

WOMEN IMMIGRANTS AND DOMESTIC VIOLENCE

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Violence against women is not limited by borders, culture, class, education, socioeconomic level or immigration status. A recent survey cosponsored by the National Institute of Justice and the Centers for Disease Control and Prevention found that approximately 4.8 million intimate partner rapes and physical assaults are perpetrated against women annually. For women and their children who have immigrated to the United States, the dangers faced in abusive relationships are often more acute.¹

Historically, these dangers have been aggravated by immigration laws. Immigrant women face pressure not only to assimilate culturally but to maintain cultural traditions as well. They face language barriers, economic insecurity, and discrimination due to gender, race or ethnicity. Additionally, the problems of domestic violence are “terribly exacerbated in marriages where one spouse is not a citizen and the non-citizen’s legal status depends on his or her marriage to the abuser.”² The battered immigrant’s ability to obtain or maintain lawful immigration status may depend on her relationship to her citizen or lawful permanent resident spouse and his willingness to file an immigrant relative petition on her behalf.

The same dynamic occurs any time immigration law gives an abusive spouse total control over the immigration status of his spouse and children. This can occur when a person has received legal permission, in the form of an immigrant or non-immigrant visa, to live and work in the United States. His spouse and children are then awarded derivative immigration status so that they can join him. Examples of persons whose spouses and children can be awarded derivative visas include diplomats, those who work for religious or international organizations, students, and people who receive visas related to their work. When immigration law gives spouses control over the immigration status of their family members, it forces many battered immigrant women to remain trapped and isolated in violent homes, afraid to turn to anyone for help. They fear continued abuse if they stay and deportation if they attempt to leave.³

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A survey among Latina immigrants in the Washington, D.C. area found that 21.7 percent of the battered immigrant women survey participants listed fear of being reported to immigration officials as their primary reason for remaining in an abusive relationship. Researchers also found that immigrant women experiencing physical and/or sexual abuse were victims of their abusers' threats - threats of deportation, threats of refusal to file immigration papers, and threats to call the Immigration and Naturalization Service (INS) - at over ten times the rate experienced by psychologically abused women. Among immigrant Latinas who reported being married, or previously married, the physical and sexual abuse rate was higher (59.5 percent) than for the general population of immigrant women surveyed (49.8 percent). A large proportion of married or formerly married physically and/or sexually abused immigrant women had a citizen or legal permanent resident spouse or former spouse who could have filed legal immigration papers for them (47.8 percent). However, 72.3 percent of physically and sexually abused women reported that their abusive citizen or lawful permanent resident spouse who could file immigration papers for them never did. Abusers use constant threats to deport spouses and children as powerful tools to prevent battered immigrant women from seeking help and to keep them in violent relationships.⁴

Immigration law historically gave male citizens and lawful permanent residents control over the immigration status of their immigrant wives and children. Early United States immigration laws incorporated the concept of *coverture*, which was "a legislative enactment of the common law theory that the husband is the head of the household." Under it, "the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband, under whose wing, protection, and cover, she performs everything."⁵ *Coverture* was so much a part of United States law that from 1907 through 1922, when a female U.S. citizen married a man from another country, she lost her U.S. citizenship. If the husband was a U.S. citizen, the law required him either to file an immigration petition for his wife or to accompany her when she applied for immigration status. Female citizens or lawful permanent residents could not, however, file petitions for their male immigrant spouses.⁶

Although subsequent legislation, particularly the Immigration and Nationality Act of 1952, changed the statutory language to make the immigration laws gender-neutral and gave women the same ability to

confer legal immigration status on a spouse that men had, the impact of the spousal sponsorship laws is still rooted in the coverture mentality. Since the power of sponsorship and autonomous action lies with the citizen or lawful permanent resident spouse, and because the majority of immigrant spouses and victims of domestic violence are women, the ramifications of spousal sponsorship are most serious for immigrant women.⁷ With the passage first of the Violence Against Women Act of 1994 (VAWA 1994) and later of the Violence Against Women Act of 2000 (VAWA 2000), Congress sought to provide direct access to legal immigration status for immigrant victims of domestic violence, thus enabling them to seek protection from ongoing abuse and to cooperate in the criminal prosecutions of their abusers. VAWA 1994 enabled battered immigrants to attain lawful permanent residence (green cards) without the knowledge or cooperation of their abusive spouse or parent. It created two forms of relief, VAWA self-petitions and VAWA cancellation of removal (formerly called "suspension of deportation"). These provisions ensure an immigrant victim of domestic violence access to lawful immigration status without having to depend on the cooperation or participation of her batterer, and without the abuser's knowledge that she has filed for immigration relief on her own.⁸

Although VAWA 1994 helped many battered immigrants, legislative protections for immigrant victims of domestic violence and sexual assault remained incomplete. Subsequent immigration laws effectively barred access to VAWA protection for many battered immigrants, and implementation problems continued to plague the VAWA process. As a result, many immigrant victims of domestic violence remained trapped in violent relationships. Immigrant victims of sexual assault remained without any immigration protection. In response, through the bipartisan efforts of sympathetic members of Congress working collaboratively with the advocacy community, President Clinton signed into law the Battered Immigrant Women Protection Act as a part of the Violence Against Women Act of 2000.⁹ It restored and expanded access to a variety of legal protections for battered immigrants by addressing residual immigration law obstacles preventing battered immigrants from freeing themselves from abusive relationships.

Significantly, VAWA 2000 for the first time offered options for the protection of legal immigration status to many battered immigrant women

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and children whose abusers were not their U.S. citizen or lawful permanent resident spouse or parent. These same provisions offered help to victims of sexual abuse. The statute created a new non-immigrant visa (U-visa) for a limited group of immigrant crime victims who suffer substantial physical or emotional injury as a result of being subjected to specific crimes committed against them in the United States. To obtain the visa, a law enforcement official (police officer, prosecutor, judge, Equal Employment Opportunity Commission or other federal or state official) investigating or prosecuting criminal activity must certify that the applicant has been helpful, is being helpful or is likely to be helpful to an investigation or prosecution of criminal activity. U-visa recipients are granted work authorization, but not public benefits.

Recognizing that women's economic dependence on their abusive partners is one of the primary reasons that battered women remain in violent relationships, Congress extended access in 1996 to the public benefits safety net for VAWA-eligible immigrant victims of domestic violence and their children. Battered women in the United States typically make 2.4 to 5 attempts to leave their abusers before they ultimately succeed. Economic dependence is a critical factor in determining the fate of a woman who leaves an abusive relationship. Those with greater economic dependence experience greater severity of abuse as compared to employed battered women. Like all battered women, 67.1 percent of battered immigrant women report lack of access to money as the one of the largest barriers to leaving an abusive relationship.¹⁰

For battered immigrants who qualify to apply for immigration benefits as VAWA self-petitioners or as applicants for suspension or cancellation of removal, the road to economic self-sufficiency is more complicated. A VAWA-eligible battered immigrant cannot obtain legal permission from the INS to work in the United States until her VAWA immigration case is approved. Approval can take up to six months or longer in light of the INS case backlogs that have developed after September 11, 2001. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress granted battered immigrant VAWA applicants access to the public benefits safety net shortly after filing their application with the INS.¹¹ This was because immigrant victims who were to be protected by VAWA could not successfully attain safety without economic sustenance apart from dependence upon their abusers. They were given limited access to

welfare benefits, and many were given access to public and assisted housing, post-secondary educational loans, the Women, Infants, and Children program, Temporary Assistance for Needy Families (TANF), Medicaid, school lunch programs and other federally funded public benefits. All battered immigrants were also guaranteed access, without regard to immigration status, to domestic violence services, shelter, transitional housing for up to two years, food banks, emergency medical services and a broad range of other federally and state funded community based programs offering services necessary to protect life and safety.

FUTURE CHALLENGES

Although there has been much progress in securing legislative protections for battered immigrant women and children in the United States, the legal options for immigrant victims are far from complete. Legal reforms are still needed to improve their access to both immigration relief and welfare benefits. A variety of implementation problems prevent them from receiving the immigration benefits and the welfare access Congress sought to provide. Additionally, the rise in anti-immigrant sentiment since September 11, 2001 has created new problems at the state level for immigrant victims of domestic violence who turn to the family courts and the police for help. Some of the outstanding issues can be summarized as follows.

Access to Legal Services: Immigrant victims of domestic violence were given special access to legal assistance in a broad variety of domestic violence related cases in 1998 when Congress allowed Legal Services Corporation (LSC) funded programs to use non-LSC funds to represent battered immigrants in any legal matter related to the domestic violence.¹² However, the law enables only immigrant victims of domestic violence abused by their spouses or parents to benefit from this assistance, leaving those abused by boyfriends or other family members without access to representation. This should be changed to allow any LSC funded program to use non-LSC dollars to represent any battered immigrant victim of domestic violence without regard to her relationship to her abuser, so long as that relationship is covered by the state's domestic violence laws.

Improved Access to Public Benefits: Although Congress granted access to public benefits to immigrant victims of domestic violence who were eli-

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gible under VAWA, it created a five-year bar to benefits access that applied to immigrants who first entered the United States after August 22, 1996. This left battered immigrants who qualify for VAWA but who first entered after that date with a five-year bar from some of the most important federal benefits programs offering relief to battered women and their children, including TANF, Medicaid, and food stamps. Additionally, welfare access for battered immigrant victims is limited to those who qualify for relief as VAWA self-petitioners, suspension or cancellation applicants. Battered immigrants who qualify for relief under the new crime victim visas have no access to federal public benefits. The law should be changed to grant immediate access to federal public benefits to any battered immigrant who has filed an application that sets out *prima facie* eligibility for relief with the INS under a family based visa application, VAWA or the new U-visa protections. Further, in many states, implementation problems block access to public benefits for many battered immigrant women. These problems include welfare agencies that turn away immigrant victims or refuse applications because of assumptions about applicants' immigration status based on their ethnicity or assumed country of origin.

Family Court and Justice System Issues: Across the country advocates and attorneys working with immigrant victims of domestic violence have seen a broad range of problems with battered immigrants' access to family court and justice system protection that appear to be related to a backlash against immigrants occurring in many communities. These problems include judges in protection order cases calling the INS and turning in immigrant victims rather than granting them protection orders against their abusers. In other cases judges may refuse to grant protection orders to VAWA-eligible battered immigrants, stating that they believe the victims are only seeking protection orders so as to obtain immigration relief. This approach fails to recognize that any battered immigrant who is eligible for self-petition could have had legal immigration status through her spouse if he had not been using lack of legal immigration status as a tool of power and control. In still other cases an abuser convinces a judge that because the abused mother lacks legal immigration status, the abuser should be awarded custody of children despite the fact of his abuse. In some communities police called to a domestic violence case will ask questions about the immigration status of the victim and will turn that information over to the INS. Similarly, prosecutors will deport rather than

prosecute immigrant abusers. This approach has the effect in many instances of increasing danger to the victim when the abuser returns to this country after his deportation or when he forces her to follow him back to the home country.

These problems provide continuing challenges to advocates, attorneys, government agencies and legislators who wish to help immigrant victims of domestic violence. Some can be resolved by further federal legislative or administrative legal reforms. Others, like the problems of welfare access to legally authorized benefits, require training, education, advocacy and perhaps litigation at the state level. Still others require training personnel in the justice system about the legal rights of immigrant victims of domestic violence and about the role anti-immigrant policies can play in undermining community policing and the criminal justice system's approach to domestic violence, including holding abusers accountable for their actions. Changes in these practices and policies are needed if battered immigrant women and children are to have access to the same protections against domestic violence as all other domestic violence victims in the United States.

NOTES

1. Patricia Tjaden and Nancy Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* (National Institute of Justice and Centers for Disease Control and Prevention, NCJ 181867, 2000), p. iii; Leslye E. Orloff and Nancy Kelly, "A Look at the Violence Against Women Act & Gender-Related Political Asylum," *Violence Against Women* 380 (1995).

2. H.R. Rep. No. 103-395, at 26-27 (1993). In this essay, victims of domestic violence will be referred to as "she" and perpetrators of domestic violence will be referred to as "he." Government and academic studies consistently find that the majority of domestic violence victims are female and that batterers are overwhelmingly male. See Callie Marie Rennison and Sarah Welchans, *Bureau of Justice Statistics Special Report: Intimate Partner Violence*, (Department of Justice, 2000) (reporting that 85 percent of victimizations by intimate partners in 1998 were committed against women); *Bureau of Justice Statistics Selected Findings: Violence Between Intimates* (U.S. Department of Justice, 1994), pp. 2-3; Mary P. Kosset et al., *Male Violence Against Women at Home, at Work and In the Community*, xiv-xv (American Psychological Association, 1994); Russel P. Dobash, "The Myth of Sexual Symmetry in Marital Violence," 39 *Social Problems* (1992), pp. 71, 74-75.

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3. Immigration and Nationality Act, Pub. L. 82-414 (1952), at § 203(d), 8 U.S.C. § 1153(d) (1999) provides that the status of the spouse and children “derives” from the person with the visa. Fear of abuse: 146 Cong. Rec. S10, 195 (daily ed. Oct. 11, 2000) (providing a section-by-section summary of the Battered Immigrant Women Protection Act of 2000).

4. 146th Cong. Rec. S10,192 (daily ed. Oct. 11, 2000) (statement of the joint managers).

5. William Blackstone, *Commentaries on the Laws of England* (First edition, 1765; G. W. Childs, 1862), p. 441. Also incorporated into common law was the husband’s right of ‘chastisement’ to restrain his wife from ‘misbehavior,’ thus creating an environment in which spousal abuse was condoned or even encouraged.

6. The Act of March 2, 1907, Chap. 2534, 34 Stat. 1228 (1907), provided that “any American woman who marries a foreigner shall take the nationality of her husband.” Section 7 of the Act of September 22, 1922, 8 U.S.C. § 9, commonly referred to as the Cable Act, repealed a portion of the law of 1907 through which American women lost citizenship upon marriage and provided that women would not cease to be citizens upon marriage unless they formally renounced citizenship. However, the Cable Act did not automatically restore citizenship already lost by women upon marriage between 1907 and 1922. *In re Watson’s Repatriation* 42 F. Supp. 163 (E.D. Ill. 1941); Marian L. Smith, “‘Any Woman Who is Now or May Hereinafter be Married . . .’: Women and Naturalization, ca. 1802-1940,” *Prologue: Quarterly of the National Archives and Records Administration*, available at <http://www.archives.gov/publications/prologue/>. Husband as citizen: Act of May 26, 1924, Pub. L. No. 139, § 4(a) (1924). Female citizens or lawful permanent residents: Janet M. Calvo, “Spouse-Based Immigration Laws: The Legacies of Coverture,” 28 *San Diego Law Review* 583 (1991), pp. 596-597.

7. Immigration and Nationality Act, op. cit., at §§ 101(a)(27), 204, 205 (codified as amended in scattered sections of 8 U.S.C.); see Leslye E. Orloff and Janice V. Kaguyutan, “Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses,” 10 *American University Journal of Gender, Social Policy & Law* (2001); Calvo, op. cit., p. 598. According to congressional reports, three to four million women in the United States are abused by their husbands each year, a figure far higher than the number of men abused by their wives. S. Rep. No. 101-545, at 30 (1990); H.R. Rep. No. 103-395, at 26 (1993).

8. The Violence Against Women Act of 1994, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-386; The Violence Against Women Act of 2000, Title V of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386. VAWA cancellation

of removal is available as an option to help battered immigrants who are brought before immigration judges for deportation. *Also see* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208 (1996).

9. Ann Moline, "Bipartisan Women Made Anti-Violence Act Happen," *Women's Enews*, December 18, 2000. The new legal protections for battered immigrants went into effect October 28, 2000 and certain provisions were given retroactive effect.

10. Remaining in violent relationships: Debra S. Kalmuss and Murray A. Strauss, "Wife's Marital Dependency and Wife Abuse," in Murray A. Strauss, Richard J. Gelles, and Christine Smith, eds., *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8145 Families* (Transaction Publishers, 1990), pp. 369-371. Attempts to leave: Lewis Okun, "Termination or Resumption of Cohabitation of Women in Battering Relationships: A Statistical Study," in Gerard T. Hotaling et al., eds., *Coping With Family Violence: Research and Policy Perspectives* (Sage Press, 1988), pp. 107, 113. Economic dependence: Michael J. Strube and Linda S. Barbour, "The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment," 45 *Journal of Marriage and the Family* (1983), pp. 785, 790-92; Mary Ann Dutton et al., "Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas," 7 *Georgetown Journal on Poverty Law and Privacy* (2000), pp. 245, 271.

11. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208.

12. Section 502(a)(2)(C) of the FY1997 Omnibus Consolidated Appropriations Bill (the "Kennedy Amendment").

