to have established that his or her deportation would cause extreme hardship. These reasons include the: (1) age of the person; (2) age and number of the person's children and their ability to speak the native language and adjust to life in another country; (3) serious illness of the person or his or her child which necessitates medical attention not adequately available in the foreign country; (4) person's inability to obtain adequate employment in the foreign country; (5) person's and the person's child's length of residence in the United States; (6) existence of other family members who will be legally residing in the United States; (7) irreparable harm that may arise as a result of disruption of education opportunities; and (8) adverse psychological impact of deportation.

In some self-petitioning cases, the circumstances surrounding domestic abuse and the consequences of the abuse may cause the extreme hardship. These self-petitioners may wish to cite and provide evidence relating to some or all of the following areas, in addition to any other basis for believing that deportation would cause extreme hardship: (1) the nature and extent of the physical and psychological consequences of the battering or extreme cruelty; (2) the impact of the loss of access to the U.S. courts and criminal justice system (including, not limited to, the ability to obtain and enforce: orders of protection; criminal investigations and prosecutions; and family law proceedings or court orders regarding child support, maintenance, child custody and visitation); (3) the self-petitioner's and/or the self-petitioner's child's need for social, medical, mental health, or other supportive services which would not be available or reasonably accessible in the foreign country; (4) the existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the self-petitioner or the self-petitioner's child for having been the victim of abuse, for leaving the abusive situation, or for actions taken to stop the abuse; (5) the abuser's ability to travel to the foreign country and the ability and willingness of foreign authorities to protect the self-petitioner and/or the self-petitioner's child from future abuse; and (6) the likelihood that the abuser's family, friends, or others acting on behalf of the abuser in the foreign country would physically or psychologically harm the self-petitioner and/or the self-petitioner's child.

The Service will develop and provide further interpretive guidance concerning the extreme hardship determination in self-petitioning cases to the Service officers who will adjudicate these self-petitions. This guidance is expected to be in the form of implementing directives, training courses, the field handbook currently under development by the Service, and other policy and procedural directives.

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