

DOMESTIC VIOLENCE REPORT™

LAW • PREVENTION • PROTECTION • ENFORCEMENT • TREATMENT • HEALTH

Vol. 11, No. 4

ISSN 1086-1270

Pages 49 – 64

April/May 2006

VAWA 2005— Summary of the Immigration Provisions

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On January 5, 2006, President George W. Bush signed into law the Violence Against Women Act ("VAWA") reauthorization of 2005 (H.R. 3402). VAWA 2005 built upon the progress of VAWA 1994 and VAWA 2000. VAWA 1994 created immigration protections for many abused immigrants and removed obstacles inadvertently interposed by immigration laws that prevent immigrant victims from safely fleeing domestic violence and prosecuting their abusers. VAWA 2000 extended immigration relief to immigrant victims of sexual assault, human trafficking, and other violent crimes who agree to cooperate in criminal investigations or prosecutions. A key goal of VAWA's immigration protections is to cut off the ability of abusers, traffickers, and perpetrators of sexual assault to blackmail their victims with threats of deportation, and thereby avoid prosecution. VAWA allows immigrant victims to obtain immigration relief without their abusers' cooperation or knowledge. Congress understood that in order to stop domestic violence, all victims need protection and assistance without regard to their immigration status.

While VAWA 1994 and 2000 made significant progress in reducing violence against immigrant women, there are still many women and children whose lives are in danger today. Many VAWA-eligible victims of domestic violence, sexual assault, child abuse, or trafficking

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National Benchmark Survey: The Impact of Domestic Violence on the American Workplace

by Kim Wells, M.A.

According to a report released by the U.S. Centers for Disease Control in April of 2003, intimate partner violence victims lose a total of nearly 8.0 million days of paid work—the equivalent of more than 32,000 full-time jobs—and nearly 5.6 million days of household productivity as a result of the violence. In addition, the Bureau of Justice Statistics estimates that 13,000 acts of domestic violence are committed in the workplace every year.

This potential for violence poses a threat not only to the victim, but also to the safety and well being of co-workers, clients, customers and the general public. Domestic violence is an issue that no employer can afford to ignore. With one out of every four women and one out of every seven men reporting physical abuse by an intimate partner during his or her lifetime (U.S. Department of Justice and U.S. Centers for Disease Control, July 2000), there can be no question that domestic violence affects all aspects of a workplace.

Past national public opinion surveys have asked executives about their experiences and attitudes regarding domestic violence and its effects on the workplace. Before this survey, no one had ever used a random telephone poll to ask employed adults about their experiences and perceptions regarding domestic violence and its impact at work.

Methodology

Group SJR, a research and communications firm, conducted the national telephone study between July 15, 2005 and September 10, 2005, surveying 1,200 full-time employed U.S. adults. Full-time was defined as working 35 or more hours a week. The margin of error for the study was +/- 3%. The survey definition of domestic violence was "the use of physical, sexual or emotional abuse or threats to control another person who is a current or former husband, wife or other intimate partner such as a boyfriend or girlfriend." The survey was released in October of 2005 and was designed to discover what the general U.S. employee population believes about domestic violence as a workplace issue. Due to the sensitive nature of many questions in the survey, we received varying levels of "don't know/refused" responses. As a result, numbers do not always add to 100%. Also, in multiple questions, such as lists of potential domestic violence awareness program elements, respondents were permitted to provide more than one answer if applicable.

Demographic Overview

Sixty-two percent (62%) of respondents were female and 38% were male. Although the survey was random, those who were

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are still being deported. Others remain economically trapped by abusers or traffickers in life-threatening situations. Some victims of family violence, including incest survivors and elder abuse victims, have been totally cut off from VAWA's immigration protections. Finally, many trafficking victims are too afraid to cooperate with law enforcement for fear that traffickers will retaliate against their family members abroad. VAWA 2005 eliminates some of the major obstacles immigrant crime survivors face in achieving safety and legal immigration status.

VAWA 2005 Advances the Original Intent of VAWA—To Halt Deportation of Immigrant Victims of Domestic Abuse

VAWA 2005 aims to stop the deportation of immigrant victims of domestic abuse, sexual assault, or trafficking in several ways. First, it gives VAWA-eligible applicants the opportunity to file one VAWA motion to reopen to pursue VAWA relief, by exempting VAWA cancellation of removal or suspension of deportation applicants from applicable deadlines and numerical limits, provided that they are physically present in the U.S. at the time of filing. If it is likely that the motion will be granted, the act of filing the motion prevents the applicant from being removed until a final decision on the motion to reopen is made (§ 825).

Second, VAWA 2005 exempts VAWA petitioners, cancellation of removal or suspension of deportation applicants from the penalties for failing to depart the U.S. after agreeing to do so, if their victimization was at least one central reason for their failure to depart (§ 812).

Third, VAWA 2005 corrects many problems specific to removal proceedings. It adds battery or extreme cruelty to the list of exceptional circumstances in removal proceedings for motions to reopen in absentia orders (§ 813(a)). It also encourages the use of the I-212 waiver process that allows the Department of Homeland Security ("DHS") to waive prior entry and removal problems for immigrant victims of domestic violence, sexual assault, or trafficking so that those who qualify for VAWA, T, or U relief can overcome reinstatement of removal problems (§ 813(b)). Finally, it improves VAWA cancellation of removal through technical amendment so judges can grant VAWA

2000 domestic violence victim waivers (§ 813(c)), and amends the good moral character definition (INA 101(f)(3)) to clarify that a prior removal order (INA 212(a)(9)(A)) does not constitute a bar to establishing good moral character.

NACARA/HRIFA. VAWA 2005 improves access to VAWA Haitian Refugee Immigration Fairness Act (HRIFA), by providing that if an alien abuser was eligible for status under the HRIFA of 1998, but did not apply for status, the alien's abused spouse or children at the time may now apply for immigration status on their own (§ 824). Similarly, it fixes the filing deadline problem for VAWA Nicaraguan Adjustment and Central American Relief Act (NACARA) applicants by allowing abused spouses and children eligible for legal immigration status as a Nicaraguan or Cuban under the NACARA of 1998 to apply even if the abuser did not apply for status and even though the filing deadline has passed (§ 815). It grants Cuban Adjustment to the spouse of a Cuban eligible for adjustment under the Cuban Adjustment Act for two years after the date on which the Cuban spouse died, or for two years after the date of termination of the marriage, if the abused spouse demonstrates a connection between the termination of the marriage and being battered or subject to extreme cruelty by the Cuban (§ 823).

Crime and Trafficking Victims. VAWA 2005 allows change of status to T or U for aliens who entered the U.S. on C (transit), D (crewmen), K (fiancée, non-immigrant spouse, child), S (criminal informant), or J (exchange visitor) visas, or as visitors under the visa waiver program, or as Guam visitors (Senate 821(c)). VAWA 2005 also extends duration of U and T visas for up to four years, with the option to extend year by year if law enforcement certifies that such extension is necessary to assist in the criminal investigation or prosecution (§ 821(a) and (b)). Through correction of a drafting error, VAWA 2005 improves protection for children of U visa recipients by allowing them to receive U visas without having to first show that the visas are necessary to avoid extreme hardship or without having to obtain a government certification attesting that a criminal investigation or prosecution would be harmed without the assistance of those family members (§ 801(b)). VAWA 2005 also enhances protection for trafficking victims by allowing those whose physical or psychological trauma impedes their

ability to cooperate with law enforcement to seek a waiver of this requirement (§ 801(a)(3)).

VAWA 2005 Extends Immigration Relief to a Larger Group of Family Violence Victims

VAWA 2005 expands VAWA self-petitioning to elder abuse victims who have been battered or subjected to extreme cruelty by their adult U.S. citizen son or daughter (§ 816). In addition, VAWA 2005 protects child abuse and incest victims by allowing them to self-petition up to age 25 so long as the child abuse was at least one central reason for the filing delay (§ 805(c)). Likewise, abused immigrant children and children of battered immigrants are protected from being cut off from VAWA immigration relief because they turn 21 by assuring that child VAWA self-petitioners and derivative children have access to VAWA's aging out protections and can additionally access any Child Status Protection Act relief for which they qualify (§ 805(a) & (b)). In a similar manner, VAWA 2005 also protects adopted children of abusive adoptive parents or family members by allowing them to obtain permanent residency even if they have not been in the legal custody of, and have not resided with, the adoptive parent for at least two years (§ 805(d)). Finally, VAWA 2005 does not allow an alien who was a VAWA petitioner or was granted a T or U visa, to file an application on behalf of the person who committed the battery, extreme cruelty, or trafficking that established the individual's eligibility as a VAWA petitioner, or T or U visa holder (§ 814(e)).

VAWA 2005 Provides Stability for Trafficking Victims

VAWA 2005 improves access to permanent residency for trafficking victims by providing them an exception to the penalties for being unlawfully present where the trafficking was at least one central reason for the unlawful presence (§ 802). In addition, some trafficking victims will now have earlier access to permanent residency by allowing their continued presence to count towards the three-year residence requirement and allowing DHS discretion to reduce the three year wait if law enforcement officials do not object (§ 803(a)). VAWA 2005 clarifies that when victims of trafficking respond to and cooperate with requests for evidence and information, they are participating in investi-

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gations and prosecutions for purposes of T visa certification (§ 804(b)). Finally, VAWA 2005 protects trafficking victims' family members living abroad and reunites family members by allowing them to receive T visas without having to show extreme hardship (§ 801(a)(2)).

VAWA 2005 Protects the Safety of Domestic Abuse, Stalking, Sexual Assault, and Trafficking Victims

In 1996 the U.S. Congress created special protections for victims of domestic violence against disclosure of information and the use of abuser-provided information in removal proceedings. In 2000 and 2005 Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims including the existence of a VAWA self-petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims. This section makes the following improvements to VAWA confidentiality:

- Extends VAWA confidentiality to trafficking victims (§ 817);
- In addition to the Department of Justice ("DOJ"), DHS, and the Department of State ("DOS") shall be covered by VAWA confidentiality rules (§ 817);
- Provides for Congressional oversight by permitting disclosure, in a manner that protects victim confidentiality and safety, to the chairs and ranking members of the U.S. House and Senate Judiciary Committees including the Immigration Subcommittees (§ 817);
- Gives the specially trained VAWA unit discretion to refer victims to non-governmental organizations with expertise serving immigrant victims for victim and legal services (§ 817);
- Establishes a system to verify that removal proceedings are not based on information prohibited by Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") § 384. When removal proceedings are initiated based on immigration enforce-

ment actions taken at a domestic violence shelter, a rape crisis center, or a courthouse (where the alien is appearing in connection with a protection order or child custody case), DHS must disclose these facts in the Notice to Appear issued against the alien. DHS must certify that it did not violate the requirements of IIRIRA § 384 (§ 825(c)); and

- DHS and DOJ must provide guidance to their officers and employees who have access to information protected by § 384 of IIRIRA, including that the purpose is to protect victims of domestic abuse, sexual assault, trafficking, or other crimes from the harm that could result from inappropriate disclosure of information (§ 817).

In addition, VAWA 2005 protects driver's license information for the limited group of crime victims whose confidential address is critical for their safety. With respect to rules governing identification cards and drivers' licenses (as enacted by the REAL ID Act of 2005), DHS and the Social Security Administration shall give special consideration to victims of domestic abuse, sexual assault, stalking, or trafficking who are entitled to enroll in state address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law, VAWA confidentiality laws, or by a court order (§ 827).

Finally, VAWA 2005 ensures that special immigrant juveniles shall not be compelled to contact the abusive family member at any stage of the SIJS application process (§ 826).

Provides for Economic Security for Immigrant Victims and Their Children

VAWA 2005 guarantees access to legal services for immigrant victims by authorizing any Legal Services Corporation-funded program to use any source of funding, including LSC funding, to represent any victim of domestic abuse, sexual assault, trafficking, or other crime, regardless of the victim's immigration or marital status (§ 104). Additionally, VAWA 2005 allows victims with approved VAWA petitions and T visas to obtain employment authorization (§ 814(b)). Such authorization is also allowed for abused spouses of certain non-immigrants in diplomat ("A"), Australian investor ("E(iii)"), international organization

("G"), or specialty ("H-1B") occupations (§ 814(c)).

Improvements in Processing VAWA Cases and Technical Amendments

Under VAWA 2005, all VAWA-related cases may be filed with the specially trained VAWA unit at the Vermont Service Center including VAWA adjustment of status applications, VAWA parole applications, and employment authorization applications for abused spouses of H, A, G, and E(iii) visa holders (legislative history). The Act also created a uniform definition of "VAWA petitioner," which covers all forms of VAWA self-petitions created in VAWA 2000, including all VAWA-self petitioners, VAWA Cuban adjustment, VAWA HRIFA, VAWA NACARA (202 & 203) applicants and battered spouse waivers (including both petitioners and their derivative children) (§ 811).

Lastly, the Act mandates promulgation of regulations implementing VAWA 2000 and VAWA 2005 by July 4, 2006 (§ 828).

International Marriage Broker Regulation ("IMBRA")

VAWA 2005 mandates that U.S. citizens filing K visa petitions disclose criminal background information to international marriage brokers and to DHS. Relevant crimes include domestic abuse crimes, other violent crimes, and multiple convictions for substance and/or alcohol abuse. DHS will be required to transmit this criminal history information, along with results of any database search, to the foreign fiancée or spouse (§ 832(a)). This information will be compiled into a domestic abuse pamphlet, created by DOS, DHS, and DOJ, and distributed to all foreign fiancées and spouses. The pamphlet will also include information on domestic abuse laws and resources for immigrant victims in the U.S. DHS shall also send to the foreign fiancée or spouse the results from any criminal background checks conducted in the course of adjudicating the K visa petition, along with the petitioner's disclosure of any criminal history. U.S. consular officers shall orally inform foreign fiancées/spouses of the petitioner's criminal history. DOS and DHS cannot disclose locational or personal information about prior victims of the U.S. citizen petitioner.

Additionally, IMBRA prevents abusive U.S. citizens from sponsoring multiple foreign fiancées and/or spouses by pro-

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hibiting DOS from issuing a K visa (unless DHS grants a waiver or the domestic violence victim exception applies) if the U.S. citizen has previously filed two K visa petitions, and less than two years have passed since the date of filing of the most recent K visa petition. DHS can waive this bar, but not when the U.S. citizen has a history of committing domestic abuse or other violent crimes (§ 832). A governmental database will be created to track serial K petitions filed by the same U.S. citizen petitioner; the database will be used to notify the foreign fiancée or spouse of the prior K petitions if the petitioner has filed three K petitions within the past 10 years (§ 832).

Moreover, International Marriage Brokers themselves are now subject to federal regulation. They are prohibited from sharing any information on minors with any person or entity. They also cannot give U.S. clients information on a foreign national until they have searched sex offender registries, collected criminal and family background information, provided background information and the domestic abuse pamphlet to the foreign national, and received written consent from the foreign national to share her contact information. Violation of these requirements can result in civil penalty up to \$25,000.

Editor's Note: For more information about IMBRA, see Heidi Boas' article on page 57 of this issue.

Technical Assistance

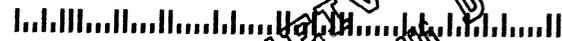
For technical assistance on VAWA 2005 immigration, contact Joanne Lin, Legal Momentum (202/326-0040; jlين@legal-momentum.org) or Christine Kellogg, ASISTA (515/244-2469 x 203; christinek@asistaonline.org). For technical assistance on IMBRA, please contact Jeanne Smoot, Tahirih Justice Center (703/575-0070; jeanne@tahirih.org).

Joanne Lin, a senior staff attorney with the Immigrant Women Program ("IWP") of Legal Momentum (formerly NOW Legal Defense and Education Fund), is a national expert on VAWA immigration, who has represented victims in immigration and family law matters, and played a leading role in drafting and negotiating the VAWA 2005 immigration provisions. Leslye Orloff, IWP Director and Associate Vice President of Legal Momentum, is a pioneer in the domestic violence movement and the nation's leading legislative advocate on VAWA immigration. She spearheaded the immigration legislative advocacy campaigns in VAWA 1994, VAWA 2000, and VAWA 2005. Heather Saeed, a 2002 graduate of Washington College of Law, is a law intern with IWP. IWP, in partnership with the National Network to End Violence Against Immigrant Women, led the effort to expand and strengthen immigration laws in VAWA 2005, which culminated in landmark protections for immigrant victims of domestic abuse, sexual assault, trafficking, or other violent crimes. ■

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