

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

In the matter of)	
)	
AGUILAR-JIMENEZ, NELLY)	No.: A# 72-714-045
)	
Respondent.)	
)	
)	

AMICI MEMORANDUM IN SUPPORT OF RESPONDENT’S REPLY BRIEF

The amici submit this memorandum in support of Respondent Nelly Aguilar-Jimenez’s Reply Brief of the Appeal of the Order of the Immigration Judge (“IJ”) by the Immigration and Naturalization Service (“Service”). The IJ granted Ms. Aguilar-Jimenez’s request for suspension of deportation under Section 244(a)(3) (1996) of the Immigration and Naturalization Act (“INA”), 8 U.S.C. § 1254(a)(3) (1996), as amended by the Violence Against Women Act (“VAWA”).¹

¹ The Violence Against Women Act, enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902-55, was codified in various sections of 8 U.S.C., 18 U.S.C. and 42 U.S.C. [hereinafter “VAWA”]. On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRAIRA”), Pub. Law 104-208, 110 Stat. 3009, eliminated Section 244 and replaced it with cancellation of removal provisions at § 240A. See IIRAIRA § 304. However, Congress preserved Section 244(a)(3) at Section 240A(b)(2). See 8 INA § 240A(b)(2).

This appeal presents the Board of Immigration Appeals (“Board” or “BIA”) with the task of determining the “extreme cruelty” and “extreme hardship” standards in the context of requests for suspension of deportation under VAWA. In its appeal the Service challenges the IJ’s findings that Ms Aguilar and her children have satisfied the requisite elements of the VAWA extreme cruelty and extreme hardship standards. Specifically, the Service disputes the IJ’s assessment that extreme cruelty includes the psychological and emotional abuse imposed on a child who is forced to watch as a parent is battered by another parent. The Service also contests the IJ’s consideration of the nature, history, severity, and impact of the abuse endured by Ms. Aguilar and her children in making his determination that the extreme hardship standard had been satisfied.

It is the position of the *amici* that the IJ’s rulings regarding the applicability of the two standards are correct and should be sustained by the Board. As VAWA is a law designed to protect the rights of immigrant women and children who are victims of domestic violence, the extreme cruelty and extreme hardship criteria must be interpreted in a manner that would best protect these individuals. The INS itself has recognized the necessity of broadly construing extreme hardship in VAWA cases through the preamble of its self-petitioning regulations and in its internal memoranda. In this brief, the *amici* identify the factors which the INS has deemed determinative of the extreme hardship standard in other VAWA cases. There is no reason for the Board to interpret extreme hardship in a different manner in this case, thereby creating two different definitions for VAWA cases. The

amici next explain why “extreme cruelty” should be broadly defined to take into consideration the humanitarian purpose behind VAWA. An examination of the construction of that term in the domestic violence and family law spheres, as well as a review of the sociological and psychological data documenting the destructive psychological and physical effects of domestic violence on child witnesses, supports the IJ’s ruling that Erica is a victim of extreme cruelty. Lastly, the *amici* explain why the 4,000 cap in Section 309(C)(7) of the IIRAIRA is not applicable to VAWA suspension of deportation cases.

DESCRIPTION AND INTERESTS OF THE AMICI

This brief *amicus curiae* is submitted on behalf of numerous interested organizations² which provide assistance to victims of domestic violence like Ms. Aguilar and her daughters. These organizations include legal service providers, women’s legal advocacy organizations, and state and national domestic violence coalitions. All *amici* have substantial knowledge of the problem of domestic violence and the procedures for combatting the problem nationwide and internationally. In addition, many of these organizations have had substantial influence in the implementation of VAWA, and have provided advice, mentoring, and training about the law to various groups, including the INS.

² A list of the *amici* appear in Appendix A hereto as Exhibit 1.

The *amici* are gravely concerned that the unduly narrow interpretation of the extreme cruelty and extreme hardship standards as advocated by the Service in this appeal, if implemented, would frustrate the Congressional intent behind VAWA by curbing the law's protection of immigrant battered women and their children from spousal abuse.³ A statement of the interest of each *amicus* is included in Appendix A hereto as Exhibit 2.

SUMMARY OF RELEVANT FACTS

The Brief in Support of Respondent's Reply Brief sets forth a detailed description of the statement of the case. See Respondent's Brief at 2-10. The *amici* hereby adopt the statement of the case set forth in Respondent's Reply Brief. In addition, the *amici* designate the following facts as being most relevant to this brief's evaluation of the extreme cruelty and extreme hardship issues under VAWA.

A. Evidence Of The Domestic Abuse To Which Respondent and Her Children Were Subjected.

There is substantial evidence showing that Ms. Aguilar and her children were subjected to physical and psychological abuse by Mr. Hernandez. The record shows that Ms. Aguilar, a native of Mexico, entered the United States with her

³ This brief refers to domestic violence victims and abused immigrants as women because ninety-five percent of adult victims of domestic violence are women. Bureau of Justice Statistics, U.S. Dept. of Justice, Report to the Nation - Crime and Justice: The Data 21 (1983).

daughter Lisbeth on March 18, 1988 and began residing with members of her family in Los Angeles. Oral Dec. at 1; Ex. 2 at 1; Tr. 102. After meeting and falling in love with Mr. Hernandez, Ms. Aguilar moved with him to Washington state. Id.

The couple lived peacefully together for a year and a half when Mr. Hernandez began drinking and became abusive toward Ms. Aguilar and Lisbeth. Id. Ms. Aguilar testified that Mr. Hernandez would beat her whenever he became drunk. Tr. 104. Twice during their relationship, Ms. Aguilar was pregnant when Mr. Hernandez beat her so severely that she miscarried. Tr. 105-106. In 1992, Ms. Aguilar gave birth to their daughter, Erica. Tr. 105. From the time of Erica's birth until April 1995, Mr. Hernandez physically abused Ms. Aguilar several times a month. Tr. 104.

Both Erica and Lisbeth repeatedly witnessed Mr. Hernandez abuse Ms. Aguilar. Tr. 108. Often times, Erica "would start screaming and crying" and "hide behind the sofa" or "under the table" when this abuse happened. Tr. 98, 108, 109. Mr. Hernandez also told Erica that he would kill her mother and take Erica away. Tr. 109-111. When Mr. Hernandez was drunk, he would forcefully take Erica from her mother and drive around with her in the car. Tr. 106-107.

As a result of this abuse, Erica suffers from extreme fear, excessive crying, depression, recurring nightmares, and often reverts back to a younger age. Tr. 42, 58; Exhibit 2 at 8. Erica is fearful that her father will carry out his threat to kill her mother and is always thinking about the domestic violence that has surrounded

her. Tr. at 59. A mental health professional found that these symptoms were common for those who suffer from post traumatic stress disorder. Id.

B. The Immigration Judge's Findings.

On November 7, 1996, the IJ issued an oral decision in support of Ms. Aguilar's request for relief under Section 244(a)(3). While Ms. Aguilar's application for suspension had requested, in the alternative, relief under Sections 244(a)(1) or 244(e), the IJ did not reach either of these requests in his decision.⁴ The IJ found that "[t]he record is replete with threats and other very significant misconduct that clearly have had a negative impact on the United States citizen child and upon her mother." See Oral Decision of the Immigration Judge at 9. He stated that Ms. Aguilar met the conditions of retaining relief under Section 244(a)(3) (1996) by showing:

- that she had been physically present in the United States for a continuous period of not less than three years;
- that she is a mother of a U.S. citizen child who had been subjected to extreme cruelty in the United States;
- that she is a person of good moral character; and
- that her deportation would result in extreme hardship to either herself or her U.S. citizen child.

Id. at 2-3, 9.

⁴ It is the understanding of the *amici* that Respondent has renewed those requests in her Reply Brief, should the Board overturn the IJ's Order.

The IJ also noted that the Attorney General has not yet issued regulations determining how extreme cruelty should be interpreted under VAWA suspension of deportation cases. Id. at 3. However, he found that the regulations set forth in the self-petitioning provisions of VAWA at 8 C.F.R. § 204.2(b)(4)(C)(vi) defining extreme cruelty were relevant and should apply by analogy in suspension cases. Id. at 3-4.

C. The Service’s Appeal of the IJ Order.

The Service’s appeal of the IJ Order alleges, among other things, that the IJ “erred in determining that Erica was ‘subject to extreme cruelty’ based on evidence of a nervous condition and a diagnosis of post-traumatic stress syndrome” and “the birth of a U.S. citizen child and a desire to take advantage of U.S. social services does not constitute ‘extreme hardship.’” INS Appeal from the Decision of the Immigration Judge at 3. The Service also alleges that the IJ cannot “grant suspension of deportation in excess of the numbers permitted by statute.” Id.

The crux of the Service’s “extreme cruelty” argument is that “[a] child is not ‘subject to extreme cruelty’ by his father where the father has neither directly harmed, threatened to harm, nor intended to harm the child,” Id. at 6, an assertion completely contradicted by the well-documented evidence of the effects of domestic violence on children. The Service also encourages the Board to go beyond the statute and require “proof of intent to harm” in cases involving extreme cruelty, Id. at 8, and to disregard the psychological and physical effects exhibited by a child who has grown up in an abusive and violent household. Id. at 9-10.

With regards to the “extreme hardship” issue, the Service misrepresents the basis of the IJ’s findings. The Service mischaracterizes Ms. Aguilar’s extreme hardship claim as “a desire to take advantage of U.S. social services.” Id. at 10. It further suggests that the mere fact that the “perpetrator of the battering is a lawful permanent resident of the United States” is enough to overcome extreme hardship, as Ms. Aguilar “can avoid contact with [her batterer by leaving the United States].” Id. at 11. The Service fails to mention that the “perpetrator” in this instance was in Mexico while Ms. Aguilar’s suspension proceeding was before the IJ. See Oral Decision of the Immigration Judge at 8.

Lastly, the Service alleges that “Congress has limited the number of suspension adjustments that may be granted” and that “that number is currently oversubscribed.” Id. at 13. The Service encourages that Board to disregard the intent behind VAWA protection and overturn the IJ’s ruling.

ARGUMENT

I. CONGRESS ENACTED VAWA TO PROTECT IMMIGRANT WOMEN AND CHILDREN FROM DOMESTIC VIOLENCE AND VAWA SHOULD BE UNIFORMLY APPLIED.

A. The History and Intent of VAWA.

During the last twenty years, Congress increasingly has recognized that domestic violence is a serious societal problem which causes severe damage, especially on the women and children subjected to it. Indeed, Congressional studies have estimated that at least 3 to 4 million women in the United States are abused

by their husbands each year, and over sixty percent of victims are beaten while they are pregnant.⁵

Unlike stranger violence, domestic violence often consists of chronic abuse characterized by persistent intimidation and repeated physical and psychological harm.⁶ Unless the law or another party intervenes, a woman almost certainly will be continually assaulted by the abusive family member.⁷ Indeed, not only will the abuse likely be repeated, it often will worsen over time. One Senate report revealed that in over half of the cases involving women who were murdered by their husbands, the police had been called at least five times previously.⁸ Stalking behavior also is part of the chronic and repetitive nature of domestic violence.⁹

⁵ H.R. Rep. No. 395, 103d Cong., 1st Sess., 26 (1993). Most national estimates are obtained from surveys or studies which have typically excluded the very poor, those who do not speak English fluently, those whose lives are particularly chaotic, and persons who are hospitalized, homeless, institutionalized or incarcerated. C. Klein & L. Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, 21 Hofstra L. Rev. 801, 809 (1994). As a result, some have estimated that the number of women battered each year is closer to six-million. Id. (citing Senator J. Biden, Remarks in the Rotunda of Russell Senate Office Building at The Opening of an Art Exhibit on Domestic Violence Sponsored by Senator Paul Wellstone (Oct. 26, 1994)).

⁶ See S. Rep. No. 138, 103 Cong., 1st Sess. 41 (1993); see also U.S. Dept of Justice, Bureau of Justice Statistics (1980); L. Henderson, Son 'Not Even Sorry' About Slaying Asks Mother's Pardon, The Knoxville Journal, (Feb. 29, 1984), at A8.

⁷ S. Rep. No. 545, 101st Cong., 2d Sess. 36 (1990).

⁸ Id. at 37.

⁹ Staff of Senate Comm. on the Judiciary, 102d Cong., 2d Sess., Violence Against Women: A Week in the Life of America, 7 (Comm. Print 1992).

In its evaluation of domestic violence, Congress recognized that battered immigrant women and children were in a unique and troubling situation. It was discovered that immigration laws actually fostered the abuse of many immigrant women by placing their ability to gain permanent lawful status in the complete control of the abuser — their U.S. citizen or lawful permanent resident spouse.¹⁰ Under these laws, battered immigrant women could either continue to live with their abuser or leave the abuser and risk deportation. As Congress noted, “[m]any immigrant women live 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.” Committee on the Judiciary, Report on Violence Against Women Act, accompanying H.R. Rep. No. 395, 103d Cong., 1st Sess. (1993).

Often times, the battered immigrant is unaware of her rights in this country and is not trusting of the legal system. The Impact of Domestic Violence on Children, A Report to the President of the American Bar Association, at 19-20 (August 1994) (attached as Exhibit 3). In many instances, her abuser has isolated her from others, she lacks sufficient knowledge of English to seek help, has no ability to support herself and her children, and does not know that domestic violence laws exist to protect her. Id.; see also Leslye E. Orloff, Deeana Jang, & Catherine F. Klein, With No Place to Turn: Improving Legal Advocacy for Battered

¹⁰ See H.R. Rep. No. 395, 103d Cong., 1st Sess., 26-27 (1993) (noting that the problem of domestic abuse is “terribly exacerbated in marriages where one
(continued...)”)

Immigrant Women, 29 Family L. Quarterly 313, 316-17 (1995) (attached hereto as Exhibit 4). The abuser, on the other hand, feeds on her fears and lack of knowledge, often holding over her head her lack of permanent residency. The Impact of Domestic Violence on Children at 19-20. He may threaten her with deportation or the loss of her children since she is an “illegal.” Id. Such conditions often keep battered immigrant women in abusive relationships where they risk injury or even death.

B. VAWA Remedial Provisions.

In 1994, Congress provided a remedy to immigrants by passing VAWA which denounced the battering of immigrant women and children within their homes and provided them with a range of protections, including criminal prosecution of their abusers. Congress enacted Section 40703 of VAWA, codified at 8 U.S.C. § 1254(a)(3) (1996), to protect battered immigrant women and their children and allow them “to leave their batterers without fear of deportation.” H.R. Rep. 395, 103d Cong., 1st Sess. 25 (1993). The VAWA provisions provide two forms of relief by which battered immigrant women and children can obtain legal residency without relying on their abusive spouse, partner, or parent.

1. VAWA Self-Petitioning Provision.

(...continued)

spouse is not a citizen and the non-citizen’s legal status depends on his or her
(continued...)

A battered immigrant woman, or her children are entitled to self-petition for permanent status without participation in the petition by her legal resident spouse. INA §§ 204(a)(1)(A)(iii), (iv) and (B)(ii), (iii) (1996). The self-petition provisions allow a woman to apply for classification as an immediate relative or preference immigrant if her deportation would result in extreme hardship to herself or her children. 8 C.F.R. § 204.2(c)(i)(G) (1997). In determining if a woman has satisfied the extreme hardship provision, the INS' regulations state that it will:

consider all credible evidence of extreme hardship submitted with a self-petition, including **evidence of hardship arising from circumstances surrounding the abuse**. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. **Self-petitioners are encouraged to cite and document all applicable factors . . .**

8 C.F.R. § 204.2(c)(viii) (1997).

The self-petitioning provisions also state that an immigrant woman may apply if she is the parent of a child who has been battered or has been the subject of extreme cruelty. 8 C.F.R. § 204.2(c)(i)(E) (1997). Extreme cruelty is defined in the INS regulations as:

includ[ing], 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. . . . **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 that are a part of an overall pattern of violence.**

(...continued)

marriage to the abuser”).

8 C.F.R. 204.2(c)(vi) (1997).

2. Suspension of Deportation Provision.

In the alternative, a battered immigrant such as Ms. Aguilar can apply for a suspension of deportation and can obtain lawful permanent residency under the suspension of deportation provision. VAWA § 40703; INA § 244(a)(3) (1996). The battered immigrant woman will receive a suspension of her deportation if she fulfills the following requirements:

- [she] has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application;
- has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and
- proves that during all of such time in the United States the alien was and is a person of good moral character; and
- is a person whose deportation would, in the opinion of the Attorney General, **result in extreme hardship to the alien or the alien's parent or child.**

INA § 244(a)(3). Hence, contrary to the Service's assertions, the statute requires immigration judges to consider whether children such as Erica have been either battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident parent. The statute also requires judges to consider the extreme hardship to a child whose mother would be deported.

While Congress, in Section 244(g) of VAWA,¹¹ authorized the Attorney General to promulgate regulations for the VAWA suspension provisions, the Executive Office for Immigration Review (“EOIR”) - the agency under the Attorney General responsible for suspension matters - has not yet done so. However, as a practical and policy matter, the construction of the definitions of “extreme hardship” and “extreme cruelty” within suspension cases should not differ from the definitions in the self-petitioning regulations discussed infra 11-12 as both are part of VAWA and are designed to protect immigrant women and children from domestic violence.¹²

It is the Board’s duty to enforce the provisions with consideration for Congress’ broader policy goals. In determining the definition of “extreme cruelty” and “extreme hardship” without the benefit of specific suspension regulations, the Board must construe the terms based on Congress’ intent to protect battered immigrant women and their children from domestic violence. The INS has interpreted what “extreme hardship” means within the context of VAWA in its implementation of the self-petitioning provisions, setting forth broad definitions

¹¹ As discussed supra n. 1, the IIRAIRA eliminated section 244. However, Congress also preserved section 244(g) as part of the cancellation provisions of §240A. See 8 U.S.C. § 240 A(b)(2).

¹² The INS is responsible for promulgating the regulations and definitions for self-petitioning matters. As discussed supra, the self-petitioning regulations contain broad definitions of “extreme cruelty” and “extreme hardship.” Both the INS and the EOIR are agencies under the Attorney General’s supervision.

that take into account the sensitive nature of domestic violence. See INS Memorandum of April 16, 1996. Indeed, it is troubling to the *amici* that the extreme hardship definition advocated for by the Service in this case so clearly contradicts INS' own policy.

As evidenced by the INS' definition of "extreme cruelty" within the self-petitioning provisions, the term includes actions which may in themselves not appear to be violent. The *amici* encourage the Board to be consistent and find that "extreme cruelty" and "extreme hardship" should have the same meaning throughout VAWA.

II. IN VAWA SUSPENSION CASES THE COURT MUST UNDERSTAND AND CONSIDER THE NATURE AND IMPACT OF DOMESTIC ABUSE IN MAKING THE "EXTREME HARDSHIP" DETERMINATION.

A. Extreme Hardship Factors Should Be Interpreted To Fulfill The Goals Of VAWA In Suspension Of Deportation Cases.

In order to qualify for suspension of deportation and lawful resident status under INA Section 244(c), battered immigrant women must demonstrate that deportation would result in "extreme hardship." The traditional "extreme hardship" inquiry applied in suspension of deportation cases involves a case-by-case assessment of several factors relating primarily to the alien's socio-economic situation. See, e.g., Matter of Anderson, 16 I&N Dec. 596 (BIA 1978); see generally

Gordon, Mailman & Yale-Loehr, Immigration Law and Procedure, § 74.07(5)(f) (1990).

The Immigration and Naturalization Service has recognized that certain additional factors are relevant in determining whether deportation would work “extreme hardship” on an abused immigrant. INS Memorandum of April 16, 1996 (“Aleinikoff Memorandum”) (attached hereto as Exhibit 5). In the Aleinikoff Memorandum to all Regional Directors, District Directors, Service Center Directors, and Officers in Charge, INS Executive Associate Commissioner Aleinikoff set out the various factors relating to domestic abuse that should be weighed as part of the “extreme hardship” determination in VAWA self-petitioning cases:

- (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, but 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 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.

Aleinikoff Memorandum at 8-9.

The guidelines promulgated by the Service in the Aleinikoff Memorandum adopted, nearly verbatim, the extreme hardship section of the preamble to the regulations implementing VAWA's self-petitioning provisions. See Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children ("Preamble"), 61 FR 13061, 13067 (March 26, 1996). The preamble recognizes that changes to the self-petitioning process were necessary because "[s]ome abusive citizens or lawful permanent residents . . . misuse their control over the petitioning process." Id. at 13062.

Thus, while some immigration judges in the past have construed the "extreme hardship" factors narrowly, making it difficult for aliens to qualify for suspension of deportation, there is no justification for applying a narrow interpretation of extreme hardship to cases brought under the VAWA provisions. Indeed, by enacting VAWA, Congress recognized the dilemma faced by abused immigrant women and intended to offer them relief by providing for their protection. An interpretation of extreme hardship in VAWA cases that will result in very limited numbers of abused battered immigrant women obtaining needed relief is contrary to Congress' intent.

Accordingly, immigration judges and the BIA should apply — just as the IJ has done in this case — an extreme hardship test that recognizes and evaluates the context of the abuse suffered by the applicant. To do otherwise would subvert Congress’ goal of aiding immigrant victims of domestic abuse.

**B. Factors That Relate To The Nature And Effect Of
Domestic Abuse Must Be Examined In Making
The Extreme Hardship Determination.**

Whether a battered immigrant would suffer “extreme hardship” through forced deportation must be interpreted in the context of the abuse suffered. To that end, immigration judges making the extreme hardship determination in cases filed under the VAWA provisions must understand the dynamics of domestic abuse and examine factors which may implicate hardships that are unique to victims of abuse as set forth by the Service in the Aleinikoff Memorandum and by Congress in the preamble to the VAWA regulations. See Aleinikoff Memorandum; Preamble at 13067. These six factors do not constitute an exhaustive list. Rather, as the Preamble advised, “extreme hardship’ must be evaluated on a case-by-case basis after a review of all the circumstances in the case. . . . Each self-petitioner is encouraged to cite and document all the reasons he or she believes that deportation would cause extreme hardship.” 61 FR at 13067. In addition to the factors set forth in the preamble and the Aleinikoff Memorandum, the *amici* believe that it is important that the BIA consider the existence of children in the household and the effects of domestic violence on the children.

The BIA should adopt the abuse-sensitive analysis of “extreme hardship.” The Service’s factors and the effect of domestic violence on children and their relevance to the extreme hardship inquiry in VAWA cases are discussed below.

1. Nature, Severity, and Extent of the Abuse.

No meaningful analysis of “extreme hardship” can be made without examining the nature, severity and extent of the abuse suffered by the battered immigrant. Proof that the immigrant has suffered severe, sustained abuse should be sufficient, of itself, to establish the extreme hardship necessary for suspension of deportation in some cases.

Virtually all victims of domestic violence suffer some type of severe physical trauma. Numerous studies have shown that physical and sexual abuse occurring in the domestic violence context can lead to permanent physical injuries and even death:

- Battered wives frequently report having been punched, kicked, attacked with knives, razors, and broken bottles, beaten with belts and buckles, burned and scalded.¹³
- Other studies show that abused women frequently suffer multiple bruises and lacerations, black eyes, fractured ribs, broken noses, subdural hematomas, and/or detached retinas after having been beaten with chains, clubs, chairs, wrenches, hammers and golf clubs.¹⁴

¹³ C. Ewing, Battered Women Who Kill: Psychological Self-Defense as Legal Justification, 8 (1987).

¹⁴ Id. at 8-9.

- Between 22% and 35% of women visiting hospital emergency rooms are there due to injuries sustained as a result of domestic violence.¹⁵
- FBI Crime Reports indicate that 30% of all female homicide victims each year are killed by their husbands.¹⁶

Experts studying domestic violence have long recognized that domestic abuse involves far more than isolated acts of physical violence. Rather, the violence develops in cycles through which the abusive partner gains control over his victimized spouse. Once a woman is victimized, there is a significant chance that she will be abused again. Indeed, research reveals that:

- During the six-month time period following an incident of domestic violence, approximately 32% of women are victimized again.¹⁷
- Forty-one percent of those assaulted are victimized again within 15 months.¹⁸
- More than 50% of husbands who victimize their wives do so three or more times a year.¹⁹

Many abused women have reported that the psychological impact of domestic abuse is more devastating than the effect of the physical violence. See D. Follingstad, et al., *The Role of Emotional Abuse in Physically Abusive*

¹⁵ T. Randal, Domestic Violence Intervention Calls for More than Treating Injuries, 264:8 J. Am. Med. Ass'n, 939-40, (August 22/29 1990).

¹⁶ Federal Bureau of Investigation, Uniform Crime Reports 11 (1986).

¹⁷ P. Langan & C. Innes, Preventing Domestic Violence Against Women, 1, Bureau of Justice Statistics Special Report, U.S. Dep't of Justice, (1986).

¹⁸ L. Bauschard, Executive Summary of the Second National Workshop on Female Offenders 13 (Raleigh, NC, April 1987).

Relationships, 5 J. Fam. Violence, 114-15 (1990) (72% of battered women reporting that emotional abuse more severe and damaging than physical abuse). Research also confirms that many victims of abuse need psychiatric attention. See Physicians and Domestic Violence: Ethical Considerations, Trends in Health Care, Law & Ethics, Vol. 8, No. 2, 13 (Spring 1993) (noting that up to 64% of female psychiatric inpatients have been abused as adults).

Experts agree that in order to recover from an abusive relationship, the abused must first find safety and then must develop self-confidence about her ability to exert power and control over her own life. However, the recovery process is slow and extremely fragile. Victims of severe abuse are particularly vulnerable and incidents of stress, loss of control, and/or loss of safety can greatly impede their recovery process. Subjecting a victim of abuse to the additional and substantial trauma of deportation is likely to exacerbate the victim's harm and greatly hinder her recovery. Moreover, many abusers threaten the immigrant women with deportation as a means of exerting Control. Thus, actual deportation would likely be viewed by many abuse victims as officially sanctioned implementation of the abuser's threats, or as retaliation for having taken measures to end the abuse, thereby exacerbating the abused's feelings of isolation, helplessness, and despair.

(...continued)

¹⁹ M. Wolfgang, Interpersonal Violence and Public Health Care: New Directions, New Challenges, printed in Surgeon General's Workshop on Violence and Public Health, (Health Resources Adm. Washington, D.C.).

In many cases, it simply would be inhumane to subject a victim of severe domestic abuse to the inherent stress that is associated with forced deportation.²⁰

2. The Importance of Access to the United States Courts and Criminal Justice System.

Consideration of the importance of the abused immigrant's access to the United States courts and criminal justice system is critical to the extreme hardship determination.

Deportation of the abused may result in extreme hardship by depriving the abused of legal protection from the abuser. In the United States, domestic violence is a crime, and targets of domestic violence may seek effective assistance from police to escape potentially violent situations. In recent years, practically all states in the United States have passed laws or enacted public procedures which require that police departments operate under mandatory or pro-arrest procedures with respect to all domestic violence cases. See C. Klein & L. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L.

²⁰ Consideration of the extent and impact of past abuse to grant relief on humanitarian grounds would not establish new precedent. For example, in Matter of Chen, 20 I. & N. Dec. 16 (BIA 1989) and Matter of B-, Interim Dec. 3251 (BIA 1995), the BIA relief to individuals who had been subjected to severe physical and psychological abuse in the past but would not likely face such persecution in the future. The BIA relief in those cases was granted for humanitarian reasons in consideration of the severe persecution already suffered.

Rev. 801, 1148-1154 (1994). In order to ensure that all jurisdictions implement these policies, VAWA has conditioned receipt of grant funding under VAWA to implementing mandatory or pro-arrest policies. Moreover, police in this country are being trained to deal with incidents of domestic violence, and may have significant experience in responding to such situations. Deportation may jeopardize the abused's physical and mental well being by cutting her off from legal protection from crimes committed by her spouse and by relocating her to a country whose police and legal system are unsympathetic to claims of domestic violence.

Abused immigrants also have the ability to gain protection from future abuse through protection orders issued and enforced through United States courts. Recognizing the importance of protection orders, Congress enacted VAWA provisions which authorize interstate enforcement of protection orders and require that such orders be given full faith and credit. Deportation would eliminate the abused immigrant's ability to seek refuge and escape abuse by cutting off her ability to enforce existing protection orders intended to protect her as she flees an abusive relationship. Deportation would also prevent her from gaining access to both court protection against future incidents of abuse and restitution for past abuse.

Deportation may also cause extreme hardship by diminishing the protection available to the abused's children. The loss of such protection must be carefully considered in the extreme hardship analysis given the well documented interrelationship between child abuse and spousal abuse. Several recent studies have found a 60-75% correlation between spouse and child abuse. See M. Roy,

Children in the Crossfire (1988); P. Jaffe, et al., Children of Battered Women (1990). Nationally, 75% of battered women have reported that their children have also been battered. Straus, et al., Behind Closed Doors: Violence in the American Family, (1980); see also S. Ford, Domestic Violence: The Great American Spectator Sport, Oklahoma Coalition on Domestic Violence and Sexual Assault, 3 (July/August 1991) (noting that children in homes where domestic violence occurs are physically abused or neglected at a rate 1500% higher than the national average).

Additionally, loss of access to United States family courts may result in extreme hardship by depriving the abused of necessary child support and even custody of her children. When battered women receive meaningful help from the legal system, that help often includes custody awards to the non-abusive partner and structured, safe, often supervised visitation between the abuser and the children. The help battered women receive from the court may also include child support orders, monthly rental payments, police assistance, the abuser being ordered to undergo counselling, and other relief necessary to halt violence that the family court may fashion. This legal relief may be awarded as a part of a civil protection order, divorce order, child support order, or custody award. Deportation of an abused immigrant women may cause extreme hardship by depriving her and/or her children of the benefits of court orders that were issued to protect her.

Finally, VAWA was enacted to criminalize the behavior of perpetrators of domestic violence, to ensure that the perpetrators are punished for their crimes, and to provide legal protection for the abused. Denial of access to the United States

courts and justice system through deportation would effectively deprive the abused of the protection and justice that Congress intended. To allow an abusive husband to escape punishment while depriving the abused spouse and her children of the legal protection of this country's judicial system would flout the spirit and purpose of VAWA. Accordingly, the loss of access to essential legal protections must be a factor in the extreme hardship analysis.

3. The Existence of and Need for Services.

Many, if not most, victims of domestic abuse need the support of family, community groups, social service organizations, and/or professional counselling to assist them in escaping an abusive relationship. Frequently victims of abuse also need assistance from social workers and trained medical personnel in order to recover from the physical and psychological trauma that stems from the abuse. Evidence that the abused would be deprived of such necessary assistance through deportation must be considered and should weigh heavily in the extreme hardship analysis.

Denial of access to effective support services may result in extreme hardship by impeding the abused's recovery. Due to the grave effects of domestic abuse, many, if not most, battered women need professional assistance to recover from the psychological effects of severe, prolonged abuse. Research confirms that victims of abuse frequently seek counseling and mental health services to help overcome their psychological trauma:

- Approximately 25% of the women utilizing psychological services have a history of being victim to domestic violence.²¹
- Nearly one-third of battered women see health care professionals repeatedly.²²
- Battered women are almost five times more likely than nonbattered women to require psychiatric treatment.²³

The need for effective counselling and psychological services cannot be overestimated in light of the potentially deadly effects of abuse.

The potential loss of essential social services also must be considered in the extreme hardship analysis. Social services for victims of domestic violence have increased greatly in this country over the past decade. See S. Glazer, *Violence Against Women*, CG Researcher, Vol. 3, No. 8, 171 (Feb.1993) (noting that the number of shelters for battered women in the United States has increased by 1500 over the past twenty years).

However, effective social and medical services may not be available or accessible to victims of domestic violence in the country to which the battered immigrant would be deported. Forced removal of the abused's social support system

²¹ E. Stark & A. Flitcraft, *Violence Among Intimates: An Epidemiological Review*, reported in *Handbook of Family Violence*, Chapter 13, 304 (E. Von Haselt, et al., Eds. 1988).

²² H. Holtz & K. Furniss, *The Health Care Provider's Role in Domestic Violence*, *Trends in Health Care, Law & Ethics*, Vol. 8, No. 2, 47 (Spring 1993).

may serve to heighten the abused's sense of isolation and helplessness and prevent her from achieving an independent, abuse-free existence, in direct contravention of the purposes of VAWA. Thus, potential deprivation of social, psychological, and medical services needed by victims of abuse through deportation must be considered in making the extreme hardship determination in cases filed under VAWA.

4. Circumstance and Conditions in the Country of Deportation.

The circumstances and conditions relating to the treatment of victims of domestic violence in the country to which the battered immigrant would be deported must be considered in the extreme hardship inquiry. Indeed, there are a number of unique hardships that an abused immigrant woman may face relating specifically to her status as a victim of domestic violence.

The battered immigrant may suffer extreme hardship because the country to which the abused would be deported may not offer her any effective legal protection against further abuse. Domestic violence is not considered a crime in many countries. Some countries even have laws, policies, and customs that condone abuse or blame the victims for the abuse and penalize her for reporting it. See In matter of A and Z, A 72-190-893 & A 72-793-219 (Dec. 12 1994) (noting that

(...continued)

²³ See E. Stark & A. Flitcraft, Spouse Abuse, reported in *Violence in America: a* (continued...)

in Jordan it is considered “culturally unacceptable to highlight what is considered a private family matter i.e. wife beating.”); see also L. Heise, Violence Against Women: The Hidden Health Burden, 255 World Bank Discussion Papers, iii (World Bank Washington D.C. 1994) (Papua New Guinea Parliamentarian stating: “Wife beating is an accepted custom... we are wasting our time debating the issue.”).

Battered women may be discriminated against in the community or ostracized by family and friends merely because of her status as a victim of abuse or because she attempted to leave the abusive relationship. Furthermore, as stated above, the country of deportation may lack the type of medical, social, and psychological services that are available in this country and that are essential to the abused’s ability to recover from the physical, mental and emotional effect of the abuse.

5. The Continuing Behavior of the Abuser in the Country of Deportation.

The potential for the abuser to continue his behavior in the country of deportation must also be considered in the extreme hardship inquiry. Immigration judges should examine the history of the abuser’s conduct, the abuser’s stalking behavior and harassment of the abused, and his ability to travel to the country to which the abused immigrant would be deported to determine whether deportation would increase the likelihood of future abuse.

(...continued)

Public Health Approach, (M. Rosenberg & M. Fenley eds. 1991).

Mere separation of the battered immigrant from her husband through deportation is unlikely, of itself, to prevent future abuse, since abusers often go to great lengths' to locate their victims. See A. Ganley, Domestic Violence: The What, Why, and Who, as Relevant to Civil Court Cases, Chapter 2, 21, 37-39, Family Violence Prevention Fund, Domestic Violence in Civil Court Cases (1992) (attached hereto as Exhibit 6). Other authorities have found that battered women who leave their abusive mates are often followed and harassed for years. A. Browne, When Battered Women Kill, 114 (1987). As United States citizen or lawful permanent resident, the abuser, unlike his victim, may travel freely between the United States and the country to which his victim is deported.

Extreme hardship may exist where evidence shows the abused has the ability to travel and has shown a propensity for engaging in extreme violence. Put simply, the government would effectively assist the abuser in perpetrating further abuse by allowing the abused to be deported despite evidence of the abuser's history of violence and ability to follow the abused to the country of deportation.

6. Potential for Continuing Harm at Hands of Abuser's Family or Friends in Country of Deportation.

The existence of family and/or friends of the abuser must also be considered in the extreme hardship analysis. It is well recognized that batterers often continue their abuse through their friends and family. Family or friends of the abuser in the country of deportation may effectively bar the abused from jobs, housing and access to other essentials, depending upon the social, political and or economic clout

wielded by the family or friends. As a result, the abused may have no place to turn for assistance in the country of deportation and may be forced to resume the abusive and potentially life threatening relationship with the batterer.

7. The Effect of Deportation on Children Who Have Been Subject to Domestic Violence.

The extreme hardship analysis must also take into account the effect that deportation would have on children who have been subjected to domestic violence. Deportation of the abused immigrant could result in a number of traumatic consequences for the children. The children could be left in the care of the abuser or placed in foster care. Or, the children could be uprooted and transported to an unfamiliar country which lacks the services essential to the children's development or the special services to address the children's psychological needs that resulted from having been subject to, or having witnessed, abuse.

The possibility that the abuser could assume custody of children, either through court order or because the children otherwise cannot accompany the abused to the country of deportation, should factor significantly in the extreme hardship analysis. Numerous studies confirm that there is a significant overlap between spousal abuse and child abuse. L. Bowker, et al., On the Relationship between Wife Beating and Child Abuse, Chapter 7, in Feminist Perspectives on Wife Abuse, (1988) (finding a 70% correlation between wife abuse and child abuse in households where children were present). And, as stated above in Section II, there is little doubt that exposure to domestic violence, either directly or indirectly, has a

tremendous adverse impact on children. The likelihood that the abuser will gain control custody of the abused's children following deportation must be considered in evaluating extreme hardship. Separation through deportation of an abused woman from children who have witnessed her abuse can have dire long term consequences for both the victim and her children.

Deportation of the abused immigrant may also result in the de facto deportation of the abused's children if the immigrant is permitted to bring her children with her to the country of deportation. The potential impact of the children's relocation must be considered in making the extreme hardship determination. As explained previously, exposure to domestic violence has been proven to have a devastating psychological impact on children, causing feelings of isolation, loneliness, and depression. Psychologists agree that children fare best in a stable loving environment. R. Vasta, et al., Child Psychology the Modern Science, Chapter 12, 444-83 (2d ed. 1995). It goes without saying that forcibly removing children from his or her school, friends, and familiar social network can be extremely traumatizing. Children who have been subjected to the trauma of domestic violence should not be forced to confront the added distress of relocation through deportation.

C. Deportation Of Ms. Aguilar Would Result in Extreme Hardship.

No more than a cursory examination of the facts in the instant matter is necessary to show that the deportation of Ms. Aguilar would constitute extreme hardship. The Service implies that the only hardship that would be imposed on Ms. Aguilar by deportation would be denial of her “desire to take advantage of U.S. social services”. Service Brief at 2. To the contrary, application of a domestic abuse sensitive “extreme hardship” analysis similar to that described above and approved by the Service and Congress clearly indicates that Ms. Aguilar can show the requisite hardship necessary to qualify for a VAWA suspension.

Ms. Aguilar is a victim of severe and recurrent domestic abuse. See Tr. at 104. The services Ms. Aguilar requires from the United States are the safeguards available under our judicial system, such as the protection order she received against Mr. Hernandez for herself and her children. Tr. 112. Deportation to Mexico would work significant harm on Ms. Aguilar by denying her access to the community services which would facilitate her recovery from the psychological trauma of her abuse while placing her in a position of danger at the hands of her abuser who knows where her parents live. See Tr. at 112. Furthermore, deportation would exacerbate the harm already imposed upon Erica Hernandez by her father’s abusive conduct.

The facts of Ms. Aguilar’s predicament clearly meet the “extreme hardship” standard in domestic abuse situations and, thus, she is well deserving of the Congressionally mandated protections of VAWA. The IJ recognized this and granted her suspension. The Board should not disturb that decision.

**III. A CHILD WHO WITNESSES DOMESTIC VIOLENCE AGAINST A
LOVED ONE HAS SUFFERED EXTREME CRUELTY UNDER THE
VAWA PROVISIONS AND MUST BE PROTECTED
FROM FURTHER CRUELTY.**

**A. In VAWA Suspension Cases, Extreme Cruelty Must Be Broadly
Construed to Take Into Consideration the Various Effects of
Domestic Violence on Battered Immigrant Women and
Children.**

1. Defining Domestic Violence and Extreme Cruelty.

An immigrant woman can successfully suspend deportation if she has been battered or subjected to extreme cruelty by her U.S. citizen or permanent resident spouse or if her child by a U.S. citizen or lawful permanent resident has been battered or subjected to extreme cruelty in the U.S. by that citizen or permanent resident parent. By allowing immigrant women and children relief from more than battering, VAWA recognizes the complexity of domestic violence which by its very nature involves more than physical abuse. In order to fully protect immigrant women from the horrors of domestic violence, the *amici* encourage the Board to broadly construe “extreme cruelty” to include all forms of domestic violence other than battering.

Domestic violence is internationally recognized as encompassing physical, sexual and psychological harm. See Declaration on the Elimination of Violence Against Women, Article 2, Beijing Platform for Action; Committee on the Elimination of Discrimination Against Women General Recommendation 19, ¶ 31;

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, Article 2. In encouraging countries to address the issue of domestic violence in their legislation, the United Nations has defined domestic violence as:

all acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to physical battery, kidnapping, threats, intimidation, coercion, staking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed ‘domestic violence.’

Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted In Accordance with Commission on Human Rights Resolution 1995/85, February 2, 1996.²⁴

In order for VAWA to truly be effective, “extreme cruelty” must be broadly defined to include the various non-battering forms of domestic violence including battering or psychological or emotional abuse. The INS has recognized the necessity of broadly defining “extreme cruelty” for VAWA matters in its promulgation of self-petitioning regulations. These regulations state that abuse includes, but is not limited to, causing or threatening to cause physical and mental

²⁴ The international definitions are in accordance with how domestic violence is viewed in the United States. For example, domestic violence has been defined by the Family Violence Prevention Fund as a “*pattern* of assaultive and controlling behaviors, including physical, sexual, and psychological attacks.” Domestic Violence in Civil Court Cases at 22 (1992).

injuries, psychological and sexual abuse and actions that in and of themselves may not initially appear violent, but are a part of an overall pattern of violence. See Section 204.2(c)(1)(vi), (e)(1)(vi). The *amici* request the Board to declare that “extreme cruelty” uniformly should be defined within VAWA and that its definition should be broadly construed to take into consideration the special nature of domestic violence.

2. Extreme Cruelty Does Not Require Intent.

The Service encourages the Board to find that extreme cruelty includes an element of intent. The Service does not cite to VAWA in support of its intent theory but rather to “state domestic relations” cases. This broad assertion that these cases require intent for the existence of extreme cruelty is misleading. The cases cited by the Service are over thirty years old and many have been distinguished or support the position of the *amici*. For example, the Service cites to Bell v. Bell, 213 Ga. 176, 97 S.E.2d 571 (Ga. 1957), and O’Connor v. O’Connor, 212 Ga. 92, 90 S.E.2d 581 (Ga. 1955), as support for its intent theory. However, Bell v. Bell distinguishes O’Connor and cites to Myrick v. Myrick, 67 Ga. 771, 778 which states :

cruel treatment, or cruelty in the broad and unrestricted sense in which it is used in our statute, is any act intended to torment, vex, or afflict, or which actually afflicts or torments without necessity; or any act of inhumanity, wrong, oppression, or injustice; for these, or any of them, is the common understanding of the term.

The Service also cites to Nason v. Nason, 48 Cal. App. 2d 500, 503, 120 P.2d 37, 39 (Cal. Ct. App. 1941) for the premise that divorce statute requires “malevolent

motive” with regards to “extreme cruelty.” The Service fails to provide the Board with the complete language cited in Nason. That case, citing to Dahnke v. Dahnke, 55 Cal. App. 12, 202 P. 894 (Cal. Ct. App. 1921), actually states: “the language of the statute would seem to import acts directed toward the other party and with a malevolent motive . . . [I]t is conceivable a case might be imagined which would fall within the meaning of the words without such motive.”

Other cases cited by the Service contain language which actually support the definition of extreme cruelty advocated by the *amici*. For example, the Service cites to Clayton v. Clayton, 81 Idaho 416, 418, 345 P.2d 719 (Idaho 1959) for support of its intent theory. Clayton states that:

[t]he particular acts of cruelty complained of are not of themselves the determining factor [of extreme cruelty], but the question as to whether the acts of cruelty caused grievous mental suffering on the part of the innocent party is the determining question under the statute.

Contrary to the Service’s assertions, state domestic relations cases actually support a broad definition of extreme cruelty.

Indeed, legislatures have even revamped their definitions of “cruelty” to allow for a broader interpretation by courts. For example, prior to 1971, New Jersey’s divorce law defined “extreme cruelty” narrowly so as to implicitly require “intent.” See Kinsella v. Kinsella, 1997 N.J. LEXIS 199, 53-54 (N.J. 1997). However, in 1971 a legislatively authorized Divorce Law Study Commission recommended the state law be changed to:

Extreme cruelty, which is defined as including any physical or mental cruelty which endangers the safety or health of the plaintiff or make it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant. . . .

Id. at 53-54; see also N.J.S.A. 2A:34-2.

The Commission explained that this revised definition “constitute[d] an effort to modernize the concept of cruelty in a moderate fashion . . . The terms are flexible but do not include trivial misconduct or ordinary contretemps.” Id. at 56, citing to Final Report of the New Jersey Divorce Law Study Commission 6 (1970) (“Final Report”). The Commission went on to state that intent was no longer a necessary component of extreme cruelty and that the new definition was:

[a]n attempt . . . to **focus upon the effect of extreme cruelty** upon the plaintiff, **rather than upon the defendant’s mens rea or intent to inflict pain**. The result, insofar as the plaintiff is concerned, is the same whether the “cruelty” is calculated or designed or a by-product of the defendant’s self-centeredness.

Id. at 57, citing to Final Report at 69. The Commission’s recommended definitions were accepted by the legislature and incorporated into law. See N.J.S.A. 2A:34-2. After 1971, “it became even clearer that the subjective experience of the plaintiff, rather than the objective quality of the acts complained of, were determinative.”

Kinsella v. Kinsella at 58.²⁵

²⁵ See also Devito v. Devito, 136 N.J. Super. 580, 583 (N.J. Ch. 1975) (“The court finds that the revised statutory language has broadened the concept of extreme cruelty and indicates that the test as to whether there is sufficient evidence to support the ‘cruelty’ allegation is a subjective one”).

Other courts which have dealt with divorce cases have also acknowledged that there is no way to determine “extreme cruelty” in an inclusive or exclusive manner. See Peter E. Van Runkle, Lassiter v. Department of Social Services: What it Means for Indigent Divorce Litigant, 43 Ohio St. L.J. 969, 985 (1982). This term must leave broad judicial discretion to the courts to determine whether the evidence proves the misconduct rises to the level of extreme cruelty. Harshbarger v. Harshbarger, 1993 Ohio App. LEXIS 3125 (Ohio Ct. App. 1993). Courts, in general, recognize that fact finding on extreme cruelty will vary from case to case, depending on the parties involved. See, e.g. Farah v. Farah, 25 Ill. App. 3d 481, 323 N.E.2d 361 (Ill. App. Ct.1975) (“[e]ach case must be considered upon its own facts, including the conduct of the parties before and at the time, their respective physical and mental conditions, and other circumstances relevant to the probable effect of the acts”); Osman v. Keating-Osman, 521 N.W.2d 655 (S.D. 1994)(“the definition of extreme cruelty differs according to the personalities of the parties involved”); Shaack v. Shaack, 414 N.W.2d 818 (S.D. 1987)(“[w]hat might be acceptable and even commonplace in the relationship between rather stolid individuals could well be extraordinary and highly unacceptable in the lives of more sensitive or high-strung husbands and wives.”); Gruebel v. Gruebel, Slip Opinion Nos. 85-CA-39, 85-CA-40 (Ohio Ct. App. 1987)(“facts constitute extreme cruelty in a given case must be left to the broad, but sound, discretion of the trial court and whether sufficient evidence has been presented to establish extreme cruelty will depend upon all the circumstances of the particular case”).

3. Examples of Extreme Cruelty to Immigrant Women.

In cases involving immigrant women, extreme cruelty must encompass a broad range of non-battering behavior. Among the types of extreme cruelty that a spouse may use to abuse his immigrant wife are social isolation, possessiveness, harassment, threats, or economic abuse against his immigrant wife. In order to assist the Board in its understanding of extreme cruelty, the *amici* provide the following list of behaviors which may constitute extreme cruelty when utilized by an abusive spouse in his perpetration of domestic violence against immigrant women and children.

a. Social Isolation

An important tool to prevent a victim from realizing her situation, seeking help, and escaping, is to keep her in social isolation. An abuser might limit the victim's ability to use the phone,²⁶ prohibit her from going to work or school,²⁷ visit family or friends,²⁸ or attend any other social activity. Many abused women are

²⁶ See e.g. Harshbarger v. Harshbarger, 1993 Ohio App. LEXIS 3125 (Ohio Ct. App. 1993) (the court treated the fact that the husband did not let his wife talk over the phone for more than twenty minutes as extreme cruelty).

²⁷ Family Violence Prevention Fund, Domestic Violence in Civil Court Cases at 23 (1992).

²⁸ See e.g. Charles P. Ewing, Battered Women Who Kill: Psychological Self-Defense an Legal Justification (1987) at 10 (citing studies showing almost 50% of women studied were forbidden by their batterers from having personal friends or having such friends in the house); Gazzillo v. Gazzillo,
(continued...)

actually physically imprisoned by their abuser.²⁹ The abuser may prevent her from learning English and by that diminish her accessibility to health care, social worker, battered women's advocates, immigration authorities, police, and courts.³⁰ In many cases, the immigrant woman is already isolated by living in a new country with no supportive community, family, and friends so that the additional isolation by the abuser leaves the immigrant victim with no accessibility to the outer world.³¹

b. Possessiveness and Harassment

Acts of jealousy and possessiveness are a common behavior of abusers.³² The abuser might accuse the victim of infidelity and of attempts to attract other men.³³

(...continued)

379 A.2d 288 (N.J. Ch. 1979) (court recognizing that a husband's refusal to allow wife to invite her relatives to visit her constitutes extreme cruelty).

²⁹ See, e.g. In re Marriage of Blinstein, 569 N.E. 2d 1357, 58-59 (Ill.Ct. App. 1991) (court recognizing that being locked in closets, homes, and/or tied to furniture constitutes extreme cruelty); Gazzillo v. Gazzillo *supra* n. 28 (court considered not letting wife out of house at night as extreme cruelty).

³⁰ Leslye E. Orloff, Deeana Jang, & Catherine F. Klein, With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women, 29 Family L. Quarterly 313, 316-17 (1995).

³¹ Id. at 314.

³² See Diana Follimstad, Larry Rutledge, Barbara Berg, Elizabeth Hause, and Darlene Polek, The Roles of Emotional Abuse in Physically Abusive Relationships, 5 J. Family Violence 113 (1990).

³³ Courts dealing with divorce cases have recognized false accusations of infidelity as extreme cruelty. See e.g. Mark v. Mark, 29 N.W. 2d 683 (1947); Keenan v. Keenan, 351 Mich. 123, 105 N.W.2d 54 (Mich. 1960) ([g]rounds for divorce exist where a husband falsely accuses his wife of adultery)

Other possessive behavior recognized by courts as justifying the issuance of a protective order include opening a victim's mail,³⁴ calling a victim frequently at home and at work,³⁵ driving around her home or work,³⁶ loitering around her home, work, or shelter,³⁷ constantly writing her letters,³⁸ contacting her friends, family, or employer,³⁹ and initiating car chases.⁴⁰

c. Threats

An abuser uses different kinds of threats to maintain the control over his victim. There is evidence that abusers use gestures such as standing very close, clenching fists, sending warning looks and displaying weapons, to intimidate their victims.⁴¹ The abuser not only threatens to hurt the victim but also threatens to hurt people and things she cares about, including her children, other members of her family, himself, family pets, and property.⁴² Abusers of immigrant women

³⁴ See e.g. Knuth v. Knuth, 1992 Minn. App. LEXIS 696 (Minn. Ct. App. 1992)

³⁵ See e.g. Johnson v. Cegielski, 393 N.W.2d 547 (Wis. Ct. App. 1986).

³⁶ See e.g. Boniek v. Boniek, 443 N.W.2d 196, 198 (Minn. Ct. App. 1989).

³⁷ See e.g. Knuth v. Knuth *supra* n. 34.

³⁸ See e.g. State v. Sarlund, 407 N.W.2d 544, 546 (Wis. 1987).

³⁹ Id.

⁴⁰ See e.g. Christenson v. Christenson, 472 N.W.2d 279, 280 (Iowa 1991).

⁴¹ Family Violence Prevention Fund, Domestic Violence in Civil Court Cases (1992) at 23-24.

⁴² Barbara Hart, Children of Domestic Violence: Risks and Remedies, 8 Protective Service Quarterly (Winter 1993); See e.g. Iowa v. Zeien, 505 N.W.2d 498 (Iowa 1993); Kreitz v. Kreitz, 750 S.W.2d 681 (Mo. Ct. App. 1988).

threaten to report the victims to the government, especially to the immigration authorities.⁴³

d. Economic Abuse

Many abusers use restrictions on the victim's economic freedom to dominate her. Abusers prevent their victim from participating in the labor market or sabotage their paid work.⁴⁴ They control the victim's access to money by taking her salary,⁴⁵ making her ask for money, and not giving her access to checking accounts. In addition, abusers will destroy family property, especially if they suspect that the victim plans to leave the relationship.⁴⁶

e. Degradation

Abusers use different methods to humiliate their victims. They may call the victims names,⁴⁷ constantly criticizing her,⁴⁸ accuse her of misconduct,⁴⁹ force her to

⁴³ Leti Volpp, Working with Battered Immigrant Women: A Handbook to Make Services Accessible at 6 (1995).

⁴⁴ See New York Victim Service Agency Report on the Costs of Domestic Violence (1987); Susan Schechter and Lisa T. Gray, A Framework for Understanding and Empowering Battered Women, Abuse and Victimization Across the Life Span at 242 (1988).

⁴⁵ Wolf v. Wolf, 333 A.2d 138, 140 (R.I. 1975) (court recognized that forcing a wife to work and taking her salary is extreme cruelty).

⁴⁶ Family Violence Prevention Fund, Domestic Violence in Civil Court Cases (1992) at 23.

⁴⁷ See, e.g. Pfalzgraf v. Pfalzgraf, Slip Opinion, 14-CA-79 (Ohio Ct. App. 1979); Gazzillo v. Gazzillo, 379 A.2d 288 (N.J. Ch. 1979)

⁴⁸ See, e.g., Gazzillo v. Gazzillo, 379 A.2d 288 (N.J. Ch. 1979)

eat, limit her activities to housework, lie and conceal information about himself, blame her for problems she cannot control, and/or force her to engage in illegal activities, drug abuse, and prostitution.

B. Extreme Cruelty Must Be Broadly Construed To Protect Child Witnesses of Domestic Violence.

The Service has argued in its brief that the IJ erred in finding “extreme cruelty” based on Erica’s nervous condition and a diagnosis of post-traumatic stress syndrome. Service Brief at 9. It argues that Erica could have just as easily suffered stress from an automobile accident or from viewing her parent in a fight at a sporting event. Id. at 9-10. The Service ignores the vast amount of sociological and psychological research which shows the unique effects of domestic violence on children. “Research on children who witness violence consistently confirms that these children experience significant emotional trauma.” Alan Topkins et al., The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications, 18 Law & Psychol. Rev. 137 (1994). In fact, even a brief review of Congressional, legislative, and court precedent, shows a general recognition of the harmful effects of domestic violence on children. The Board should reject outright the Service’s unsubstantiated arguments.

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⁴⁹ See e.g. Keenan v. Keenan, 105 N.W.2d 54 (1960) (unfounded accusations of misconduct, tending to degrade and humiliate, and which, if believed, would cause loss of friends and respect, constitute extreme cruelty).

(continued...)

Studies indicate that children who witness domestic violence demonstrate the same negative effects as children who are physically and sexually abused. See Joan S. Meier, Notes From the Underground: Integrating Psychological and Legal Perspectives On Domestic Violence In Theory and Practice, 21 Hofstra L. Rev. 1295, 1308 (1993).

These children who must “live in the homes where parents are battered carry the terrible lessons of violence with them into adulthood.” U.S. Attorney General’s Task Force on Family Violence, 1984 Report. Despite the Service’s assertions to the contrary, it is well-documented that a toddler who is consistently exposed to domestic violence against her mother for a period of three years will carry the violence with her throughout her life:

Children who live in a battering relationship experience the most insidious form of child abuse. Whether or not they are physically abused by either parent is less important than the psychological scars they bear from watching their fathers beat their mothers. . . .

P. Jaffe et al., Children of Battered Women 42. It is important that courts, as the IJ did here, take appropriate actions to protect a child witness of mother abuse. To do otherwise is to subject a child to further abuse and cruelty.

A child witness of domestic violence suffers extreme cruelty because she is a victim of psychological maltreatment. “Psychological maltreatment” has been defined by the International Conference on Psychological Abuse of Children and Youth as:

acts of omission and commission which are judged on the basis of a combination of community standards and professional expertise to be psychologically damaging. Such acts are committed by individuals . . . who by their characteristics . . . are in a position of differential power that renders a child vulnerable. Such acts damage immediately or ultimately the behavioral, cognitive, affective, or physical functioning of the child.

See Marla R. Brassard et al., *Psychological Maltreatment of Children and Youth* (1983).

Indeed, the Conference clearly stated that psychological abuse included forcing a child to observe violence directed toward a loved one. Id.

The severity of the psychological effect of abuse on a child depends on the type of abusive control used by the perpetrator, the duration of the abuse, and the age, gender, and developmental stage of the child. The Family Violence Prevention Fund, Domestic Violence in Civil Court Cases, (1992). “Toddlers are not too young to understand what is happening, and children who do not show adverse effects at the time of the violence may have problems later.” National Council of Juvenile and Family Court Judges, *Courts and Communities: Confronting Violence in the Family, Conference Highlights*, 27 (March 1993).

b. Behavioral Disorders

Observing domestic violence either directly or indirectly also deprives a child of the fulfillment of their emotional and developmental needs. Margaret Elbow, Children of Violent Marriages, The Forgotten Victims, *J. Contemp. Social Work*, 465 (October 1982). Children subjected to such cruelty often exhibit behavioral

disorders including anxiousness, excessive crying, and sadness. See P. Jaffe at 32, 35; see also Saunders at 51 (“in one study, 3/4 of the children of battered women exhibited clinically significant behavioral problems, compared with only 13% of those in a control group”). In the instant case, Erica demonstrated this very behavior, waking up at night “crying saying that her daddy was going to come back to kill her . . . mommy.” Tr. 42; Exhibit 2 at 8.

Children may even regress to an earlier stage of functioning, have trouble sleeping, and experience recurring nightmares that revolve around the traumatic witnessing events. See Jaffe at 42. In Erica’s case, she “reverted back to being a little baby” and experienced recurring nightmares and flashbacks. Tr. 42; Exhibit 2 at 8.

c. Disruption of Maternal Bond

Witnessing the abuse of a mother in particular has a severe psychological impact on a child. D. Saunders, Child Custody Decisions in Families Experiencing Woman Abuse, *Social Work* 39(1) at 51 (Jan. 1994). Studies indicate that “the emotional development of children ‘is intimately connected with the safety and nurturance provided by their environment.’” See P. Jaffe et al., Children of Battered Women, 32-33 (1990). If that environment is full of violence, those children are more likely to be adversely affected and experience a variety of problems, “including physical health problems, acting-out problems, and a wide range of disorders reflecting low self-concept, fear and anxiety, and social isolation.” Id. This description collaborates the emotional turmoil experienced by Erica who was

constantly fearful as a result of witnessing her mother's beatings and for whom "anything could trigger her memory on an incident, and her fear would accelerate." Tr. 59.

A child experiences extreme cruelty when forced to witness domestic violence because "a child's sense of self and his or her development of emotional expression stem from important early experiences involving significant members of the family." Id. When exposed to familial violence, "younger children are less capable of looking for situational explanations or cues to assist them in interpreting the severity of a particular emotionally charged event." Id. at 47. Hence, children may blame themselves and/or undergo extreme emotional distress which causes them to believe that "their mother and/or themselves are in grave jeopardy." Id. Regardless of the intent of the perpetrator, a child who constantly is exposed to abuse will suffer.

That is because:

Subjecting children to the victimization of their mothers is a severe form of psychological maltreatment. Such exposure arouses a mixture of intense feelings in the children that include fear . . . guilt . . . , divided loyalties, and anger.

D. Saunders, Child Custody Decisions in Families Experiencing Woman Abuse, *Social Work*, 51 (Jan. 1994).

At all stages of development, children learn from the emotional expression of others, are able to sense the presence of discord, and accordingly experience emotional distress. Jaffe at 45. Children subjected to emotional distress such as watching their mother being beaten "show signs of restlessness, nervousness, [and]

confusion because of the differences between home and school environments, reticence in discussing violence, and fantasies about a different home life.” Id. at 49. Often times, these children may blame themselves for the violence, and their inability to protect their mother, thus developing cognitive difficulties. Id. at 52; see also Terry Davidson, Conjugal Crime: Understanding and Changing the Wife Beating Pattern, 115-125 (1978). This is what we see in this case when Erica and Lisbeth felt guilty about their mother’s abuse, believing that they had done something to cause “their father to hit them or hit their mom.” Tr. 43-44.

d. Violent Behavior

Another documented effect of children witnessing violence is the reality that those children will grow up to be batterers. One study reported that “53% of [their] sample of 25 children [who witnessed domestic violence] acted out violently with their parents, 60% acted out violently with siblings, 30% with peers, and 33% with researchers.” Jane H. Pfouts et al., Forgotten Victims of Family Violence, 27 Soc. Work 367, 368 (1982). Another national study of domestic violence found that men who witnesses their fathers beating their mothers were three times more likely to hit their wives than those who had not witnessed such abuse as children. Murray A. Starus et al., Behind Closed Doors: Violence in the American Family (1980). In general, children who witness domestic violence at home often become the perpetrators of such violence in their adult lives. Ellen C. Herrenkohl et al., Perspectives on the Intergenerational Transmission of Abuse, in The Dark Side of Families: Current Family Violence Research 305 (1983).

2. Legal and Legislative Evidence

In putting forth its “extreme cruelty” argument, the Service completely ignores the legal and legislative evidence which recognizes that children who witness domestic violence suffer severe psychological abuse. This evidence supports the Board’s inclusion of such abuse in the “extreme cruelty” definition.

a. Legislatures

In the “Child Abuse Prevention and Treatment Act,” Congress has defined the term child abuse as including psychological maltreatment. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat 4 (1974). Specifically, “child abuse and neglect” are defined as:

. . . the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child’s welfare under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby”
Pub. L. No. 93-247, 88 Stat 4 (1974).

In addition to the statutory recognition of psychological abuse, Congress and the state legislatures have recently begun to note the effects of domestic violence on a child’s psychological and physical well-being in custody battles. They support the view that where a child is from a violent home, it is in the child’s best interest to be in the custody of the non-violent parent. Congress, for example, passed a resolution in support of this broader policy objective, which states that “for the purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the

custody of the abusive spouse “ H.R. Cong. Res. 172, 101st Cong., 2d Sess. (1990).

At least thirty-eight states and the district of Columbia mandate that judges take domestic violence into account in custody cases. See J. Zorza, *How Abused Women Can Use the Law To Help Protect Their Children, Ending the Cycle of Violence: Community Responses to Children of Battered Women* (1994). Texas and Washington currently prohibit joint custody to batterers. See Tex. Fam. Code § 14.021(h); Wash. RCW § 26.09.191(1)(c)(ii). One researcher noted that “collectively the codes appear to create a new legal principle; to wit, the existence of domestic violence in a family mitigates against an award of [custody] to the abusive parent.” B. Hart, *State Codes on Domestic Violence: Analysis, Commentary, and Recommendations*, Chapter 2, National Council of Juvenile and Family Court Judges (Reno, NV 1992). These states recognize the adverse effects of domestic violence on children and the necessity to protect them from further violence.

b. Courts

Courts have also found that a child’s presence during abusive acts can be detrimental to the child. See *Dallas Cty. Child Prot. Serv. v. Bowling*, 833 S.W.2d 730, 733 (Tex. App.- Dallas 1992)([a] [c]hild’s presence during an abusive act directed at another is evidence that the child’s emotional and physical well-being has been endangered “); *In re Matter of Michael M.*, 591 N.Y.S.2d 681, 685 (Fam. Ct. 1992) (holding that “the children were at a substantial risk for emotional and psychological impairment as a result of domestic conflict and violence of the

parents”); Custody of Vaughn, 664 N.E.2d 434, 439 (Mass. 1996)(“it is well documented that witnessing domestic violence . . . has a profound impact on children. There are significant reported psychological problems in children who witness domestic violence, especially during important developmental stages”). Similarly, the Model Code on Domestic and Family Violence, developed by the National Council of Juvenile and Family Court Judges, states:

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.

NCJFCJ, Model Code on Domestic and Family Violence, Section 401 (January 1994).

The Board should follow Congress’ and the courts’ recognition that a child witnessing the victimization of her mother is harmed emotionally and psychologically and uphold the IJ’s findings. There is no doubt that Erica, a U.S. citizen, has been subject to extreme cruelty by repeatedly witnessing her father abuse and threaten her mother. Witnessing the victimization of one’s mother is psychological maltreatment and significantly affects a child’s development. While Mr. Hernandez may not battered Erica, he nonetheless subjected her to extreme cruelty.

III. THE 4,000 CAP OF SECTION 309(C)(7) IS MERELY A LIMIT ON THE NUMBER OF APPLICANTS ENTITLED TO AN ADJUSTMENT OF STATUS FOLLOWING A GRANT OF SUSPENSION AND NOT A

LIMITATION ON THE NUMBER OF APPLICANTS ENTITLED TO SUSPENSION OF DEPORTATION.

In its brief the Service states that the Board cannot maintain the IJ's decision because of Section 309(c)(7) of IIRAIRA. See Service Brief at 13. That section states that the "Attorney General may not suspend the deportation and adjust the status under section 244 of the Immigration Nationality Act of more than 4,000 aliens in any fiscal year. . . ." IIRIRA § 309(c)(7) (emphasis added). In interpreting this statute, the Board must construe "and" for its "conjunctive meaning rather than a word interchangeable with 'or'" unless the Court finds that "strict grammatical structure" frustrates the clear legislative intent. Bruce v. First Fed. Sav. and Loan Ass'n of Conroe, Inc., 837 F.2d 712, 715 (5th Cir. 1988). See also United States v. Smith, 35 F.3d 344, 347 (8th Cir. 1994) (construing the word "or" to mean "and" is conjunctive which contravenes ordinary usage). Here, the use of "and" imposes a 4,000 limit on suspensions of deportation followed by adjustments, but not to suspensions individually. See Tefel v. Reno, No. 97-0805-CIV-KING, 1997 U.S. Dist. LEXIS 10688, at *20 n.3 (S.D. Fla. May 20, 1997) (noting that "[T]he 4000 cap addressed in § 309(c)(7) is a cap on adjustment of status not on granting suspension of deportation.").

"Suspension of deportation" and "adjustment of status" are separate and distinct stages within a single legalization process. Thus, the Attorney General can (1) issue a suspension on deportation to any qualified applicant without limitation, and (2) issue a suspension of deportation followed by an adjustment of status so long as the Attorney General does not adjust the status of more than 4,000 such

applicants within any fiscal year. See id. The statutory cap under section 309(c)(7) applies only to adjustments of status following a grant of suspension of deportation. See id. Accordingly, the 4,000 cap is not applicable to Ms. Aguilar's request for suspension of deportation under VAWA.

Moreover, imposing a cap on VAWA suspension applicants would be contrary to the intent of the immigration provisions under VAWA which provide relief for battered immigrant spouses and their children. If this Court finds the 4,000 cap applicable to VAWA suspension applicants, the IJ can hear extensive testimony of violence and find three years of continuous residency, yet still deny suspension. Moreover, an IJ can also find "good moral character" plus extreme hardship, and once again deny suspension due to the cap. Such decisions would thwart VAWA's goal of protecting abused immigrant women. Instead of protecting Ms. Aguilar, such a decision would throw Ms. Aguilar into a harmful and potentially deadly situation. Courts, through applying the cap to VAWA suspension applicants, would subject battered women and children to continued abuse merely because their suspension hearing occurs later in the fiscal year when numbers are exhausted. This distinction would be cruel and arbitrary denying women with identical predicaments the same protections provided to others who happen to have hearings earlier in the year.

In the present case, refusing to grant Ms. Aguilar's request for suspension of deportation on the 4,000 cap technicality will permit continued abuse, stalking behavior, and furthermore, will not inhibit the abuser's ability to travel abroad and

inflict additional harm on Ms. Aguilar. Thus, relegating Ms. Aguilar to seek protection in her native country is clearly an inadequate remedy to protect her from continued abuse.⁵⁰ Ruling against suspension undoubtedly disregards Ms. Aguilar's needs for special support services (e.g., medical, social, psychological), and unquestionably denies Ms. Aguilar's access to tangible protective measures in the United States (e.g., protective orders, child support, family court custody).

The goal of VAWA is to provide tangible protection, and not illusory relief. Simply stated, applying the 4,000 cap to abused immigrant women would render VAWA protections worthless. For the foregoing reasons, Congress could not have intended such an arbitrary distinction that both contravenes statutory language and negates the ameliorative purposes of suspension of deportation under VAWA. Thus, this Court should depart from an interpretation of § 309(c)(7) which results in "absurd consequences as well as unreasonableness," and grant Ms. Aguilar's request for suspension of deportation. See Norman J. Singer, Sutherland Statutory Construction § 45.12. (5th ed. 1992).⁵¹

⁵⁰ In Mexico, the state is hesitant to involve itself in what it deems domestic issues. Committee on International Relations, U.S. House of Representatives and The Committee on Foreign Relations, U.S. Senate, 104th Cong., 2d Sess., 472. Domestic violence is such an issue.

⁵¹ See also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Lauer, 49 F.3d 323, 327 (7th Cir. 1995) ("We look beyond the express language of the statute only where such language is ambiguous, or where a literal interpretation would lead to absurd results or thwart the goals of the statutory scheme."); People v. Jenkins, 893 P.2d 1224, 1231 (Cal. 1995) ("We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."); Robin
(continued...)

CONCLUSION

For the foregoing reasons, the Board should uphold the IJ's ruling on Ms. Aguilar's request for suspension of deportation.

Respectfully submitted,

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v. Meadows, 561 N.E. 2d 111, 114-15 (Ill. App. Ct. 1990) (“Where literal enforcement of a statute will result in great injustice which was not contemplated, we will construe the statute to give effect to what must have been reasonably intended by the legislature.”).